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**OLLSCOIL NA HÉIREANN, CORCAIGH**  
**NATIONAL UNIVERSITY OF IRELAND, CORK**



**SCHOOL EXPULSION IN IRELAND:**  
**A SOCIO-LEGAL RIGHTS-BASED ANALYSIS OF EXPULSION LAW AND PRACTICE**

**THESIS PRESENTED BY**  
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**FOR THE DEGREE OF**  
**DOCTORAL THESIS IN LAW (PHD, LAW)**

**DEAN OF THE SCHOOL OF LAW: PROF. CONOR O'MAHONY**

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**2025**



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## DECLARATION

This is to certify that the work I am submitting is my own and has not been submitted for another degree, either at University College Cork or elsewhere. All external references and sources are clearly acknowledged and identified within the contents. I have read and understood the regulations of University College Cork concerning plagiarism and intellectual property.

Digital signature of the candidate: \_\_\_\_\_

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## ABSTRACT

This thesis presents a socio-legal analysis of how school expulsion decisions are made in practice and the extent to which they comply with legal and procedural fairness standards. The study is contextualised through an analysis of the legal foundations of the right to education, the right to be heard, and the right to fair procedure. First-hand observations of school board practices, coupled with an identified gap in the literature on school expulsion in Ireland, have motivated this research.

Underpinned by Pierre Bourdieu's theory of practice, the thesis conceptualises expulsion not simply as a legal decision but as a social practice embedded within structures of cultural and symbolic power. The study begins with an analysis of the legal framework, which is complemented by a literature review of sociological aspects of expulsion.

A detailed examination of methodological and ethical issues related to socio-legal research informed the empirical component of the study. Data were gathered through semi-structured interviews with key expulsion decision makers, students and parents affected by both formal and informal expulsions to gain a comprehensive understanding of expulsion law in practice.

The interviews examined decision-makers' understandings of the legal context of expulsion and their experiences of the expulsion and appeal mechanism. This revealed inconsistencies in the interpretation and implementation of legal obligations. In addition, the findings unveiled a complex array of concerns, particularly regarding the independence of decision-making processes. Other important issues identified include structural weaknesses within the legislative framework and a marked tendency among some decision-makers to favour professional judgement over strict legal compliance. While often well-intentioned, this practice raises significant concerns regarding adherence to legal standards, particularly in cases such as informal expulsions that occur without formal documentation or access to appeal, and reflects a broader ambivalence towards established legal procedures.

The role of judicial review in expulsion cases is examined, as are the legal grounds upon which such reviews may be sought. The thesis investigates the legal standing of s. 29 appeal committee decisions and the deliberations of the Higher Courts in matters

relating to expulsion. The study examines the development and procedural operation of s. 29 appeals, highlighting barriers to participation in appeals, including limited access to information and a lack of legal support. It criticises the underutilisation of the student voice in appeals, contrary to the provisions of Article 12 of the UNCRC. The study investigates the influence of socio-economic status and family engagement in shaping expulsion outcomes. It reveals how school expulsion disproportionately affects students from marginalised backgrounds and explores how expulsion affects students' well-being and access to a new school.

The thesis concludes by advocating for legal reform to align expulsion practices with rights-based standards. It proposes the creation of an independent agency to oversee expulsion appeals and support families.

## DEFINITION OF TERMS

### Definition of Social Class

There is no single, authoritative definition of the term social class. The distinction between socio-economic class groups is sometimes blurred. The common understanding of class is usually defined as people having the same social, economic, cultural, political, or educational status. In the absence of a definition of class in the academic literature accessed here, the researcher uses the terminology presented by the other authors when discussing their work. When reporting on the research findings generated here, the definition utilised is based on the terminology employed by the Central Statistics Office. Consequently, this study engages the terms ‘upper and middle class’ and ‘lower socio-economic class grouping’ when discussing social class. For a corresponding breakdown of the relevant occupations, see the chart below.

### Socio-Economic Class Expressed in Terms of Occupation

| Social Class Groups |                              | Socio-Economic Groupings   |
|---------------------|------------------------------|----------------------------|
| 1                   | Professional workers         | Upper and middle-class     |
| 2                   | Managerial and technical     |                            |
| 3                   | Non-manual                   |                            |
| 4                   | Skilled manual               |                            |
| 5                   | Semi-skilled                 | Lower socio-economic class |
| 6                   | Unskilled                    |                            |
| 7                   | All other gainfully occupied |                            |
| 8                   | Unemployed                   |                            |

|                              |                                                                                                                                                                                                                                      |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The Minister                 | The term Minister is used here to avoid repeated use of the terms Minister of Education, the Minister for Education and Skills and the Minister for Education and Youth.                                                             |
| School Personnel             | The inclusive term school personnel represents teachers, principals, special needs assistants, auxiliary staff, and members of the school Boards of Management.                                                                      |
| Student                      | To avoid frequent repetition of the phrase 'student' or 'young person', the term 'student' describes a young person enrolled in a post-primary school.                                                                               |
| Student at risk of expulsion | For ease of reference, the phrase 'student at risk of expulsion' is used to encompass students who have experienced formal or informal expulsion and those who are 'close to the edge' and at risk of expulsion.                     |
| Expulsion Hearing            | A special meeting of the Board of Management of a school to consider a recommendation by the school principal for the board to expel a student.                                                                                      |
| Parallel External            | An investigation external to the school, yet related to the recommendation to expel. It may, for example, involve a criminal investigation by An Garda Síochána or a child protection assessment by Tusla Child Protection Services. |

## GLOSSARY OF ABBREVIATIONS

|          |                                                                      |
|----------|----------------------------------------------------------------------|
| ASTI     | ADHD Attention Deficit Hyperactivity Disorder                        |
| BOM      | Association of Secondary Teachers in Ireland                         |
| C&C      | School Board of Management                                           |
| CCTV     | Community and Comprehensive Schools                                  |
| CRC      | Closed-Circuit Television                                            |
| CRC/C/GC | Convention on the Rights of the Child                                |
|          | Convention on the Rights of the Child, Committee,<br>General Comment |
| DEIS     | Delivering Equality of Opportunity in Schools                        |
| DES      | Department of Education and Science                                  |
| DOE      | Department of Education                                              |
| DOS      | Director of Schools (ETB)                                            |
| ECHR     | European Convention on Human Rights                                  |
| ETB      | Education and Training Board                                         |
| EWO      | Educational Welfare Officer                                          |
| EWS      | Educational Welfare Service                                          |
| GQR      | Generalisation from Qualitative Research                             |
| INTO     | Irish National Teachers' Organisation                                |
| IRP      | Independent Review Panel                                             |
| LC       | Leaving Certificate Examination                                      |
| NCSE     | National Council for Special Education                               |
| NEWB     | National Educational Welfare Board                                   |
| Ors      | Others                                                               |
| PQ       | Parliamentary Question                                               |
| s. 29    | Section 29 of the Act of 1998                                        |
| S.I.     | Statutory Instrument                                                 |
| SAN      | School Attendance Notice                                             |
| SEN      | Special Educational Needs                                            |
| SREC     | University College Cork Social Research Ethics<br>Committee          |
| STPP     | School-to-Prison Pipeline                                            |
| TD       | Teachta Dála (Member of the Irish Parliament)                        |
| TREC     | Tusla Research Ethics Committee                                      |
| TUI      | Teachers Union of Ireland                                            |
| TUSLA    | The Child and Family Agency                                          |
| UNCRC    | United Nations Convention on the Rights of the Child                 |
| VEC      | Vocational Education Committee                                       |
| VSS      | Voluntary Secondary School                                           |

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B. (a minor) v. The Board of Management of St Q's College; C. (a minor) v. The Board of Management of St Q's College, [2019] IECA 229.

Barry v. Fitzpatrick, [1996] 1 ILRM 512.

Board of Management of B. National School v. The Secretary General of the Department of Education and Skills & Ors., [2019] IEHC 738.

Board of Management of Presentation College Athenry v. Secretary General of the Department of Education and Skills & Ors., [2017] IEHC 521.

Board of Management of St. Marnock's National School v. Secretary General of the Department of Education and Skills & Ors., [2017] IEHC 683.

Board of Management of St. Molaga's School v. Secretary General of the Department of Education and Science & Ors., [2009] IEHC 91, [2010] 1 ILRM 122.

Board of Management of St. Molaga's National School v. Secretary General Department of Education & Ors., [2010] IESC 57.

Board of Management of the College v. Secretary General of the Department of Education & Ors., [2013] IEHC 358.

City of Waterford VEC v. Department of Education and Science & Ors., [2011] IEHC 278.

Clare v. Minister for Education and Science, [2004] IEHC 350.

Co. Westmeath Vocational Educational Committee v. the Department of Education and Science, [2009] IEHC 373.

Council of Civil Service Unions v. Minister for the Civil Service, [1985] A.C. 374.

Crowley v. Ireland, [1980] IR 102.

de Róiste v. Minister for Defence, [2001] 1 IR 190.

Director of Public Prosecutions v. Fagan, [1994] 2 IR 265.

Ermakov v. Westminster City Council, [1996] 2 All E. R. 302.

G v. an Bord Uchtála, [1980] IR 32.

Garvey v. Ireland, [1981] IR 75.

Glencar Exploration p.l.c. v. Mayo County Council (No. 2), [2002] 1 ILRM 481.

Loftus v. Attorney General, [1979] IR 221.

Lucan Educate Together National School v. Department of Education and Science & Ors., [2011] IEHC 86.

McDonald v. Bord na gCon, [1965] IR 217.

MD v. Board of Management of a Secondary School, [2024] IESC 11.

Meadows v. Minister for Justice, Equality and Law Reform, [2010] 2 IR 701.

Minister for Labour v. Grace, [1993] 2 IR 53.

Monaghan UDC v. Alf-A-Bet Productions Ltd, [1980] ILRM 64.

Murtagh & anor v. Board of Governors of St Emer's National School, [1991] 1 IR 482,

North Western Health Board v. H.W., [2001] 3 IR 622.

O'Brien v. Bord na Mona, [1983] IR 255.

O'Brien v. Personal Injuries Assessment Board, [2008] IESC 71, [2009] 3 IR 243.

O'Donovan v. Board of Management of De La Salle College Wicklow & Ors., [2009] IEHC 163.

O'Keeffe v. An Board Pleanála, [1993] 1 IR 39.

O'Keeffe v. Hickey, The Minister for Education and Science, Ireland, and The Attorney General, [2009] 2 IR 302, [2009] 1 I.L.M.R. 490.

Okunade v. Minister for Justice, Equality and Law Reform & Ors., [2012] IESC 49.

R v. Secretary of State for the Home Department, ex parte Doody; R v. Same, ex parte Pierson; R v. Same, ex parte Smart; R v. Same, ex parte Pegg, [1994] 1 AC 531, NIQB 6, 106(e).

R v. Secretary of State for the Home Department, ex parte Doody ; R v. Same, ex parte

Re a Ward of Court (withholding medical treatment) (No. 2), [1996] 2 IR 79.

Re JJ, [2022] 3 IR 1.

S.C. (A Minor, Suing by his Mother and Next Friend N.C.) v. Secretary General of the Department of Education and Skills, Sean Slowey, Hilda McHugh and Pat Delea (Respondent) The Board of Management of St. Munchin's College (Notice Party), [2017] IEHC 847.

Sinnott v. Minister for Education, [2001] 2 IR 545.

State (Healy) v. Donoghue [1976] IR 325.

State (Keegan) v. Stardust Victims' Compensation Tribunal, [1986] IR 642.

State (Smullen & Smullen) v. Duffy and Ors., [1980] 2 I.L.R.M 46.

Student A. and Student B. v. Dublin Secondary School, [1999] IEHC 47.

Student A.B. (a minor) v. The Board of Management of a Secondary School, [2019] IEHC 255.

T (By Her Mother and Litigation Friend A) R on the Application of) and Head Teacher of Elliot School and Others, [2002] EWCA Civ 1349

Tomasz Zalewski v. The Workplace Relations Commission, an Adjudication Officer (Rosaleen Glackin), Ireland and the Attorney General, [2020] IEHC 178.

Tomasz Zalewski v. The Workplace Relations Commission, an Adjudication Officer, [Y], Ireland and the Attorney General, [2021] IESC 24.

Walter Prendiville v. The Medical Council, Ireland and Attorney General, [2007] IEHC 427, [2008] 3 IR 122.

Wright (a Minor) v. Board of Management of Gorey Community College, [2000] IEHC 37.

Wylie v. Revenue Commissioners, [1994] 2 IR 160.

#### **STATUTORY INSTRUMENTS**

Government of Ireland (1937). Constitution of Ireland. Dublin: Stationery Office.

Government of Ireland (1961). The Road Traffic Act. Dublin: Stationery Office.

Government of Ireland (1961). The Courts (Supplemental Provisions) Act. Dublin: Stationery Office.

Government of Ireland (1992). Education for a changing world. Green paper on education. Government of Ireland (1997). The Education (NO. 2) Bill. Dublin: Stationery Office.

Government of Ireland (1997). The Non-Fatal Offences Against the Person Act. Dublin: Stationery Office.

Government of Ireland (1998). The Education Act. Dublin: Stationery Office.

Government of Ireland (2000). The Education (Welfare) Act. Dublin: Stationery Office.

Government of Ireland (2000). The Equal Status Act. Dublin: Stationery Office.

Government of Ireland (2004). The Civil Liability and Courts Act. Dublin: Stationery Office.

Government of Ireland (2007). The Education (Miscellaneous Provisions). Dublin: Stationery Office.

Government of Ireland (2013). The Child and Family Agency Act. Dublin:  
Stationery Office.

Government of Ireland (2013). The Education and Training Boards Act. Dublin:  
Stationery Office.

Government of Ireland (2015). The Workplace Relations Act. Dublin: Stationery  
Office.

Government of Ireland (2016). The Education (Admission to Schools) Bill. Dublin:  
Stationery Office.

Government of Ireland (2018). The Education (Admission to Schools) Act. Dublin:  
Stationery Office.

#### **UK STATUTORY INSTRUMENTS**

The Education Act 2002. (2002). London: The Stationery Office.

The Education Act 2011. (2011). London: The Stationery Office.

#### **COMMENCEMENT ORDERS**

The Education Act 1998, (Commencement) (No. 2) Order 1999 (S.I. No. 470 of 1999),  
art. 2.

The Education (Admission to Schools) Act 2018, (Commencement) (No. 2) Order  
2020. (S.I. No. 366/2020)

The Education Welfare (Transfer of Departmental Administration and Ministerial  
Functions) Order 2020 (S.I. 588 of 2020).

#### **PARLIAMENTARY DEBATES\QUESTIONS**

Dáil Éireann Debate, 19 March 1998.

Vol 487, No. 5. Col 988.

Dáil Éireann Debate, 07 July 2011.

School Enrolments.  
Parliamentary Question to  
Minister for Education and  
Skills. Question (60) Written  
answer.

|                                          |                                                                                                                                |
|------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Dáil Éireann Debate, 02 July 2024.       | Parliamentary Question to the Minister for Education.<br>Question Number: 222 Question Reference(s): 28030/24. Written answer. |
| Seanad Éireann Debate, 10 Feb 1994.      | Vol. 139. No. 4. Minister for Education.                                                                                       |
| Seanad Éireann Debate, 21 June 2000.     | Vol. 521, No. 5. The Education (Welfare) Bill, 1999. Report Stage.                                                             |
| Seanad Éireann Debate, 13 June 2018.     | Vol. 258, No. 9. The Education (Admission to Schools) Bill 2016: Second Stage. Minister for Education and Skills.              |
| Select Committee on Education and Skills | The Education (Admission to Schools) Debate, 28 June 2017. Bill 2016.                                                          |

#### INTERNATIONAL INSTRUMENTS

- The Universal Declaration of Human Rights (1948).
- The European Convention on Human Rights (1950).
- The United Nations Declaration of the Rights of the Child. (1959).
- The Convention against Discrimination in Education (1960).
- The International Covenant on Economic, Social and Cultural Rights (1966).
- The United Nations Convention on the Rights of the Child (1989).

## **1. INTRODUCTION.**

### **1.1. INTRODUCTION AND RATIONALE**

Education is a fundamental right closely linked to a child's development and lifelong prospects, due to its multiplier effect. There is a general expectation that all post-primary students will receive their education within a mainstream school setting. This expectation is grounded in the understanding that students will engage in behaviour that allows teachers to effectively carry out their professional responsibilities and sustain a supportive learning environment. In extreme cases, the impact of disruptive student behaviour on teaching and learning and the safety and or wellbeing of students or school staff is significant, making expulsion from school unavoidable. The decision to review this complex, sensitive topic has been informed by the author's first-hand experience as an educator in various professional contexts, including membership on a range of school boards of management and a regional educational training board. The study aims to examine the legal framework governing school expulsion in Ireland in order to develop a comprehensive understanding of the phenomenon.

School expulsion presents significant legal and professional issues for schools, yet, to date, the topic has received little scholarly attention in Ireland. Set against public commentary and demands for greater access to schools generally, it is timely that the precise nature of school expulsion in Ireland is examined. As the first comprehensive examination of the issue in Ireland, the project is distinctive and contributes to existing Irish and international literature on school expulsion law. As such, it addresses the significant gap in our understanding of the implementation of expulsion law. The focus of the study is the application of the law in practice. It sets forth an informed and comprehensive account that describes and scrutinises the legal framework for expulsion with particular attention to the right to education, the right to be heard, and the right to fair procedures. This brings this thesis into the realm of Irish domestic law and its interaction with international law in place as of 1<sup>st</sup> August 2025.

## **1.2. RESEARCH OVERVIEW**

The study adopts an interdisciplinary socio-legal perspective, enabling the voices of decision-makers to be heard in order to fuse understandings of law and practice from various perspectives into policy discourse and debate. The thesis consists of a doctrinal analysis of the law concerning school expulsion, a review of social science literature related to expulsion, and empirical research utilising semi-structured interviews to capture the lived experiences of decision-makers and their interactions with the legal framework. The empirical findings are enhanced with current quantitative data relating to formal expulsion and appeals.

The research questions that guided the study focused on establishing the legal framework, the structure and functionality of expulsion-related decision-making and the support available to parents of the expelled when exercising their duty/right to have their children educated:

- i. What is the current legal framework for school expulsion in Ireland?
- ii. Are school BOMs adequately equipped to engage in the school expulsion process as provided for in law?
- iii. Are Section 29 appeals conducted with due regard to the principle of natural justice and informed by the children's rights agenda?
- iv. How effective is the legislative provision in supporting parents vindicate their duty/right to have their children educated?

## **1.3. PARAMETERS AND LOCATION OF THE EMPIRICAL RESEARCH**

The focus of the study is on post-primary students attending recognised schools in receipt of public funding. The term 'post-primary' is used here as the collective term for second-level school types in Ireland. The empirical data was accessed through forty-four semi-structured interviews conducted with ten discrete groups, each representing a key decision-making group. The selection of participants was guided by the need to protect interviewees' identities and to ensure representation from both urban and rural areas across the country. To this end, a stratified sampling approach was adopted. Participants in each category were selected using a proportional sampling strategy, ensuring equal representation from three regions to maintain balanced regional representation and reduce regional bias. Limited background

information was presented when reporting on individuals' contributions in order to preserve individual and organisational anonymity.

#### **1.4. RESEARCH THEORETICAL FRAMEWORK**

Pierre Bourdieu's seminal work is primarily concerned with the dynamics of power in society, especially the diverse and subtle ways in which power is transferred, concepts which are of particular importance here. His theory of practice functions essentially as a theory of research practice.<sup>1</sup> His core conceptual tools of habitus, forms of capital, symbolic power and symbolic violence provide a comprehensive framework for understanding decision-making in a social context and are engaged to practical effect in this research. By engaging Bourdieu's framework, this study situates individual agency within broader fields of power and social relations, thereby offering a nuanced understanding of practice as both structured and structuring.

This study undertakes an objective examination of the law relating to expulsion, together with a subjective examination of the law in practice as presented by interviewees; Bourdieu offers strong support for this approach.<sup>2</sup>

#### **1.5. LIMITATIONS AND CHALLENGES OF THE RESEARCH**

There were a number of challenges associated with the study, principally difficulties accessing participants; this was especially the case with regard to marginalised, hard-to-reach families. In addition, given the sensitive nature of the topic under consideration, complying with data protection requirements, securing ethical approvals, and the gatekeepers' consent were significant elements of the task undertaken.<sup>3</sup>

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<sup>1</sup> Michael James Grenfell, *Pierre Bourdieu: key concepts*. (London: Routledge Publication) 2014, p.213.

<sup>2</sup> Pierre Bourdieu & Loïc Wacquant, *An Invitation to Reflexive Sociology*. (Chicago: University of Chicago Press) 1992.

<sup>3</sup> Note. For discussion on Informed Voluntary Consent, see section 4.1.1.

## 1.6. THESIS OUTLINE

Throughout eight chapters, the thesis moves from a legal analysis to a sociological perspective, illuminating key issues relating to expulsion. This shift is followed by a discussion of the methodological elements of the empirical research and the subsequent analysis of findings. This chapter also offers an overview of the study, including its rationale, objectives, theoretical underpinnings, methodological approach, and key limitations.

**Chapter Two** presents a doctrinal analysis of international and domestic law concerning the right to education, the right to be heard, and the right to fair procedures aimed at establishing the legal framework within which expulsion occurs. The legal principles applicable to expulsion decision-making are scrutinised, as is its governing framework. Attention is afforded to the development of the appeal mechanism and the deliberations of the courts on foot of challenges to the outcome of appeals. This analysis informed both the research methodology and the emerging themes that form the basis of the interview schedules. It provided a background against which to analyse the research findings and enabled the research questions to be addressed.

Acknowledging that law does not exist in a vacuum, **Chapter Three** adopts a sociological perspective, examines the broader societal context that influences expulsion decision-making and discusses the role of the education system as a contributor to social inequality. The chapter discusses various forms of expulsion, the forces promoting expulsion, and the consequences of expulsion with a view to achieving a fuller understanding of the law in practice. As an essential element of challenging expulsion, the chapter examines the status of the voice of parents in education. In the absence of relevant Irish academic literature, current English literature is reviewed to explore parents' experiences of expulsion appeals.

In **Chapter Four**, the theoretical framework and methodologies adopted to address the research questions are outlined. The rationale for engaging an interdisciplinary socio-legal approach is discussed, highlighting the thoroughness of this design. The chapter examines ethical standards pertaining to socio-legal research and discusses the limitations of the research undertaken. The concepts of positionality and reflexivity,

which are of significance in the context of this study, are detailed. Additionally, the empirical data collection and analysis method employed are discussed, as are issues relating to the generalisation of the research findings.

Informed by the first-hand experience of key decision-makers, **Chapter Five** presents the research findings related to expulsion decision-making. The primary focus here is on the role of the school board of management (BOM) and its consideration of the school principal's recommendation to expel. Particular attention is afforded to the composition of the board, the recruitment and training of members and the BOM chairpersons' perception of the legal context of their decision-making. In this context, the chairpersons' perception of the expelled student's right to be heard is analysed. The nature and effect of the Educational Welfare Service's involvement in school expulsions are reviewed. Moving beyond formal expulsion, attention is afforded to the debate surrounding non-statutory informal expulsion. Adopting a broad perspective, the chapter examines the role and power of the school principal concerning both formal and informal expulsions and their influence on the board's consideration of a recommendation to expel.

Grounded on the experience of appeal committee chairpersons' involvement in the expulsion appeal mechanism, **Chapter Six** advances our understanding of expulsion law in practice. While not easily reconciled, the views of participants on the factors at play before and during appeal oral hearings are examined in detail. The chapter assesses the independence of appeal committees. Here, attention is afforded to the composition of committees, the training of members, and chairpersons' perceptions of the legal context of their work. Notwithstanding the absence of a right of attendance for students (of less than 18 years of age) at appeal oral hearings, interviewees' perceptions of the benefit of hearing the voice of the student facing expulsion and the impact of such perceptions on practice are considered. The limited nature of support for parents challenging expulsion and the barriers they face are discussed, as are a number of identified shortcomings in the legislative provisions and statutory guidance.

In **Chapter Seven**, the involvement of parents of formally expelled students in the expulsion process is examined, as is the experience of informally expelled students

and a discrete group of parents of informally expelled students. The chapter reveals parents' motivations for appealing formal expulsion, with particular attention to the impact of access to information and social capital. The views of parents on the value of the now-discontinued facilitation stage of the appeal mechanism are discussed against the background of the limited support available to families. Parents' perception of the weight afforded to their voice throughout the expulsion and appeal process is scrutinised in the context of their right to be heard, as are their perceptions of who decides to expel. The status of the student's voice, as provided for under international law, is also assessed. The impact of expulsion on efforts to secure a place in a new school, educational progression and employment prospects are examined. The broader consequences of expulsion, the personal feelings of the expelled, and its impact on social and family relationships are discussed.

Based on the research findings, **Chapter Eight** provides a synopsis of conclusions previously presented at the end of each chapter, along with a discussion and recommendations. The strengths and limitations of the research approach are reviewed.

## **CHAPTER 2. AN EXAMINATION OF THE LEGAL FRAMEWORK GOVERNING SCHOOL EXPULSIONS IN IRELAND**

### **2.1. INTRODUCTION**

In the previous chapter, the rationale for this research was outlined, which is based on the contention that this important topic has received insufficient attention from the academic community and educationalists in Ireland. The purpose of this chapter is to establish the legal framework within which expulsion occurs. This is an essential undertaking to provide a background against which to analyse the research findings and enable the research questions to be addressed. The chapter begins with a detailed discussion of its core themes: the right to education, the right to be heard, and the right to fair procedures as provided for in domestic and international law.

The legal principles applicable to expulsion decision-making are scrutinised, as is the regulatory framework for expulsion and enrolment; later, their implementation is examined. The chapter analyses the school expulsion process and the nature of expulsion decision-making with particular attention afforded to the duties of the Board of Management (BOM) in matters relating to student discipline.

Section 29 of the Education Act 1998 (the 1998 Act) as amended, established the legal framework for appeals against decisions to expel. However, the Act does not provide an express test that must be met before a student can be expelled. Informed by the notion of minimal formality, the mechanism offers parents a quick, confidential, inexpensive redress mechanism for those willing to challenge. Section 29 stipulates that members of appeal committees must be independent and impartial in the performance of their functions. The chapter discusses the challenges members face in fulfilling this requirement, given that the Minister has complete control over the appointment and removal of committee members.

The chapter examines the development of the appeal mechanism and the operation of the appeal oral hearings. The significance of this novel mechanism is acknowledged, given the adverse consequences of expulsion, as discussed in the following chapter. Although relatively straightforward, the mechanism has raised a series of complex issues. It has fallen to the courts to establish the parameters for expulsions and appeals. The chapter discusses pertinent case law that has determined, among other matters,

the legal status of a s. 29 appeal and the factors that may or may not be taken into account by the decision-making body. These clarifications have now been enshrined in the legislation.

Recently, the Supreme Court held that adjudication officers at the Workplace Relations Commission (WRC) are engaged in the administration of justice; consequently, the WRC is categorised as a body constituted under Article 39 of the Constitution. The potential impact of this ruling on the manner in which s. 29 oral hearings are conducted is examined. Should a disgruntled party to an appeal be sufficiently aggrieved, they may apply to the High Court to seek a judicial review of a decision made by a s. 29 committee. The constitutional position of judicial review is discussed, as are the grounds on which to mount review proceedings. Finally, the chapter concludes by raising questions regarding the adequacy of the current appeal provision.

## **2.2. THE RIGHT TO EDUCATION**

This section discusses the duty of the State to educate, and the scope of that duty as set down in international law and the Irish Constitution.

### **2.2.1. THE RIGHT TO EDUCATION UNDER INTERNATIONAL LAW**

The right to education is one of the oldest rights recognised in international law. Given the double dimension of education, both a human right in itself and an essential means of realising other human rights, the right to education is guaranteed in several human rights instruments.<sup>1</sup> International agreements generally provide for free primary education and acknowledge parents' right to choose the kind of education given to their children. In addition, secondary education in different forms, including technical and vocational secondary education, should be available and accessible. Accessibility is to be enhanced by every appropriate means, particularly by the progressive introduction of free education.

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<sup>1</sup> Note. The principal universal human rights instruments that recognise the right to education are Article 26 of the Universal Declaration of Human Rights (1948), Principle 7 of the United Nations Declaration of the Rights of the Child. (1959), the Convention against Discrimination in Education (1960), Articles 13–14 of the International Covenant on Economic, Social and Cultural Rights (1966), and Articles 28 and 29 of the United Nations Convention on the Rights of the Child.

The balance between the interests of the child and parents in international and domestic law governing education has been described as an imbalance in favour of parents, with the stated exception of the United Nations Convention on the Rights of the Child (UNCRC).<sup>2</sup> Article 3 of the UNCRC provides that in all actions concerning the child, the primary consideration should be the best interests of the child.

The UNCRC is a comprehensive, internationally binding agreement on children's rights that includes the right to education, an adequate standard of living, and protection from abuse and harm. Ireland ratified the UNCRC without reservations or interpretative declarations, prompting the conclusion that Irish law and policy fully aligned with the Convention's principles and provisions.<sup>3</sup> However, ratification does not imply that domestic law and policy are entirely aligned with the Convention, as discussed in section 2.3 below.

Article 1 defines the child as 'every human being below the age of eighteen unless under the law applicable to the child, majority is attained earlier'. The UNCRC clearly stipulates that children have to be regarded as bearers of human rights. The almost universal endorsement of the UNCRC confirms that 'the international community has moved away from the image of the child as a passive and merely vulnerable individual and embraced the image of the child as a rights holder, as a subject of rights'.<sup>4</sup> Article 28 of the UNCRC provides that every child has the right to an education. Respect for the right of the child to be heard within education is fundamental to the realisation of the right to education.<sup>5</sup> The concept of education under the UNCRC should be comprehended broadly, as revealed by a combined reading of Articles 28(1) and 29(1). The latter articulates the extensive goals of formal education. Hence, education under Article 28(1) should be understood as the process of developing the child's personality, talents, mental and physical abilities and developing the child's ability to participate in a free society, among other matters. In recognition of its significant resource implications, this provision is subject to progressive realisation. However, this does not alter the obligation of states to fully realise the rights in the end. It is

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<sup>2</sup> Conor O'Mahony, *Educational Rights in Irish Law*. (London: Thomson Round Hall) 2006, para 4-86.

<sup>3</sup> Ursula Kilkelly, *The protection of children's rights in Ireland: Monitoring the Monitoring Process of the U.N. Convention on the Rights of the Child*. In Dennis Driscoll (Ed.), *Irish Human Rights Review*. (Dublin: Round Hall Sweet & Maxwell) 2000, pp. 17-40.

<sup>4</sup> Ton Liefaard, 'Child-friendly justice: protection and participation of children in the justice system' (2015) 88. *Temp. L. Rev.* 905, pp. 907-908.

<sup>5</sup> CRC/C/GC/12, para. 105.

noteworthy that Article 28 (2) provides that State parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity. This standard aligns with the Irish Constitutional right to dignity. In the Supreme Court case of *Re a Ward of Court (No 2)*, [1996] 2 IR 79,<sup>6</sup> Denham J. referred to the right to be treated with dignity as an unspecified Constitutional right of all living persons. As such, the State has a duty under Article 40.3 to protect and vindicate the right to dignity.

Ireland is a dualist State. Article. 29.6 of the Constitution provides that international agreements and treaties have no legal effect within the domestic legal order until an Act of the Oireachtas gives them domestic legal effect. Therefore, while Ireland has ratified international instruments that, in theory, provide important rights to the Irish people, the legal reality imposed by this constitutional requirement prohibits reliance on the UNCRC in Irish courts.

Nevertheless, should an individual believe their rights under the UNCRC have been violated, it is open to them to lodge a complaint with the UNCRC Committee under the Third Optional Protocol to the Convention. Incorporation into domestic law ensures accountability for implementation at a national level. Non-incorporation, although ratified, ensures the provisions of the UNCRC are binding on the State but not within it. There is no domestic remedy for violations of rights contained in the Convention that are not separately provided for under Irish law. The then Minister for Foreign Affairs, David Andrews, TD, stated in 1998 that the Government had no plans to incorporate the UN Convention into domestic law; this position has not altered.<sup>7</sup>

### **2.2.2. THE CONSTITUTIONAL RIGHT TO EDUCATION IN IRELAND**

The Irish constitutional protection of the right to education pre-dates similar provisions in international instruments, although this right is not absolute. Article 42 affirms the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children,<sup>8</sup> in their homes, in private schools or schools recognised or established by

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<sup>6</sup> *Re a Ward of Court (withholding medical treatment) (No. 2)*, [1996] 2 IR 79, 162.

<sup>7</sup> Dáil Éireann Debate, 19 March 1998, Vol 487, No 5, Col 988.

<sup>8</sup> Constitution of Ireland, 1937, Article 42.1.

the State.<sup>9</sup> The State shall, as guardian of the common good, require that children receive a certain minimum education, moral, intellectual and social.<sup>10</sup> Article 42.4 stipulates that the State shall provide for free primary education and, where needed, give reasonable aid to private and corporate educational initiatives and provide other educational facilities or institutions with due regard for the rights of parents.

Case law has confirmed the right to education from both parents and from the State; additionally, parents have a duty to vindicate their children's rights.<sup>11</sup> The absence of an explicit Constitutional right of children to receive education is noteworthy, as is the absence of express Constitutional protection for the best interests principle. Attention has been drawn to the lack of a counterbalancing provision to protect the subservient rights of the individual family member against the rights of the family unit.<sup>12</sup> The Constitution obliges parents to vindicate their children's right to education. It provides for the State to intervene where the safety or welfare of the child is likely to be prejudicially affected, having regard for the natural and imprescriptible rights of the child. The Supreme Court acknowledged that the Constitutional amendment of 2022,<sup>13</sup> has altered the threshold for State intervention in cases of parental failure while seeking to maintain the essential structure of the Constitution and the balance between the position and autonomy of the family, the State and the rights of an individual child.<sup>14</sup> The subtle change introduced by the amendment, whose direction is 'clearly discernible', is likely to have lowered the threshold for State intervention in 'exceptional circumstances, where there is something which can be properly described as a failure of parental duty' has occurred.<sup>15</sup> While the threshold remains high before the State can override parental decision-making, recent legislative amendment provides for an independent challenge to school expulsions when parents fail to act.<sup>16</sup> It has been argued that the parent-centred provisions of the Irish Constitution, coupled

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<sup>9</sup> Constitution of Ireland, 1937, Article 42.2.

<sup>10</sup> Constitution of Ireland, 1937, Article 42.3.2.

<sup>11</sup> Conor O'Mahony, 'The Same, but Different? Article 42A and the Threshold for State Intervention in Family Life: In Re JJ'. (2022) 4. *Irish Supreme Court Review* 141, p. 159.

<sup>12</sup> Conor O'Mahony, 'The Same, but Different? Article 42A and the Threshold for State Intervention in Family Life: In Re JJ'. (2022) 4. *Irish Supreme Court Review* 141, p. 145.

<sup>13</sup> Constitution of Ireland, 1937, Article 42A.2.1.

<sup>14</sup> Re JJ, [2022] 3 IR 1.

<sup>15</sup> Re JJ, [2022] 3 IR 1 para. 133.

<sup>16</sup> The Education (Welfare) Act 2000, s. 26 as amended by s. 10(b) of the Education (Admission to Schools) Act 2018.

with a highly conservative interpretation by the courts, have potentially impaired the rights of the child.<sup>17</sup>

#### **2.2.2.1. THE CONSTITUTIONAL RIGHT TO FREE PRIMARY EDUCATION**

The rights of parents and the child in the matter of education are set out in Article 42 of the Constitution. It envisages a three-way relationship between parent, child, and State. Article 42.4 contains one of the few explicit socio-economic rights in the Constitution; it provides that:

The State shall provide for free primary education. It shall endeavour to supplement and give reasonable aid to private and corporate educational initiatives, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

The first clause of this guarantee is most significant as it is phrased in mandatory language and tolerates no exceptions. The onus on the State in relation to other forms of education is only to ‘endeavour to supplement.’ The final phrase of the guarantee is also significant in that it ensures that the State does not use its role as a provider of education to usurp the autonomy of parents, especially in religious and moral formation.

The High Court examined the duty placed on the State and the meaning of this provision in 1978 and on appeal by the Supreme Court in *Crowley v. Ireland*, [1980] IR 102. The Supreme Court emphasised that the State’s obligation was to ‘provide for’ free primary education. The State did not have to provide that education itself directly. Hence, the State did not breach its obligations when teachers in a particular national school refused to teach. The *Crowley* case arose out of a strike by members of the Irish National Teachers Organisation (INTO). In the High Court judgement, McMahon J. held that Article 42.4, which directed the State to provide for free primary education, conferred by implication on those for whose benefit the direction was made a corresponding right to receive such instruction. O’Higgins C.J., endorsed the view of the High Court case when the case was appealed to the Supreme Court:<sup>18</sup>

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<sup>17</sup> Conor O’Mahony, *Educational Rights in Irish Law*. (London: Thomson Round Hall) 2006, para 4-03.

<sup>18</sup> *Crowley v. Ireland*, [1980] IR 102, 122.

... in my view, it cannot be doubted that citizens have the right to receive what it is the duty of the State to provide.

The Irish version of Article 42.4 states, ‘Ní foláir don Stát socrú a dhéanamh chun bunoidreachas a bheith ar fáil in aisce,’ [The State must arrange for basic education to be available free of charge], while the English language version reads ‘The State shall provide for free primary education ...’

The distinction brought out by the Irish version clearly imposes an obligation on the State to make arrangements so that primary education is available free of charge. This is of significance, given that under Article 25.4, in the event of conflict between the texts of the Constitution, the Irish language version shall prevail. While the courts have acknowledged that Article 42.4 embodies a right to free primary education, in *Sinnott v. Minister for Education*, [2001] 2 IR 545, the Supreme Court interpreted this right as being confined to children, that is, persons up to the age of eighteen and not adults, even where their needs continue to require primary education. This case highlights the weakness of the State's obligation with respect to post-primary education. It has been argued that it is constitutionally and politically legitimate for Irish courts to protect the implied socio-economic rights of marginalised individuals and groups when it is clear that the political system has egregiously neglected such rights.<sup>19</sup> The real value of litigation in this context is that it acts as a corrective mechanism for the political system, requiring that system to address issues of social exclusion that would otherwise be ignored.<sup>20</sup>

### 2.3. THE RIGHT TO BE HEARD IN EDUCATION

The discussion so far has been concerned with the educational rights of children and parents and the relationship between educational rights and the duty of the State. This section will discuss the rights of parents and students to be heard under international

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<sup>19</sup> Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland. The Legitimacy of Judicial Activism on behalf of the Disadvantaged*. (Dublin: Institute of Public Administration) 2002, pp 9-57.

<sup>20</sup> Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland. The Legitimacy of Judicial Activism on behalf of the Disadvantaged*. (Dublin: Institute of Public Administration) 2002, pp 9-57.

and domestic law, with particular reference to their involvement in the school expulsion process.

### **2.3.1. THE UNCRC– GENERAL PRINCIPLES**

The UNCRC encompasses four general principles, first introduced as guidelines for countries meeting their periodic review obligations and now guiding the application, implementation, and interpretation of the Convention.<sup>21</sup> These principles underpin all children's rights and include non-discrimination, Article 2, the best interests of the child, Article 3(1), the right to survival and development, Article 6, and the right to be heard, Article 12. They are based on the notion that children are equal as human beings. They are interconnected and cannot be applied individually without consideration of each other. They must be understood as both normative, representing rights, and instrumental, serving as a guide for action. The rights bestowed on parents and students by the UNCRC are multifaceted, interwoven, and sometimes conflicting. While Article 2 provides that there should be no discrimination, it does not address situations in which the rights of the child compete with or undermine the rights of adults. Article 12 elevates the child's right to be heard to a defining principle of the Convention.<sup>22</sup>

### **2.3.2. THE UNCRC AND THE RIGHT TO BE HEARD**

#### **2.3.2.1. THE UNCRC AND THE VOICE OF THE STUDENT**

The concept of the 'student's voice' in schools has received increased attention in the past decades, a welcome development attributed to the ratification of the UNCRC.<sup>23</sup> Article 12(1) calls on parties to ensure that every child capable of forming their own view has the right (not an obligation) to express their feelings and wishes in all matters affecting them and to have their opinions considered and taken seriously. It bestows

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<sup>21</sup> CRC/C/GC/5 General Comment No. 5 (2003): para. 12.

<sup>22</sup> Ursula Kilkelly, *Children's Rights in Ireland. Law, Policy and Practice*. (Dublin: Tottle Publishing Ltd.) 2016, p 28.

<sup>23</sup> Andrew Noyes, 'Pupil voice: purpose, power, and the possibilities for democratic schooling' (2005) 31. *British Educational Research Journal* 532, p. 533.

on students the right to ‘be given meaningful opportunities to participate in formal and informal decision-making within the school environment.’<sup>24</sup>

Despite the positivity surrounding the notion of children’s rights, there remains a level of passive and, indeed, at times, active opposition to the Convention and the notion of children as rights holders, both in terms of specific elements of the Convention and also the Convention as a legal instrument.<sup>25</sup> Kilkelly contends that this is understandable, as recognising children as rights holders and the State as a duty bearer represents a paradigm shift.<sup>26</sup> However, States are not always willing to take on that responsibility, a position sometimes supported by parents who contend that the responsibilities are rightfully theirs.<sup>27</sup> This may shed some light on the somewhat limited response to implementing the provisions of the convention in domestic law generally. For example, the failure of domestic law to incorporate the best interest principle in education law and the failure to grant expelled students a voice in the expulsion appeal process.

Article 12 presents a fundamental challenge to the education community in Ireland. It has long been recognised that children’s enjoyment of their right to be heard depends on the cooperation of adults who may not be committed to Article 12 or whose vested interest may act as a barrier to compliance.<sup>28</sup> Some schools believe compliance would require ‘too much effort, effort better expended on education itself’.<sup>29</sup> The contention that teachers know best prevails in some quarters.<sup>30</sup> The latter, coupled with a lack of

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<sup>24</sup> Deirdre Horgan, Catherine Forde, Shirley Martin, Aisling Parkes & Angela O’Connell, ‘Seen and Not Heard: Children and Young People’s Experiences of Participation in the Home, School, and Community.’ (2015). Dublin: Department of Children and Youth Affairs, p. 70.

<sup>25</sup> Ursula Kilkelly, ‘The UN Convention on the Rights of the Child: protecting children’s rights across generations’. (2023). Paper presented. Frontiers of Children’s Rights Summer School. Leiden University, the Netherlands, 5<sup>th</sup> July 2023.

<sup>26</sup> Ursula Kilkelly, ‘The UN Convention on the Rights of the Child: protecting children’s rights across generations’. (2023). Paper presented. Frontiers of Children’s Rights Summer School. Leiden University, the Netherlands, 5<sup>th</sup> July 2023.

<sup>27</sup> Ursula Kilkelly, ‘The UN Convention on the Rights of the Child: protecting children’s rights across generations’. (2023). Paper presented. Frontiers of Children’s Rights Summer School. Leiden University, the Netherlands, 5<sup>th</sup> July 2023.

<sup>28</sup> Laura Lundy, ‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child’ (2007) 33. British Educational Research Journal 927, p. 929.

<sup>29</sup> Laura Lundy, ‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child’ (2007) 33. British Educational Research Journal 927, p. 930.

<sup>30</sup> Martin Brown, Gerry McNamara, Shivaun O’Brien, Craig Skerritt, Joe O’Hara, Jerich Faddar, Sakir Cinqir, Jan Vanhoof, Maria Figueiredo & Gül Kurum, ‘Parent and student voice in evaluation and planning in schools’ (2020) 23. Improving Schools 85, p. 87.

confidence in children's ability to have meaningful input into decision-making and a perceived risk that accepting children's voices may undermine schools' authority, works in opposition to the full realisation of Article 12.<sup>31</sup> The limited awareness of teachers generally as to the right of the child to be heard has been highlighted.<sup>32</sup> Lundy refers to the words of the Committee to declare that:<sup>33</sup>

... if the adults around children, their parents and other family members, teachers and carers do not understand the implications of the Convention, and above all, its confirmation of the equal status of children as the subject of rights, it is most unlikely that the rights set out in the Convention will be realised for many children.

Lundy argues that common abbreviations, such as 'the voice of the child,' can potentially diminish its impact. As an imperfect summary, these abbreviations restrict full consideration of key elements, which emphasises that the provision applies to all matters affecting the child. She holds that a conservative interpretation can effectively 'shut down' the application of Article 12.<sup>34</sup> The understanding of student participation in decision-making in schools is perceived differently by teachers in Ireland than by their students.<sup>35</sup> While students are increasingly consulted regarding classroom practice,<sup>36</sup> their voices are effectively shut out of important decision-making in schools. Their influence is limited to matters of minor importance, such as the cafeteria menu and fundraising activities. Student councils,<sup>37</sup> although mandated by law, often provide a constrained environment where students are not afforded the opportunity to

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<sup>31</sup> Laura Lundy, 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33. *British Educational Research Journal* 927, p. 930.

<sup>32</sup> Laura Lundy, 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33. *British Educational Research Journal* 927, p. 930.

<sup>33</sup> CRC/C/GC No. 5 (2003): General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), pp. 15-16.

<sup>34</sup> Laura Lundy, 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33. *British Educational Research Journal* 927, p.930.

<sup>35</sup> Catherine Forde, Deirdre Horgan, Shirley Martin & Aisling Parkes, 'Learning from children's voice in schools: Experiences from Ireland' (2018) 19. *Journal of Educational Change* 489, p. 489.

<sup>36</sup> Craig Skerritt, Martin Brown & Joe O'Hara, 'Student voice and classroom practice: how students are consulted in contexts without traditions of student's voice' (2023) 31. *Pedagogy, culture & society* 955, p. 970.

<sup>37</sup> Note. The Education Act 1998, s. 27(3) provides that students may establish a student council. Its establishment is not mandatory. Students do not always believe their student councils are representative, nor do they necessarily accept them as a democratic medium to express their views. See Paula Flynn, '*Authentic listening to student voice and the transformative potential to empower students with social, emotional, and behavioural difficulties in mainstream schools.*' (2013). (Doctoral dissertation, Trinity College Dublin).

raise matters of importance.<sup>38</sup> Most students feel they are not recognised as valued partners, with little focus on reaching shared decisions.<sup>39</sup>

Lundy's model of participation aims to 'unpack' the legal implications of the provision by highlighting and analysing the significance of each of the specific phrases contained within Article 12. It is influenced by relevant provisions of the UNCRC and informed by the comments and observations of the UN Committee on the Rights of the Child.<sup>40</sup> The model is designed to focus decision-makers on four elements of the provision, namely space, voice, audience, and influence. Acknowledging their interrelatedness, she holds that children must be given the opportunity to express a view (space) and be facilitated to express their views (voice). They must be listened to (audience), and their view must be acted upon as appropriate (influence). Her model aims to provide an accessible précis that captures the meaning and scope of the article. Incorporating Lundy's model into the school expulsion process would address the failure of the process to respect the provisions of Article 12. It is noteworthy that the Irish Government has adopted the Lundy Model of Participation as the basis for the National Strategy on Children and Young People's Participation in Decision-Making.<sup>41</sup> However, although acknowledging the positive impacts of incorporating the voice of the child,<sup>42</sup> the initiative has not progressed in the specific context of the education system to date.

Article 12(2) explicitly calls on state parties to ensure that children are afforded the opportunity to be heard in any judicial and administrative proceedings affecting them, either directly or through a representative or an appropriate body, in a fashion consistent with the procedural rules of the national law.<sup>43</sup> This provision must be read in conjunction with Article 5, which refers to the child's evolving capacities. The provision has particular significance in relation to school expulsion hearings, as the

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<sup>38</sup> Forde, C., Horgan, D., Martin, S., & Parkes, A. (2018). Learning from children's voice in schools: Experiences from Ireland. *Journal of Educational Change*, 19(4), 489-509.

<sup>39</sup> Horgan, D., Forde, C., Martin, S., Parkes, A., & O'Connell, A. (2015). *Seen and Not Heard: Children and Young People's Experiences of Participation in the Home, School and Community*, p 68. Dublin: Department of Children and Youth Affairs.

<sup>40</sup> Lundy, L. (2007). 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child. *British Educational Research Journal*, 33(1), 927-942, pp. 932-933.

<sup>41</sup> Department of Children and Youth Affairs. (2015). *National strategy on children and young people's participation in decision-making, 2015–2020*, p. 21.

<sup>42</sup> Department of Children and Youth Affairs. (2015). *National strategy on children and young people's participation in decision-making, 2015–2020*, p. 7.

<sup>43</sup> CRC/C/GC/ No.12 (2009): *The Right of the Child to be Heard*, para 67.

UNCRC committee emphasises the right of the child to be heard in school disciplinary matters, particularly in the case of exclusion from instruction or school.<sup>44</sup> These decisions must be subject to judicial review as they contradict the child's right to education.<sup>45</sup> It is the prerogative of the child to decide how they wish to be heard: directly to the decision-making body or through a representative or appropriate body. However, the Committee recommends that, wherever possible, the child must be given the opportunity to be heard directly in proceedings. It is acknowledged that 'a child cannot be heard effectively where the environment is intimidating, hostile, insensitive or inappropriate for their age' and that proceedings should be both accessible and child-appropriate.<sup>46</sup> In addition, students have the right to seek and receive information relating to the school expulsion and appeal processes as provided for in Article 13. The information must be delivered in a child-friendly manner.<sup>47</sup>

The best interest principle is fundamental to the Convention as it contains the general standard that underpins the application of the rights guaranteed. It provides that in all actions concerning children, whether by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the child's best interest shall be a primary consideration, not the only consideration, not necessarily the paramount consideration, but a primary consideration. It is relevant to every decision made regarding children, individually and more generally, when policies are being developed or legislation is being drafted.

While it is acknowledged that the standard is simply stated, its practical application can be quite complex due to the numerous and often subjective factors that influence what is regarded as the 'best interest of the child'.

In the English context, Monk highlights the highly contingent nature of the principle:<sup>48</sup>

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<sup>44</sup> Note. CRC/C/GC/12, para. 67 provides examples of administrative proceedings, including mechanisms to address expulsions.

<sup>45</sup> CRC/C/GC/ No.12 (2009): The Right of the Child to be Heard, para 113.

<sup>46</sup> CRC/C/GC/ No.12 (2009): The Right of the Child to be Heard, para 34.

<sup>47</sup> CRC/C/GC/ No.12 (2009): The Right of the Child to be Heard, para. 34.

<sup>48</sup> Daniel Monk, 'Children's rights in education - making sense of contradictions' (2002) 14. Child and Family Law Quarterly 45, p. 48.

... the varied and complex underlying sociological reasons for the continuing resistance to hearing children; and how, in practice, children's voices are excluded or used selectively to resolve adult disputes and how legal practitioners and other professionals, as well as the courts, are implicated in that process.

While the best interests principle has not been incorporated into Irish education law, it has been suggested that the principle is deliberately vague and adjustable, one whose implementation is both problematic and promising.<sup>49</sup> The UNCRC committee has indicated that the best interests principle should be guided by the rights contained in the UNCRC.<sup>50</sup> Significantly, the Committee has pointed out that ‘an adult’s judgment of a child’s best interests cannot override the obligation to respect all the child’s rights under the Convention.’<sup>51</sup>

Acknowledging the considerable progress in promoting children’s rights, it has been argued that the children's rights agenda faces considerable global opposition, with the very concept of children as rights holders being questioned.<sup>52</sup> Children’s capacity and competence to make autonomous decisions have been questioned,<sup>53</sup> as well as their involvement in dispute resolution and the relationship between the rights of children and those of their parents. In some instances, this occurs under the guise of traditional or cultural values, counterterrorism or national security responses, with dramatic implications for the full enjoyment of their rights and protections provided by the UNCRC.<sup>54</sup>

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<sup>49</sup> Ton Liefwaard, ‘International Children’s Rights: Protecting Children’s Rights and Interests Across Generations’. (2023). Paper presented. Frontiers of Children's Rights Summer School. Leiden University, the Netherlands, 3<sup>rd</sup> July 2023.

<sup>50</sup> CRC/C/GC/14 General Comment No. 14 (2013), para. 32.

<sup>51</sup> CRC/C/GC/13 General Comment No. 13 (2011), para. 61.

<sup>52</sup> Ann Skelton, ‘Making Children’s Rights Real: Access To Justice. Frontiers of Children's Rights’. (2023). Paper presented. Summer School. Leiden University, the Netherlands, 5th July 2023.

<sup>53</sup> Laura Lundy, ‘Voice’ is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child’ (2007) 33. British Educational Research Journal 927, p. 929.

<sup>54</sup> Ann Skelton, ‘Making Children’s Rights Real: Access To Justice. Frontiers of Children's Rights’. (2023). Paper presented. Summer School. Leiden University, the Netherlands, 5th July 2023.

### **2.3.2.2. THE UNCRC AND THE VOICE OF PARENTS**

While not reflected as a general principle, two specific provisions of the UNCRC relating to parents are of importance here. Article 18 recognises that parents acting in their child's best interests are the child's primary caregivers and legal representatives. In addition, it provides that States have special responsibilities toward parents to support them and to provide appropriate assistance to parents in performing their child-rearing responsibilities.

### **2.3.2.3. THE RIGHT TO BE HEARD IN IRISH EDUCATION LAW**

#### **2.3.2.3.1. THE VOICE OF STUDENTS IN SCHOOL EXPULSION LAW**

The Act of 1998 established the legal framework for appeals against a decision to expel. However, the Act is silent on the right of a student facing expulsion to attend the initial BOM hearing, where the decision to expel is formulated. BOM chairpersons interviewed support students' right to attend the BOM hearing, and students sometimes exercise this right.<sup>55</sup> However, as will be seen, the consensus among parents and students interviewed was that the voice of the student, as presented by the student, was not listened to by the school.<sup>56</sup> A student under 18 years does not have the right to lodge an appeal; they are not a party to the proceedings. They do not have the right to attend their expulsion appeal oral hearing. Consequently, they are not permitted to engage directly with the appeal committee should they wish to present in person an explanation for their behaviour or challenge disputed evidence. The student representative at s. 29 oral hearings is generally the parent(s). The EWO may attend the hearing; however, they are not so mandated.<sup>57</sup> The Education (Admission to Schools) Act 2018 (the Act of 2018) provides that the appeal committee shall have regard to the merit of any explanation offered by the student in relation to their behaviour.<sup>58</sup> The inherent contradiction embedded in the above is deprived of logic and appears unreasonable. This sits uncomfortably with the right to be heard bestowed

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<sup>55</sup> See: Section 5.7, for the chairperson's perception of the right of students to be heard.

<sup>56</sup> See: Section 7.7.2, for the voice of informally expelled students.

<sup>57</sup> See. Attendees at <https://www.gov.ie/en/publication/19941-appeals-against-expulsion-or-suspension-for-a-period-or-periods-totaling-not-less-than-20-school-days-in-a-school-year/#appeal-hearing-attendees>

<sup>58</sup> The Education (Admission to Schools) Act 2018, s. 29D(7)(4)(b).

on students under Article 12 of the UNCRC. In its General Comments<sup>59</sup> on the aims of education, the Committee emphasised that:<sup>60</sup>

Children do not lose their human rights by virtue of passing through the school gates. Thus, for example, education must be provided in a way that respects the inherent dignity of the child and enables the child to express his or her views freely in accordance with Article 12(1) and to participate in school life.

In chapter seven, the involvement of expelled students in the expulsion process is examined.

#### **2.3.2.3.2. THE VOICE OF PARENTS IN SCHOOL EXPULSION LAW**

The parent voice is often championed as an empowering process that can improve standards in education.<sup>61</sup> In the context of this thesis, ‘parents’ voice’ refers to how parents frame and communicate their opinions to a school and how they become involved with the institution. The central role occupied by parents in terms of their children’s education is recognised in Irish law.<sup>62</sup> This is given effect by the enactment of the Act of 1998, which provides formal recognition to the voice of parents, the establishment of BOM in schools, which includes parental representation,<sup>63</sup> and the right of parents to establish a parent association.<sup>64</sup> In addition to the above, parental involvement includes ongoing cooperation with teachers to support their child’s learning. Parents dealing with schools are relatively powerless individuals versus powerful collective organisations. Parent councils are the exception that proves the rule, as they are essentially powerless and optional.<sup>65</sup> There are perceived limitations

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<sup>59</sup> Note. The purpose of the UN General Comments is to provide an authoritative interpretation of the rights contained in the articles and provisions of the UNCRC and the optional protocols. General Comments are not binding, even on parties that have ratified the Convention. However, they demonstrate the flexibility and adaptability of the UNCRC in addressing the evolving needs of children.

<sup>60</sup> CRC/C/GC/1 General Comment No. 1 (2001): para 8.

<sup>61</sup> Martin Brown, Gerry McNamara, Shivaun O’Brien, Craig Skerritt, Joe O’Hara, Jerich Faddar, Sakir Cinqir, Jan Vanhoof, Maria Figueiredo & Gül Kurum, ‘Parent and student voice in evaluation and planning in schools’ (2020) 23. *Improving Schools* 85, p. 89.

<sup>62</sup> Constitution of Ireland, 1937, Art.42.

<sup>63</sup> The Education Act 1998, s. 14.

<sup>64</sup> The Education Act 1998, s. 26.

<sup>65</sup> Note. The Education Act 1998, s. 26(1) provides that the parents of students at a recognised school may establish a parents’ association, membership of which is open to all parents of students at that school.

to the inclusion of parents' voices in education, including a lack of time, institutional atmosphere, teacher attitude, and a fear of criticism.<sup>66</sup> Although most schools appear to have developed more forms of democratic engagement with parents, many schools require guidance and support for parental engagement, as schools, rather than parents, are often hard to reach.<sup>67</sup> Some maintain that schools effectively silence minority groups and working-class parents.<sup>68</sup> Parents' rights in Ireland are represented entirely in terms of individual parents' rights. Their views are often obtained as aggregates of these. The Act of 1998 provides for the establishment of Parents' Associations (PAs).<sup>69</sup> The PA works to promote the students' interests in a school in cooperation with teachers, the school principal and the BOM.<sup>70</sup> The National Parents' Council Post-Primary is an umbrella organisation for post-primary school PAs.<sup>71</sup>

## 2.4. THE LEGAL PRINCIPLES APPLICABLE TO SCHOOL EXPULSION DECISION-MAKING

The right to procedural fairness in decision-making is a long-standing common law right afforded to individuals whose interests are affected by the decision-making. A denial of fair procedure undermines the fairness of a decision-making process. This section examines the legal principles applicable to expulsion decision-making to ensure procedural fairness.

### 2.4.1. BREACH OF NATURAL JUSTICE AND CONSTITUTIONAL JUSTICE

An essential condition of the principle of natural justice dictates that the decision-maker approaches the decision-making process with 'fairness.' It is well established that the principle *Nemo Iudex in Causa Sua* (no man shall be a judge in his own cause)

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<sup>66</sup> Martin Brown, Gerry McNamara, Shivaun O'Brien, Craig Skerritt, Joe O'Hara, Jerich Faddar, Sakir Cinqir, Jan Vanhoof, Maria Figueiredo & Gül Kurum, 'Parent and student voice in evaluation and planning in schools' (2020) 23. *Improving Schools* 85, pp. 89-90.

<sup>67</sup> Alma Harris & Janet Goodall, 'Do parents know they matter? Engaging all parents in learning' (2008) 50. *Educational Research* 277, p. 277.

<sup>68</sup> See: Jacky Lumby, 'Parent voice: knowledge, values and viewpoint' (2007). 10 *Improving Schools* 220, p. 229.

Mary O'Donoghue, 'Putting working-class mothers in their place: social stratification, the field of education, and Pierre Bourdieu's theory of practice' (2013) 34. *British Journal of Sociology of Education* 190, p. 203.

<sup>69</sup> The Education Act, 1998, s. 26(1).

<sup>70</sup> The Education Act, 1998, s. 26(2).

<sup>71</sup> The Education Act, 1998, s. 26(4)(b).

is a fundamental principle of natural justice and the procedure of the courts.<sup>72</sup> In *Garvey v. Ireland*, [1981] IR 75, O'Higgins C.J., observed that applying these principles to different situations where competing interests are at play has eluded precise definition.<sup>73</sup> Indeed, they have been criticised and even rejected by those who believe precise definitions are essential to true law. Nevertheless, natural justice is seen as an indispensable feature of the common law. There are two fundamental procedural rules for upholding natural justice:<sup>74</sup>

- a) That the decision maker must not be biased.
- b) Anyone who may be adversely affected by a decision should not be condemned unheard; rather, he should have the best chance to put his side of the case.

The right to fair procedure in decision-making was given constitutional status in *Garvey v. Ireland*, where O'Higgins C.J., held that by Article 40, s. 3, 'there is guaranteed to every citizen whose rights may be affected by decisions taken by others the right to fair and just procedure'.<sup>75</sup> This applies to authorities empowered by legislation who take action that may infringe on the rights of others. Deciding bodies must act fairly and must inform the complainant of the reasons for the proposed action.<sup>76</sup> The elevated status of these powers mandates that decision-making cannot be exercised unjustly or unfairly, as the Constitution incorporates into our laws and their administration the requirement for natural justice.

The principle is applied in decision-making to help defend against bias. Bias may be conscious or unconscious. The possible sources of bias are enormously diverse; they may stem from the decision-maker's attitudes, relationships, or beliefs.<sup>77</sup> Morgan and Hogan highlight the risk of bias associated with 'loyalty to the institution'. They contend that in such cases, servants of an institution might be regarded as being so committed to the objectives or interests of their institution that they might be incapable

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<sup>72</sup> Finín O'Brien, 'Nemo iudex in causa sua: Aspects of the No-bias rule of constitutional justice in courts and administrative bodies' (2011) 2. *Irish Journal of Legal Studies* 26, p. 26.

<sup>73</sup> *Garvey v. Ireland*, [1981] IR 75, p. 91.

<sup>74</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 500.

<sup>75</sup> *Garvey v. Ireland*, [1981] IR 75, p. 97.

<sup>76</sup> *Garvey v. Ireland*, [1981] IR 75, p. 97.

<sup>77</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 514.

of holding the balance fairly between these objectives and those of other parties. However, they concede that a decision maker must be afforded the authority to exercise their duty without undue interference.<sup>78</sup> They support their contention by referencing *O'Brien v. Bord na Móna*, [1983] IR 255,<sup>79</sup> where Keane J. stated (in the words of O'Higgins C.J., in *Loftus v. Attorney General*, [1979] IR 221):<sup>80</sup>

... it would be manifestly impossible for [public bodies] to discharge their particular responsibilities in an efficient and sensible manner if every such decision could be successfully challenged by a litigant on the grounds that the official who made it was actuated by a conscientious desire to advance the authority's interest rather than a spirit of judicial detachment .... a decision is not vitiated simply because the official who made it can be said to have a natural interest in favour of advancing the interest of the authority whose interest he is there to serve; but if, in addition, he exercises administrative discretion 'capriciously, partially or in a manifestly unfair manner' his action would be restrained and corrected by the Courts.

#### 2.4.2. THE RIGHT TO A FAIR HEARING

Central to ensuring fair procedure in matters relating to expulsion is the requirement that all sides be permitted to express their view fairly. Expulsion decision makers will be acting unreasonably if they refuse to hear applications or make certain decisions without taking individual circumstances into account. The rules of natural justice require that the student or their parent, acting on their behalf, is given an oral hearing by the BOM; they must know the case against them and be able to examine and object to the evidence. Here, the observations of O'Sullivan J. in *Wright (a Minor) v. The Board of Management of Gorey Community College*, [2000] IEHC 37 are noteworthy; the learned judge accepted that it is reasonable for the accused to be allowed to hear the case against him, a gist of the evidence supporting the charge, an opportunity to respond with evidence of his own, and an opportunity to address the BOM.<sup>81</sup> However,

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<sup>78</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 518.

<sup>79</sup> *O'Brien v. Bord na Mona*, [1983] IR 255, p. 269.

<sup>80</sup> *Loftus v. Attorney General*, [1979] IR 221, p. 241.

<sup>81</sup> *Wright (a Minor) v. The Board of Management of Gorey Community College*, [2000] IEHC 37, para. 26.

the absence of the aforementioned did not deter the court from finding that the balance of convenience favoured the school's case.

Recognising that case law from other jurisdictions is, at most, persuasive in the Irish context, the case of *Dooley v. The Secretary of State for the Home Department* is interesting as it addresses the evolving nature of the standards of fairness. Lord Mustill held:<sup>82</sup>

The standards of fairness are not immutable. They may change with the passage of time, both in the general and in their application to decisions of a particular type. The principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision, and this is to be taken into account in all its aspects.

The recognition that the standards of fairness are not immutable calls for an appreciation of the unequal power dynamic at play during the expulsion process. While the courts recognised the right of the accused to be given a reasonable opportunity to hear the case against them, they did not recognise the unequal position of, nor the vulnerable circumstances of unsupported parents.

#### **2.4.3. DUTY TO GIVE REASONS**

It is now settled that a person adversely affected by a s. 29 committee decision is entitled to the reasons relied upon by the committee to determine if they have grounds to challenge that decision. This requirement is a prerequisite of the overarching principle of fair procedure. In *City of Waterford VEC v. Department of Education and Science & Ors.*, [2011] IEHC 278, Charleton J. held that the reasoning need not be elaborate but sufficient to allow parties to the appeal to understand why the committee made its decision.<sup>83</sup> A s. 29 committee must confine itself to the decision and the reasons that informed it when defending its decision at judicial review. Charleton J. emphasised that the law on administrative tribunals does not permit the decision-making body to add additional reasons beyond the document wherein the decision is officially set out. By allowing afterthoughts, the reliability that the parties to a tribunal

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<sup>82</sup> R v. Secretary of State for the Home Department, ex parte Doody ; R v. Same, ex parte Pierson; R v. Same, ex parte Smart ; R v. Same, ex parte Pegg, [1994] 1 AC 531, NIQB 6, 106(e).

<sup>83</sup> City of Waterford VEC v. Department of Education and Science & Ors., [2011] IEHC 278, para. 12.

are entitled to expect would be undermined.<sup>84</sup> The court accepted that, on occasion, evidence could be admitted to clarify poorly expressed reasons or, in exceptional cases where a mistake occurs, to correct the error.<sup>85</sup> More recently, in *BOM of St. Marnock's National School v. Secretary General of the DES*, [2017] IEHC 683, Coffey J. held that the appeal committee sought to advance reasons for its decision that differed from the reasons recorded in the determination. In so doing, the judge described the committee's efforts as, at best, an attempt at ex post facto rationalisation, which he held had fallen foul of the Ermakov Principle.<sup>86</sup> In *Ermakov v. Westminster City Council*, [1996] 2 All E. R. 302, Hutchison L.J., held that the purpose of additional evidence should generally be elucidation, not fundamental alteration, confirmation, or contradiction. The court held that there is no merit in receiving and relying on additional evidence as validating the decision evidence, which indicates that the real reasons were wholly different from the stated reasons.<sup>87</sup> While the reasons given by the decision-making body need not be elaborate, to do so is an essential element of a fair procedure. The onus on the appeal committee to give reasons for its decision is now enshrined in legislation.<sup>88</sup> The Minister must inform the applicant, the respondent and those agencies that made a submission at the appeal hearing of the committee's final decision and the reasons for its decision.<sup>89</sup>

## 2.5. LEGISLATIVE FRAMEWORK AND OVERSIGHT OF SCHOOL EXPULSION: A RIGHTS-BASED ANALYSIS

This section examines key legislative developments impacting access to school, school expulsion, and the expulsion appeals mechanism. The framework for education in Ireland has developed in an *ad hoc* manner, with schools traditionally having considerable power and independence.<sup>90</sup> This high level of autonomy enjoyed by

<sup>84</sup> *City of Waterford VEC v. Department of Education and Science & Ors.*, [2011] IEHC 278, para. 15.

<sup>85</sup> *City of Waterford VEC v. Department of Education and Science & Ors.*, [2011] IEHC 278, para. 16.

<sup>86</sup> *Board of Management of St. Marnock's National School v. Secretary General of the Department of Education and Skills & Ors.*, [2017] IEHC 683, para. 52.

<sup>87</sup> *Ermakov v. Westminster City Council*, [1996] 2 All E. R. 302, para. 2.

<sup>88</sup> The Education Act 1998, s. 29(7)(a) as amended by the Education (Admission to Schools) Act 2018, s. 7(29D)(12).

<sup>89</sup> The Education Act 1998, s. 29(7)(a) as amended by the Education (Admission to Schools) Act 2018, s. 7(29D)(13)(a).

<sup>90</sup> See: Ursula Kilkelly, *Children's Rights in Ireland: Law, Policy, and Practice*. (Tottel Publishing Ltd.) 2008, para. 12.113. Dymna Glendenning, *Education and the Law*. (Dublin: Tottel Publishing) 2012, p. 22. See also: Mary Gilbride, *The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to*

schools, particularly at post-primary level, is evident in their everyday operation. The Ombudsman for Children's Office stated that the degree of autonomy afforded to Irish Schools has operated in such a way that the State has been unable to exercise oversight and recommends a recalibration of the balance between schools' autonomy and oversight by the Government.<sup>91</sup> The notion of autonomy is related to schools' power to self-determine relevant matters, such as the objectives and activities to be conducted. It also refers to matters of governance, disciplinary policies, and student admission.<sup>92</sup> The Acts of 1998 and the Education (Welfare) Act 2000 (the Act of 2000) set out a series of safeguards to protect against arbitrary or excessive reliance on expulsion as a disciplinary sanction. The Equal Status Acts 2000-2018 prohibit, subject to certain exceptions, direct and indirect discrimination, while the Act of 2018 is intended to ensure that the way in which schools decide on applications for admission is structured fairly, a provision that is of particular relevance to expelled students, as discussed in chapter 7.

#### 2.5.1. THE EDUCATION ACT 1998

The Education Act 1998 marked a significant milestone in Irish education as it was the first piece of legislation in the history of the State to outline the legal rights and responsibilities of the Government relating to education.<sup>93</sup> It established a legislative basis for primary and secondary education in Ireland. It provides that the Minister must ensure the availability of a level and quality of suitable education to each person resident in the State.<sup>94</sup>

Compromise is evident throughout its provisions, acknowledging the partnership that exists between church and state.<sup>95</sup> It provides that the minister must 'make all reasonable efforts to consult with the education partners and other persons with a

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*which it has Addressed Power and Inequality Issues in Irish Education.*' (2013), p. 1. (Doctoral thesis, Maynooth University).

<sup>91</sup> See: Office of the Commissioner for Children. (2016). *Education in Focus*, p. 4.

<sup>92</sup> Tommaso Agasisti, Giuseppe Catalano & Sibiano Piergiacomo, 'Can schools be autonomous in a centralised educational system? On formal and actual school autonomy in the Italian context' (2013) 27. *International Journal of Educational Management*, 292, p. 292.

<sup>93</sup> David J. Carey, *The Essential Parents' Guide to Special Education in Ireland*. (Dublin: Primary ABC) 2005, p. 136.

<sup>94</sup> The Education Act 1998, s. 7(1)(a).

<sup>95</sup> Ursula Kilkelly, *Children's Rights in Ireland: Law, Policy, and Practice*. (Tottel Publishing Ltd.) 2008, para. 12.034.

particular interest in or knowledge of education-related matters.<sup>96</sup> This provision could be utilised as an avenue to consult with students on education policy and law; however, to date, the facility lies dormant. The absence of substantial reference to the rights of the child in the Act, as envisaged in the UNCRC, is worthy of criticism. This would have provided a straightforward rights-based platform for education in Ireland and guidance to confirm to those involved in its delivery that a solid legislative declaration of a child-focused approach supported their decision-making.<sup>97</sup> The lost opportunity to advance the terms of Article 12 is especially disappointing.<sup>98</sup> In the context of this study, it is noteworthy that the Act states its purpose is ‘to ensure that the education system is accountable to students, their parents and the State for the education provided’.<sup>99</sup>

#### **2.5.2. THE DUTIES OF THE BOARD OF MANAGEMENT IN RELATION TO STUDENT DISCIPLINE**

The Act of 1998 places a duty on a school patron to appoint a BOM for a recognised school; however, it is not an absolute duty as the requirement of the Act is qualified by the phrase ‘where practicable’.<sup>100</sup> The BOM must manage the school on ‘behalf of the patrons and for the benefit of the students and their parents, and to provide or cause to be provided appropriate education for each student at the school for which the board has responsibility.’<sup>101</sup> While carrying out these functions, the board is required to act in accordance with the policies determined by the Minister, to uphold the characteristic spirit of the school and be accountable to the patron, to consult with, and keep the patron informed of its decisions and proposals. The board must develop and publish the school’s admission policy.<sup>102</sup> The Act of 2000 places a duty on the BOM to prepare a code of behaviour for the students registered at the school in accordance with the

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<sup>96</sup> The Education Act 1998, s. 7(4)(b).

<sup>97</sup> Ursula Kilkelly, *Children’s Rights in Ireland: Law, Policy, and Practice*. (Tottel Publishing Ltd.) 2008, para. 12.036.

<sup>98</sup> Note. CRC/C/GC/12, para. 110, holds that the participation of children in decision-making processes in schools should be achieved through class councils, student councils, and student representation on school boards and committees, where they can freely express their views on the development and implementation of school policies and codes of behaviour. It is recommended that such rights be enshrined in legislation rather than relying on the goodwill of school authorities.

<sup>99</sup> The Education Act 1998, long title.

<sup>100</sup> The Education Act 1998, s. 14(1).

<sup>101</sup> The Education Act 1998, s. 15.

<sup>102</sup> Note. School admission is regulated by the Act of 2018, as discussed at 2.5.4 below.

provisions of the Act.<sup>103</sup> When exercising its right to expel for breaches of the code of behaviour, the decision-making of the BOM must adhere to fair procedures informed by the principle of natural justice,<sup>104</sup> as discussed in para 2.5.1 below. Kilkelly has noted the considerable burden placed on a BOM and the onerous range of responsibilities, the exercise of which demands an understanding of an array of legislation. She contends these responsibilities sit uneasily with the real fact that board members are ‘unpaid, untrained and part-time’ and largely unsupported by the state in the fulfilment of these functions.<sup>105</sup> The board has body corporate status, with perpetual succession and the power to sue and be sued in its corporate name.<sup>106</sup> The Act of 1998 provides that no action shall lie against a board member in respect of actions taken in good faith in pursuance of the Act or any regulations made by the Minister under this Act.<sup>107</sup> Membership of the board must be agreed upon between patrons, the national association of parents, recognised school management organisations, recognised trade unions and staff associations representing teachers and the Minister.<sup>108</sup> Although the Act does not explicitly provide for student representation, it does not appear to prohibit it.

As the primary expulsion decision-makers and respondents in s. 29 appeals, the BOM plays a critical role in the overall expulsion process. Their responsibilities encompass both procedural and adjudicative aspects, positioning them at the centre of important educational and legal issues. The mechanism and procedure for school expulsions, including the specific responsibilities of the BOM, are detailed in Section 2.6. In addition, Section 2.7 provides an in-depth examination of the s. 29 appeals process, through which expulsion decisions can be formally challenged.

### **2.5.3. THE EDUCATION (WELFARE) ACT 2000**

Article 28(1)(e) of the UNCRC requires States to take measures to encourage regular attendance at schools and reduce drop-out rates. The provisions of the Act of 2000 are

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<sup>103</sup> The Education (Welfare) Act 2000, s. 23(1).

<sup>104</sup> *Wright (a Minor) v. The Board of Management of Gorey Community College*, [2000] IEHC 37, para. 24.

<sup>105</sup> Ursula Kilkelly, *Children’s Rights in Ireland: Law, Policy, and Practice*. (Tottel Publishing Ltd.) 2008, para. 12.030.

<sup>106</sup> The Education Act 1998, s. 14(2).

<sup>107</sup> The Education Act 1998, s. 14(7).

<sup>108</sup> The Education Act 1998, s. 14(1).

directed towards encouraging children to attend school, as well as the monitoring of attendance and drop-out rates. The Act established the then National Educational Welfare Board (NEWB).<sup>109</sup> The board was charged with ensuring that each child attends a recognised school or otherwise receives a certain minimum education in line with Constitutional provision.<sup>110</sup> Following the incorporation of the NEWB into The Child and Family Agency (Tusla), the functions of the board are now carried out by the Educational Welfare Service (EWS) of Tusla.<sup>111</sup> The EWS provides for the monitoring of school attendance in order to address absenteeism and early school leaving.

By virtue of amendments to the Act of 1998,<sup>112</sup> the EWS may take a s. 29 appeal against a decision of a BOM relating to expulsion from a school or refusal to enrol a student. Further legislative amendments provide that the EWS may appoint a person independent of the service to mount a s. 29 appeal as above.<sup>113</sup> The EWS need not consult with or obtain the approval of the parent or pupil in order to make such an appeal. In addition, where a child is expelled or refused admission to a school, the Act imposes a duty on the EWS to make all reasonable efforts to have the child enrolled in another school.<sup>114</sup> The Act of 1998 provides for EWS involvement in s. 29 appeals:<sup>115</sup>

The National Educational Welfare Board may, at the hearing of an appeal brought by a parent or student against a decision to which paragraph (a) [Expulsion] or (c) [Refusal to enrol] of subsection (1) applies, make such submissions (whether in writing or orally) to the appeals committee, as it considers appropriate.

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<sup>109</sup> The Education (Welfare) Act 2000, s. 9(1).

<sup>110</sup> Constitution of Ireland, 1937, Article 42.3.2.

<sup>111</sup> Note. The National Educational Welfare Board was incorporated into the Child and Family Agency (Tusla) in January 2014, pursuant to the Child and Family Agency Act 2013. The functions vested in the Minister for Children, Equality, Disability, Integration, and Youth in relation to education welfare services were subsequently transferred to the Minister for Education in 2021. The amendments to the Child and Family Agency Act 2013 provided the Minister for Education with a direct line for policy direction and oversight of Tusla in respect of the education welfare services. See: The Education Welfare (Transfer of Departmental Administration and Ministerial Functions) Order 2020 (S.I. 588 of 2020).

<sup>112</sup> The Education (Welfare) Act 2000, s. 26(1) amends The Education Act 1998, s. 29(1)(d).

<sup>113</sup> The Education (Welfare) Act 2000, s. 26(1) as amended by the Education (Admission to Schools) Act 2018, s. 10(b).

<sup>114</sup> The Education (Welfare) Act 2000, s. 27(1).

<sup>115</sup> The Education Act 1998, s. 29(4)(a) as amended by the Education (Welfare) Act 2000, s. 26(2).

The Act of 2000 provides that each school must develop and publish a Code of Behaviour. The code shall specify among other matters:<sup>116</sup>

- a. the standards of behaviour that shall be observed by each student attending the school
- b. the measures that may be taken when a student fails or refuses to observe those standards
- c. the procedures to be followed before a student may be suspended or expelled from the school concerned
- d. the procedures to be followed relating to notification of a child's absence from school

#### **2.5.4. THE EDUCATION (ADMISSION TO SCHOOLS) ACT 2018**

Securing a place in a new school in a timely manner enables an expelled student to continue their education and assists in mitigating the consequences of expulsion. The Department published a 'discussion paper on a regulatory framework for school enrolments' in June 2011. The paper was advanced to inform consideration by the education partners and other interested parties of suggestions on making enrolment in schools more open, equitable and consistent.<sup>117</sup> The consultation informed the provisions of the Act 2018, which aims to provide a legislative framework for school admission. It is intended to ensure that the way in which schools decide on applications for admission is structured fairly and transparently.

Prior to the introduction of the Act of 2018, the utilisation of legally permissible exclusionary practices by oversubscribed schools led to allegations of 'cherry picking' (selecting the most talented students).<sup>118</sup> The practice contributed to the establishment of a de facto two-tiered education system.<sup>119</sup> The Act transferred responsibility for implementing the school's admission policy to the principal and provides that the principal be accountable to the BOM in this regard.<sup>120</sup> An unsuccessful applicant may request the BOM to review a decision (of the principal) to refuse admission and

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<sup>116</sup> The Education (Welfare) Act 2000, s. 23(2).

<sup>117</sup> Dáil Éireann Debate, School Enrolments, 07 July 2011. Parliamentary Question to Minister for Education and Skills. Questions (60) Written answer.

<sup>118</sup> Dymphna Glendenning, '*Squaring the Circle: Balancing Church-State Interests in Education (Admissions to School) Bill 2015*'. (2015a). Paper delivered. Conference Title: Education and the Law. St. Angela's College, Sligo.

<sup>119</sup> David M. Doyle, Marie Muldoon & Clíodhna Murphy, 'Education in Ireland: accessible without discrimination for all?' (2020) 24. *The International Journal of Human Rights* 1701, p. 1714.

<sup>120</sup> The Education (Admission to Schools) Act 2018 s. 6(1)(a).

thereafter appeal in accordance with s. 29(1)(c)(i) or (ii) of the Act of 1998.<sup>121</sup> The effective operation of the former calls for the BOM to be empowered to act in an informed, independent manner, a topic discussed in chapter five and a recurring theme throughout this thesis.

In the interest of the common good, the Act stipulates that a recognised school shall prepare and publish an admissions policy.<sup>122</sup> The admissions policy must include an admission statement that sets out the characteristic spirit of the school, acceptable and unacceptable selection criteria. The statement must record that the school shall not discriminate in the admission of a student to the school on nine specified grounds.<sup>123</sup> In addition, schools will now publish an annual admission notice.<sup>124</sup> The notice will outline the application procedure, provide details of the number of places available, and designate a pre-defined window for acceptance of applications. Schools that are not oversubscribed must admit all students applying.<sup>125</sup> Waiting lists for enrolment are prohibited (other than where a school is oversubscribed),<sup>126</sup> thereby ensuring that students who move into a new area are not disadvantaged. Where a school is oversubscribed, the admission policy must set out the selection criteria which shall be applied.<sup>127</sup> The charging of fees or seeking payment or contributions for an application for admission to a mainstream school or for the enrolment or continued enrolment of a student in a school is prohibited.<sup>128</sup>

In certain circumstances, the NCSE (National Council for Special Education) or Tusla may designate a school or centre for education that a child is to attend.<sup>129</sup> Of particular interest here is the provision that the Minister may make regulations to provide that a school may not require an applicant to submit, among other matters, references from

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<sup>121</sup> The Education (Admission to Schools) Act 2018, s. 62(7)(m).

<sup>122</sup> The Education (Admission to Schools) Act 2018 s. 62.

<sup>123</sup> Note. The Admission Statement must state that the school will not discriminate on eight of the established grounds (excluding age) and a ninth ground relating to the SEN of the applicant as per the Education (Admission to Schools) Act 2018 s. 61(1).

<sup>124</sup> The Education (Admission to Schools) Act 2018 s. 63.

<sup>125</sup> The Education (Admission to Schools) Act 2018, s. 62(7)(c).

<sup>126</sup> Note. The Education (Admission to Schools) Act 2018, s. 7(i) provides that where a school is oversubscribed, the school shall compile a waiting list of students whose applications for admission to the school were unsuccessful due to the school being oversubscribed. The waiting list remains valid for the school year in which admission is being sought.

<sup>127</sup> The Education (Admission to Schools) Act 2018, s. 62(7)(d)

<sup>128</sup> The Education (Admission to Schools) Act 2018, s. 64.

<sup>129</sup> The Education (Admission to Schools) Act 2018 s. 67.

a school previously attended.<sup>130</sup> In addition, the Act provides an exemption to privacy law and allows school boards to share information about enrolment applications received, offers made and accepted, and students' personal details.<sup>131</sup> The commencement of the Act of 2018 is a significant step in developing a fair and transparent school enrolment system. However, critics contend the act does not go far enough in ensuring access to school is free from discrimination. Permitting 25% of available places to be reserved for children of former pupils is criticised as a potentially exclusionary practice.<sup>132</sup> The phasing out of long-standing waiting lists for school places, along with practices such as compulsory attendance at open days, interviews or the payment of a fee to hold a place for a child in a school, must be welcomed. Given the competitive nature of post-primary education in Ireland, students seek to maintain a competitive advantage by selecting subjects at senior cycle that best match their skill set. Refusing a school place to an expelled student on the grounds that the new school cannot match the student's previously selected subject may, on the one hand, appear laudable; on the other, it may be an example of sharp practice rooted in an intent to exclude.<sup>133</sup> This practice is questionable and could be deemed illegal unless the admissions policy unambiguously references this as an admissions criterion. Otherwise, it may be regarded as a grey zone practice akin to informal expulsion.

#### 2.5.5. EQUAL STATUS ACTS 2000 TO 2018

These Acts prohibit, subject to certain exceptions, direct and indirect discrimination on nine grounds: gender, marital status, family status, age, disability, race, sexual orientation, religious belief, and membership of the traveller community.<sup>134</sup> The Acts specify that a school may not discriminate on any of these grounds in its admission policy. However, a single-sex school may discriminate on gender grounds. Denominational schools may give preference to applicants from one faith over others or refuse an applicant if it can be proven that refusal is essential to maintain the

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<sup>130</sup> The Education (Admission to Schools) Act 2018 s. 65(3)(d)(iii).

<sup>131</sup> The Education (Admission to Schools) Act 2018 s. 66.

<sup>132</sup> David M. Doyle, Marie Muldoon & Clíodhna Murphy, 'Education in Ireland: accessible without discrimination for all?' (2020) 24. *The International Journal of Human Rights* 1701, p. 1714.

<sup>133</sup> David M. Doyle, Marie Muldoon & Clíodhna Murphy, 'Education in Ireland: accessible without discrimination for all?' (2020) 24. *The International Journal of Human Rights* 1701, p. 1714.

<sup>134</sup> The Equal Status Act 2000, s. 3(2).

school's ethos.<sup>135</sup> In addition, a school must not discriminate in relation to the expulsion of a student or any other sanction against the student.<sup>136</sup> The Acts oblige educational providers to make reasonable accommodations for students with disabilities.<sup>137</sup> There is no obligation to provide special treatment, facilities or adjustments, as schools are obliged only to expend such funds as may be regarded as nominal in order to make such reasonable accommodation available. The burden of proof rests on the person with the disability who must show that, without the provision of special treatment or facilities in relation to the operation of the educational establishment, it would be impossible or unduly burdensome for that person to avail of the educational services in question.

Although the Acts' provisions may reasonably be assessed as supportive of inclusive education for students with disabilities, the statutory protection provided is limited.<sup>138</sup> In *Clare v. Minister for Education and Science*, [2004] IEHC 350, Smyth J. held, on the facts of the case, that the expulsion of a pupil with Attention-Deficit Hyperactivity Disorder (ADHD) from a particular school did not constitute discrimination, having regard to s. 7.<sup>139</sup> The court held that making arrangements for the pupil to be educated in another school was a proper response:

... in making the arrangement in the Parish Hall in Mooncoin, such were a proper response by the Defendants to provide a 'discrimination' in favour of Richard (bearing in mind section 4(4) of the Act of 2000 Equal Status Act), that such is not to be considered as discrimination so as to ensure that he had a more than equitable opportunity to permit and facilitate in his realising his potential.

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<sup>135</sup> The Equal Status Act 2000, s. 7(3) as amended by the Education (Admission to Schools) Act 2018, s. 11(ii)(ca).

<sup>136</sup> The Equal Status Act 2000, s. 7(2)(d)

<sup>137</sup> Note. Reasonable accommodation may be defined as providing special treatment or facilities or making adjustments for a person to enable them to access a service. A school must provide reasonable accommodation to meet the needs of a person with a disability if it would be impossible or unduly difficult for that person to participate in school without special treatment, facilities, or adjustments.

<sup>138</sup> Gerry Whyte, *Inclusive Education under Irish Law*. In G. De Beco, S. Quinlivan & J. E. Lord (Eds.), *The right to inclusive education in international human rights law* (pp. 497-513). (Cambridge University Press) 2019, p. 504.

<sup>139</sup> The Equal Status Act 2000, s. 7(4)(b) provides that the prohibition of discrimination in s. 2(b) of the Act shall not apply to the extent that compliance with any of its provisions in relation to a student with a disability would, by virtue of the disability, make it impossible or have a seriously detrimental effect on the provision by an educational establishment of its services to other students.

The Acts provide that where a person has a disability in circumstances that could cause harm to the person or others, treating the person differently to the extent reasonably necessary to prevent such harm does not constitute discrimination.<sup>140</sup>

## 2.6. SCHOOL EXPULSION - PROCESS AND DECISION-MAKING

Having analysed the development of the legislative provisions guiding expulsion, this section examines the expulsion process as provided for in law and the nature of expulsion decision-making with reference to the school BOM and s. 29 committees.

### 2.6.1. THE SCHOOL EXPULSION PROCESS

The BOM has the authority to expel a student.<sup>141</sup> As a matter of best practice, that authority should be reserved by the board and not delegated.<sup>142</sup> The decision to expel initiates the legal process and transforms a troublesome student into an expelled student with all the practical, status, and legal consequences that follow.<sup>143</sup> The process commences when the school principal refers a serious breach of the school discipline code to the BOM and recommends that the board expel the student.

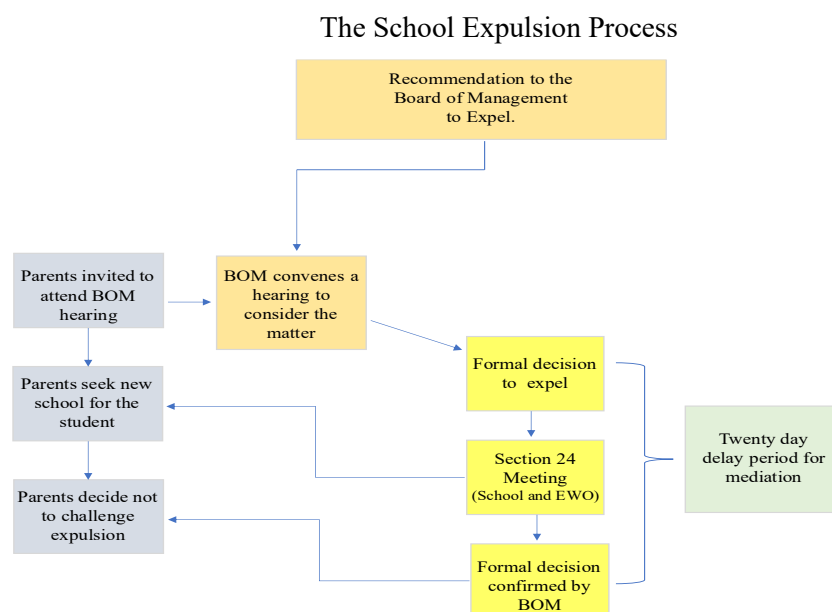


Figure 1.

<sup>140</sup> The Equal Status Act 2000, s. 4(4).

<sup>141</sup> The Education Act 1998, s. 29(1). The Education (Welfare) Act 2000, s. 24(1).

<sup>142</sup> National Educational Welfare Board, 'Developing a Code of Behaviour: Guidelines for Schools'. (2008). Dublin: National Educational Welfare Board, para. 12.1.

<sup>143</sup> Daniel Monk, '(Re) constructing the Head Teacher: Legal Narratives and the Politics of School Exclusions' (2005) 32. *Journal of Law and Society* 399, p. 405.

The student's parents are invited to attend the BOM hearing and make a submission on behalf of their child. Similarly, the principal will outline the case for expulsion in the presence of the parents. The student may or may not attend the hearing. Thereafter, the BOM will deliberate on the matter. When deciding to expel, the board must adhere to the procedure laid down in legislation,<sup>144</sup> case law,<sup>145</sup> the schools code of behaviour and the NEWB guidelines, *Developing a Code of Behaviour, Guidelines for Schools*. Here, the board is acting in a quasi-judicial manner since the sanction of expulsion interferes with the fundamental rights and liberties of others.<sup>146</sup> The BOM must take special care to ensure that fair procedures are accessible to people with disabilities or those from a different language or cultural background.<sup>147</sup> The procedure requires decisions to be made at various stages by the school principal, the BOM, and the EWO. The decision-makers must adhere to the principles of natural justice. The BOM should only decide to expel as a proportionate step in extreme cases of unacceptable student behaviour.<sup>148</sup> It requires serious grounds, such as the student's behaviour being a persistent cause of significant disruption to the learning of others or the teaching process, that the student's continued presence in the school creates a real threat to the safety, health, or welfare of the school community, or that the student has been responsible for serious property damage.

The BOM may (in exceptional circumstances) expel based on a single breach of the discipline code; the reason for so doing may include:<sup>149</sup>

- a serious threat of violence against another student or member of the staff
- actual violence or physical assault
- supplying illegal drugs to other students in the school
- sexual assault.

Where the BOM forms the view that a student should be expelled, it shall, before expelling the student, notify the relevant Educational Welfare Officer (EWO) of the

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<sup>144</sup> The Education Act 1998, s. 29.

<sup>145</sup> *City of Waterford VEC v. Department of Education and Science & Ors.*, [2011] IEHC 278.

<sup>146</sup> Dymrna Glendenning, *'Section 29 Appeals: Where do we stand now'* (2015b). Paper delivered. Conference Title: Education and the Law. Trinity College Dublin.

<sup>147</sup> National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'*. (2008). Dublin: National Educational Welfare Board, para. 10.2.

<sup>148</sup> National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'*. (2008). Dublin: National Educational Welfare Board, para. 12.2.

<sup>149</sup> National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'*. (2008). Dublin: National Educational Welfare Board, para. 12.2.

EWS in writing of its intention to expel and the reasons therefor.<sup>150</sup> The BOM may decide to suspend the student during the twenty-day period where the board believes that the student's presence in the school is likely to 'seriously disrupt the learning of others or represent a threat to the safety of other students or staff.'<sup>151</sup> The EWO shall, after receiving a notification, make all reasonable efforts to ensure that provision is made for the student's continued education. The EWO shall make all reasonable efforts to consult with the school principal, or a person nominated by them, the student, the parents, and other persons as the EWO considers appropriate. The consultation process will include a meeting between the EWO and those relevant persons who agree to attend. The meeting is commonly referred to as a s. 24 meeting.<sup>152</sup> The stated intention of the s. 24 meeting is to ensure the student's continued education. In *O'Donovan v. BOM of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, Hedigan J. highlighted the value of this provision, which is reflected in the language of the Act of 2000. It is mandatory in its terms and states variously that measures should be taken 'forthwith' and 'as soon as may be.'<sup>153</sup> The court laid emphasis on the prohibition against expelling a student without allowing twenty days for the EWO to perform their function.<sup>154</sup> The parent alleged a breach of statutory duty on behalf of the school, specifically a failure by the board to notify the EWO in a timely manner as was their duty under the provisions of the Act of 2000.<sup>155</sup> Hedigan J. held:<sup>156</sup>

There was, nonetheless, a plain and unambiguous violation of the requirement under sections 21(4) and 24(4) of the 2000 Act to engage with the educational welfare officer. The role of the educational welfare officer is a vital one. It is to ensure that there is no untoward break in the continuous education of a child, where disciplinary procedures such as expulsion or a long period of suspension are in contemplation.

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<sup>150</sup> The Education (Welfare) Act 2000, s. 24(1).

<sup>151</sup> National Educational Welfare Board, '*Developing a Code of Behaviour: Guidelines for Schools*'. (2008). Dublin: National Educational Welfare Board, para. 12.4, Step 5.

<sup>152</sup> The Education (Welfare) Act 2000, s. 24(2) and (3).

<sup>153</sup> *O'Donovan v. BOM of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, para. 47.

<sup>154</sup> The Education (Welfare) Act 2000, s. 24(4)

<sup>155</sup> The Education (Welfare) Act 2000, s. 21(4) places an obligation on the principal to cause a record of the attendance or non-attendance to be maintained for each school day of each student registered at that school. Section 24(4) of the Act restricts the BOM from expelling before the passing of 20 school days following the receipt of the notification by the EWO.

<sup>156</sup> *O'Donovan v. Board of Management of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, para. 56.

The Court held that the decisions of the BOM and the appeal committee were made in breach of the student's statutory rights and granted orders quashing the applicant's expulsion.<sup>157</sup>

Despite the undisputed importance of the EWO's role, the manner in which the EWO performs their function is less than clear. In June of 2000, the then Minister for Education, Dr. Michael Woods TD, informed Dáil Éireann that he intended that the EWO's tasks:<sup>158</sup>

... will be to assist pupils and schools where a pupil is experiencing difficulties in order to resolve any difficulties within the school. Should that prove impossible, and the school expels the student, the role of the officer will be to employ their liaison skills and links with other schools to facilitate the enrolment of the pupil in another school.

NEWB guidelines propose that the consultations may result in an agreement about an alternative intervention that would avoid expulsion; otherwise, the consultation should focus on alternative education. Where it fails to do so, despite such efforts, the EWO is empowered, with the consent of the parents of the child and the Minister, to 'make such arrangements as it considers appropriate to ensure that the child receives a certain minimum education.' It is then required that the progress of that education be monitored.<sup>159</sup> This must be considered an additional measure to ensure a certain minimum education, not a substitute requirement. The Act of 2000 and the NEWB guidelines are silent on the attendance or otherwise of BOM members at the s. 24 meeting. Therefore, the meeting may lack direct input from the primary decision-making body. Should a matter arise at the meeting that requires consideration by the board, the school representatives may be obliged to revert to the board, as the board is the decision-maker in matters relating to expulsion.

Informal expulsion occurs when the principal (or someone acting on their behalf) instructs, encourages, or advises a student or their parents/guardians that the student must leave the school permanently on a voluntary basis or face formal expulsion. There is no provision in law for informal expulsion. Evidence from research

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<sup>157</sup> O'Donovan v. Board of Management of De La Salle College Wicklow & Ors., [2009] IEHC 163, para. 57.

<sup>158</sup> Seanad Éireann Debate, 21 June 2000, Vol. 521, No. 5. The Education (Welfare) Bill, 1999.

<sup>159</sup> The Education (Welfare) Act 2000, s. 27(2).

undertaken in England suggests the problem is extensive, although it remains a chronically under-researched area of education.<sup>160</sup> While occasionally referred to in Ireland, the true nature and extent of informal expulsion from school in Ireland are currently unknown.<sup>161</sup> The practice of informal expulsion is discussed throughout this thesis.<sup>162</sup>

### 2.6.2. THE NATURE OF SCHOOL EXPULSION DECISION-MAKING

Despite the obvious connection with school discipline, BOM and s. 29 committee decision-making have a distinct judicial function. They are not performing an administrative function when considering a recommendation to expel. They are acting in a quasi-judicial capacity.<sup>163</sup> In *Student A and Student B v. a Dublin Secondary School*, [1999] IEHC 47, Kearns J. held that expulsion is the most draconian punishment a school can impose; decisions can be properly regarded as quasi-judicial. The learned judge cited Glendenning,<sup>164</sup> with approval, who postulated that ‘a school may be perceived by a court to be acting in a quasi-judicial capacity because it makes decisions of a serious nature that influence the rights of students.’<sup>165</sup>

### 2.7. SECTION 29 EXPULSION APPEALS

For those willing to mount a challenge to expulsion, there is a multi-stage process, which, in the first instance, involves a hearing by the BOM, during which the principal presents the recommendation to expel,<sup>166</sup> and the parents engage with the board,

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<sup>160</sup> Megan Whitehouse, ‘Illegal school exclusion in English education policy’ (2022) 27. *Emotional and Behavioural Difficulties* 220, pp. 220-221.

<sup>161</sup> See: Mary Gilbride, ‘*The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education*’ (2013), para 7.3.4. (Doctoral thesis, Maynooth University). See also: Emer Smyth, Joanne Banks, Jessica O’Sullivan, Selina McCoy, Paul Redmond & Seamus McGuinness, ‘*Evaluation of the National Youthreach Programme (No. 82). Research Series.*’ (2019). The Economic and Social Research Institute (ESRI), para 9.2.

<sup>162</sup> See: Sections s 5.6, 6.6, 7.4 and 7.7.

<sup>163</sup> Note. A quasi-judicial body is a non-judicial body which has powers and functions resembling those of a court of law or a judge. It is obliged to objectively determine facts in accordance with the principles of natural justice and draw conclusions from them to provide the basis for official action.

<sup>164</sup> Dymna Glendenning, *Education and the Law*. (Dublin: Butterworths Ireland Ltd.)1999, pp. 328-329.

<sup>165</sup> *Student A. and Student B. v. Dublin Secondary School*, [1999] IEHC 47, para. 29.

<sup>166</sup> See Chapter 5 for research findings on experiences and perceptions of BOM chairpersons as key decision-makers in the expulsion process.

intending to demonstrate that expulsion is not warranted.<sup>167</sup> Should the BOM proceed with the expulsion, parents may challenge the decision pursuant to s. 29 of the Act of 1998.<sup>168</sup>

This section examines the development and operation of the appeal mechanism. The legal standing of the appeal committee decision is discussed, and an analysis of the possible implications of a recent Supreme Court employment law case on school expulsion law is presented. Not all parents whose child is expelled from school wish to challenge the school's decision. A parent may believe that their child's needs were not being met at the school from which they have been expelled or, in any event, consider that a fresh start in another school would be beneficial. Yet many parents are indeed displeased and recognise that expulsion from school can be a particularly serious matter for their child and the parents themselves, and are thus willing to mount a challenge.<sup>169</sup> The EWS may appoint an independent person to appeal a decision to expel. The person appointed must have the experience, qualifications, training, or expertise that the EWS considers appropriate. In carrying out their functions, they must have regard for the best interests of the student concerned.<sup>170</sup>

#### **2.7.1. THE DEVELOPMENT OF THE SECTION 29 APPEAL MECHANISM**

The s. 29 appeal system has attracted some controversy. In the mid-2000s, all teacher unions, the Irish National Teachers' Organisation (INTO),<sup>171</sup> the Teachers Union of Ireland (TUI),<sup>172</sup> and the Association of Secondary Teachers Ireland (ASTI)<sup>173</sup> articulated serious reservations regarding indiscipline in schools in all sectors. In particular, the operation of the appeal system was criticised, with one teacher representative group claiming schools were reluctant or even fearful to expel students

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<sup>167</sup> Note. For discussion on the experiences and perceptions of parents of formally and informally expelled students, see sections 7.3 and 7.4.

<sup>168</sup> Note. For discussion on the experiences of parents who attended a s. 29 appeal hearing, see section 7.3.4.

<sup>169</sup> Note. For discussion on barriers to taking an appeal, see section 7.3.3.

<sup>170</sup> The Education (Welfare) Act 2000, s. 26 as amended by the Education (Admission to Schools) Act 2018, s. 20.

<sup>171</sup> INTO - Discipline in the Primary School 2002.

<sup>172</sup> TUI - An Approach to Discipline in Schools 2004.

<sup>173</sup> ASTI - An Information Leaflet - Responding to Serious Indiscipline in Schools 2004.

because of the risk that the appeal would be successful and weaken the school's disciplinary structure:<sup>174</sup>

Whilst the objective of section 29 is to provide parents and students with a grievance procedure that is quick, private and free, we are now witnessing reluctance and sometimes fear, on the part of school management to exclude students because of the distinct possibility that such a decision may be overturned on foot of a section 29 appeal, that the school will be ordered to re-admit the student, with a consequent visible weakening of its disciplinary structures.

The view emerged that the process has become more litigious, with some parents and schools challenging the determinations made by appeal committees.<sup>175</sup> The process has been described as 'burdensome', leading to the assertion that primary legislation is required to amend the scope of s. 29 and related procedures.<sup>176</sup> Consequently, the Minister established a task force to examine these matters; the report was published in 2006.<sup>177</sup> On foot of the report, the Minister proposed to amend s. 29 of the Act of 1998. The Education (Miscellaneous Provisions) Act 2007 was enacted. Section 4 of the 2007 Act provided for the amendment of s. 29 of the Act of 1998. However, the section was not commenced and was subsequently repealed by the Act of 2018.<sup>178</sup> Some elements of the amendments had been included in DOE Circular Letter M48/01.<sup>179</sup>

The Education (Admission to Schools) Bill 2016, as initiated, did not provide for an amendment to the s. 29 appeal mechanism. Changes to the appeals mechanism were first introduced during the Select Committee on Education and Skills debate.<sup>180</sup> The Act of 2018 provides for a new s. 29 mechanism encapsulating seven new subsections numbered 29 to 29F.<sup>181</sup> The Minister issued a commencement order on 25 September

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<sup>174</sup> TUI - An Approach to Discipline in Schools 2004, p. 8.

<sup>175</sup> Note. In its submission regarding the Admission to Schools Bill, the then Irish Vocational Education Association stated that these appeals 'irrespective of the outcome, by and large, cause dysfunction within a school community' and 'produce only losers.'

<sup>176</sup> Teachers' Union of Ireland, *'Response, Regulatory Framework For School Enrolment (Department of Education and Skills).'* Dublin. (2011), p. 9.

<sup>177</sup> Maeve Martin, 'School Matters: The Report of the Task Force on Student Behaviour in Second Level Schools, 2006' (2006) 20. *REACH: Journal of Inclusive Education in Ireland* 5.

<sup>178</sup> The Education (Admission to Schools) Act 2018, s. 12(d).

<sup>179</sup> Department of Education and Science, *'Circular letter M48/01. Appeal Procedures Under Section 29 of the Education Act 1998.'* (2001).

<sup>180</sup> Select Committee on Education and Skills Debate, 28 June 2017. Education (Admission to Schools) Bill 2016.

<sup>181</sup> The Education (Admission to Schools) Act 2018, s. 7.

2020.<sup>182</sup> The amendments align legislation with practice and seek to increase the process's effectiveness.<sup>183</sup> It confirmed that an appeal against a decision to expel is an appeal *de novo*.<sup>184</sup>

Summary of key changes to the s. 29 appeal mechanism.

- a. The legal status of the appeals committee's decision has been elevated from recommendation to the Secretary General of the DOE to that of a final decision.
- b. The removal of the provision that required appeals relating to ETB-managed schools to be heard by an ETB's s. 29 Committee in the first instance.
- c. Section 29 appeal committees will now issue a preliminary decision to the parties, and the parties may provide their observations concerning that preliminary decision.
- d. The facilitation process has been removed.
- e. The requirement that a department inspector sits on every appeals committee is removed.

a. The elevation of the appeal committee's deliberation from a recommendation to a final decision provides welcome clarification. The pre-existing provision provided that a recommendation by an appeals committee did not of itself have any direct legal effect, save that it was a matter to which the Secretary General was obliged to have regard to when exercising their powers and functions under s. 29(7)(b) of the Act. The Secretary General had discretion in giving directions to the BOM as appeared to them and was permitted to be 'expedient' to remedy the matter, which was the focus of the appeal. Coffey J. questions whether the term 'expedient' gives the Secretary General a 'remedial power that was materially different and more flexible than that given to an Appeal Committee established under s. 29 of the Act.'<sup>185</sup>

b. A BOM of an ETB-managed school is regarded as a subcommittee of the ETB. A member of the ETB normally chaired the former ETB s. 29 appeal committee. The committee's decision was presented to a full meeting of the ETB for approval. The

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<sup>182</sup> The Education (Admission to Schools) Act 2018, (Commencement) (No. 2) Order 2020. (S.I. No. 366/2020).

<sup>183</sup> Seanad Éireann Debate, 13 June 2018, Vol. 258, No. 9. The Education (Admission to Schools) Bill 2016: Second Stage per Minister for Education and Skills.

<sup>184</sup> Note. An appeal *de novo* involves a fresh examination of the facts of the case from the beginning without being obligated to consider earlier rulings or decisions made in the case.

<sup>185</sup> Board of Management of St. Marnock's National School v. Secretary General of the Department of Education and Skills & Ors, [2017] IEHC 683, para. 51.

removal of this layer of appeal must be welcomed. As noted by Kelly J. in *Walter Prendiville v. The Medical Council*, [2007] IEHC 427:<sup>186</sup>

Gone are the days when it was considered permissible that a decision maker exercising quasi-judicial functions should sit with an appellate or confirming body to hear an appeal or confirmation against his own decision.

c. The committee's preliminary decision will now be issued to the parties, and the parties are afforded the opportunity to provide their observations concerning that initial decision. However, the rationale for this development is unclear. While these observations may be informative and helpful should the case go to judicial review, one can only speculate what action, if any, a committee might take on foot of receiving such observations. Will post-oral hearing information influence the final decision? Will the observations be confidential to the committee or shared with the parties to the appeal? What view would the courts take of a decision modified on foot of information/observations received post-hearing?

d. Prior to the amendment of s. 29 of the Act of 1998, the appeal mechanism provided for a mediation process that took place before an appeal would go to a full oral hearing.<sup>187</sup> The facilitator, who focused on calm, quiet, and private resolution of the dispute, delivered a report indicating the success or failure of the mediation process. Glendenning emphasises the centrality of the facilitator's role and cautions against overlooking the benefits of mediation \ facilitation.<sup>188</sup> The removal of the facilitation stage of the appeal process is regrettable and has attracted criticism from some education partners.<sup>189</sup> Incorporating a mediation process represents both compelling logic and common sense, the benefits of which should not be overlooked; given that the concept of informality underpins the appeal mechanism, the rationale

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<sup>186</sup> *Walter Prendiville v. The Medical Council, Ireland, and Attorney General*, [2007] IEHC 427, [2008] 3 IR 122, para. 127.

<sup>187</sup> Note. Section 29(4)(a) provided for the facilitation stage. Circular Letter 20/02. Appeals Procedures under Section 29 of the Education Act 1998, para. 17-21 sets out the operation of the then Facilitation Process.

<sup>188</sup> Dympna Glendenning, '*Section 29 Appeals: Where do we stand now*' (2015b). Paper delivered. Conference Title: Education and the Law. Trinity College Dublin.

<sup>189</sup> Irish Primary Principals' Network Submission to the Department of Education and Skills - The Education (Admission to Schools) Act 2018, - Revisions to Section 29 of The Education Act 1998, 4th June 2020, paras. 2(1) and 3.1(2).

for its removal is difficult to discern. The new provision provides that where the committee believes that agreement between the parties is practicable, it may assist the parties in reaching an agreement as the committee considers appropriate. This provision is vague, offers little guidance to parties and risks straying into illegality by engaging in informal arrangements not provided for in legislation.

e. The removal of the requirement that an s. 29 committee include a DOE Department inspector should be applauded as the previous requirement to have an employee of the minister may be perceived as undermining the committee's independence. While a committee now formed does not need to include an inspector, the amendment does not exclude their inclusion.

Regrettably, the amendments introduced failed to grant formal status to a student of fewer than eighteen years of age, despite the adoption by the Irish Government of the National Strategy on Children and Young People's Participation in Decision-Making, as discussed above.

#### **2.7.2. THE OPERATION OF SECTION 29 OF THE EDUCATION ACT 1998**

Section 29 of the Act of 1998 provides for an appeal of a decision of a BOM (or a person acting on behalf of the BOM) in the case of expulsion, long-term suspension, and refusal to enrol.<sup>190</sup> At the core of the appeal mechanism is a desire to balance the interests of the individual student at risk of expulsion against those of the compliant majority whose education and social well-being may be threatened as a result of disruptive behaviour. An appeal against a decision to expel may be lodged by the parent of the student or by the student, where they are aged eighteen or over, or the EWS may appoint a person to appeal the decision.<sup>191</sup>

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<sup>190</sup> The Education Act 1998, s. 29, as amended by The Education (Admission to Schools) Act 2018, s. 7.

<sup>191</sup> The Education (Welfare) Act 2000, s. 26(1) as amended by The Education (Admission to Schools) Act 2018, s. 10(b)(1).

## The Operation of Section 29 of the Education Act 1998

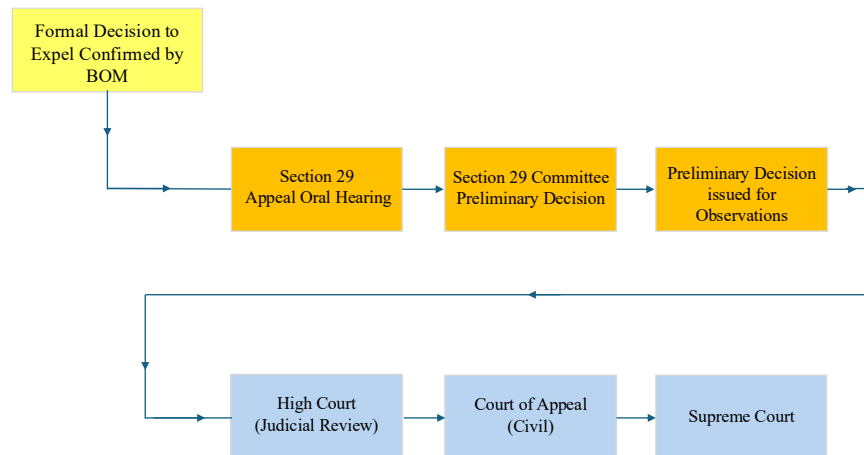


Figure 2.

Achieving a balance between the rights and interests of children, parents and the State without disproportionately relegating the interests of one of the parties presents a major challenge for legislators, particularly should a conflict arise between the educational rights of a parent and their child.<sup>192</sup> It has been argued that since the child is the principal beneficiary of education, the child's rights and interests should prevail.<sup>193</sup> International standards dictate that children whose rights are infringed should be able to access effective, child-sensitive, independent complaint mechanisms.<sup>194</sup> Section 29 of the Act of 1998 deprives students of less than eighteen years of age access to this important procedural right, notwithstanding that the student may or may not agree with the parent's decision. This represents a failure of the legislature to ensure domestic law meets international standards and a failure to strike an appropriate balance between the rights and interests of the student and their parents.

While there is a Constitutional presumption in favour of parent-oriented autonomy,<sup>195</sup> it is now settled as a matter of law that a young person of 16 or 17 years has the right to decide on elements of their own medical treatment.<sup>196</sup> Acknowledgement of this

<sup>192</sup> Conor O'Mahony, *Educational Rights in Irish Law*. (London: Thomson Round Hall) 2006, para 4-03.

<sup>193</sup> Conor O'Mahony, *Educational Rights in Irish Law*. (London: Thomson Round Hall) 2006, para 4-03.

<sup>194</sup> CRC/C/GC/5 General Comment No. 5 (2003), para. 67.

<sup>195</sup> *North Western Health Board v. H.W.*, [2001] 3 IR 622.

<sup>196</sup> Note. The court's decision is restricted to the right to consent to medical treatment in certain circumstances; it does not extend to the right to refuse consent to treatment that the parents have approved.

right is based on the assumption that they possess the capacity to decide (unless there is significant evidence to the contrary).<sup>197</sup> This provision is in keeping with international law, which recognises the evolving capacities of the child,<sup>198</sup> that children develop and become more capable of making important decisions. Indeed, the Non-Fatal Offences Against the Person Act, 1997, provides that ‘it shall not be necessary to obtain any consent for medical treatment from his or her parent or guardian.’<sup>199</sup> It was argued that parental rights should never be allowed to prevail at the expense of the welfare of the child.<sup>200</sup> The words of Walsh J. in *G v. an Bord Uchtála*, [1980] IR 32 are noteworthy when he stated that ‘there is nothing in the Constitution to indicate that in cases of conflict, the rights of the parent are always to be given primacy’.<sup>201</sup> By the same token, a student of post-compulsory school age should, in their own right, have the right to appeal their expulsion from school. The claim on behalf of the student is made notwithstanding the provision that the EWS may appoint an independent person to take a s. 29 appeal against a decision to expel;<sup>202</sup> the claim is also informed by evidence uncovered by this research regarding the effectiveness of the EWS in school expulsion cases generally, as discussed throughout this thesis. The call to allow students of 16 or 17 years to challenge their expulsion is supported by Art 3(1) of the UNCRC, which provides that the best interests of the child shall be a primary consideration and the argument that the educational interests of the parents should only prevail in cases where allowing the interests of the child to prevail would not be in the child's best interests.<sup>203</sup> However, it is acknowledged that the considerable influence placed on parental interests by the provisions of the Constitution may oppose this argument.

Section 29 of the Act of 1998 stipulates that the appeal is to the Secretary General of the DOE. The Minister must establish one or more panels of suitable persons to

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<sup>197</sup> See: *Re JJ*, [2021] IESC 1

<sup>198</sup> Note. UNCRC Article 5 provides that States Parties shall respect the responsibilities, rights, and duties of parents (among others) to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the Convention.

<sup>199</sup> Non-Fatal Offences Against the Person Act, 1997, s.23(1).

<sup>200</sup> Conor O'Mahony, *Educational Rights in Irish Law*. (London: Thomson Round Hall) 2006, para 4-84.

<sup>201</sup> *G v. an Bord Uchtála*, [1980] IR 32, 78.

<sup>202</sup> The Education (Welfare) Act 2000, s. 26(1) as amended by The Education (Admission) to School Act 2018, s. 10(1).

<sup>203</sup> Conor O'Mahony, *Educational Rights in Irish Law*. (London: Thomson Round Hall) 2006, para 4-93.

consider appeals under s. 29 of the Act of 1998.<sup>204</sup> Appointment to the panel shall be for such a period as the Minister may determine.<sup>205</sup> The Minister may withdraw a member from the panel for stated reasons.<sup>206</sup> The appeal procedure relating to expulsion involves an oral hearing before a committee of three members drawn from the above-mentioned panel. The Minister must nominate one of the committee members as Chair, who has a casting vote in the event of an equality of votes.<sup>207</sup> The Minister may replace any member of an appeal committee before the commencement of an oral hearing where they consider it necessary to do so with another panel member.<sup>208</sup>

The Act of 2018 provides that panel members are independent and impartial in carrying out their functions.<sup>209</sup> The Act does not reconcile this with the power in the preceding subsection, which gives the Minister unqualified power of revocation of appointment. Accepting that committee members will endeavour to exercise their duties with professionalism and independence while hearing appeals, it is noteworthy that committees comprise exclusively of ministerial nominees.<sup>210</sup> The Minister has complete discretion regarding the composition of the panels, the period of appointment and has the power to remove a member for a stated reason. Such extensive power may risk undermining perceptions of the independence of the process when viewed from the perspective of an aggrieved parent. Nominations to the panel by a broad spectrum of community-based organisations would enhance perceptions of independence.

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<sup>204</sup> The Education Act 1998, s. 29(2) as amended by The Education (Admission to Schools) Act 2018, s. 7(29A)(1).

<sup>205</sup> The Education (Admission to Schools) Act 2018, s. 7(29A)(2)(a).

<sup>206</sup> The Education (Admission to Schools) Act 2018, s. 7(29A)(2)(c).

<sup>207</sup> The Education (Admission to Schools) Act 2018, s. 7(29A)(4).

<sup>208</sup> The Education (Admission to Schools) Act 2018, s. 7(29A)(5)(a).

<sup>209</sup> The Education (Admission to Schools) Act 2018, s. 7(29A)(2)(d).

<sup>210</sup> Note. The view has been expressed that the more independent the system becomes, the more detached it is from the school context, a context that should inform decisions as to whether a child who disrupts the education of others should be admitted or excluded (Harris et al. 2000).

### 2.7.2.1. SECTION 29 APPEAL ORAL HEARINGS

Prior to the commencement of the Act of 1998, courtroom challenges against discipline sanctions imposed as a consequence of a breach of the code of behaviour demonstrated a willingness by the Courts to allow schools a wide latitude and discretion, subject to fair procedures.<sup>211</sup> The process leading to a decision to exclude must incorporate the basic principles of fairness and natural justice; that said, the Courts are disposed towards applying these principles less rigorously in the school context. In *Wright v. The BOM of Gorey Community College*, O’Sullivan J. held:<sup>212</sup>

In the case of a school, the requirements of maintaining discipline and authority means that the requirement of fair procedure does not demand something approaching the formality of a courtroom situation, even where expulsion, which is the ultimate sanction with very serious consequences for the person expelled, is open for consideration.

Committee members are not required to have legal qualifications or experience. Parents may request a s. 29 appeal within 42 calendar days following the BOM's decision.<sup>213</sup> The legislation specifies that the Minister may determine the period within which an appeals committee shall decide on an appeal.<sup>214</sup> The committee's decision is final. Where the committee proposes to allow an appeal, it must notify the Minister of the proposed direction to the BOM.<sup>215</sup> The appeal committee should act in accordance with procedures prescribed by the Minister.<sup>216</sup> The primary purpose of the prescribed procedures is to ensure that oral hearings are conducted with the ‘minimum of formality consistent with giving all the parties a fair hearing’ under the legislation.<sup>217</sup> An appeals committee will consider appeals only after all available internal appeal mechanisms within the education setting have been exhausted. All parties must come

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<sup>211</sup> Ciaran Craven, *Bullying and School Discipline*. In Dympna Glendenning & William Binchy (Eds.), *Litigation Against Schools: Implications for School Management* (pp. 145-178). (Dublin: First Law Ltd.) 2006, p. 175.

<sup>212</sup> *Wright (a Minor) v. The Board of Management of Gorey Community College*, [2000] IEHC 37, para. 24.

<sup>213</sup> Department of Education, ‘*Appeals against expulsion or suspension for a period or periods totalling not less than 20 school days in a school year.*’ (2024), para. 3.

<sup>214</sup> The Education Act 1998, s. 29(4)(c) as amended by The Education (Admission to Schools) Act 2018, s. 7. 29B(1)(a).

<sup>215</sup> The Education Act 1998, s. 29(6)(a) and (b) as amended by The Education (Admission to Schools) Act 2018, s. 7. 29D(7).

<sup>216</sup> The Education Act 1998, s. 29 as amended by The Education (Admission to Schools) Act 2018, s. 7(29B)(1).

<sup>217</sup> The Education Act 1998, s. 29 as amended by The Education (Admission to Schools) Act 2018, s. 7(29D)(2)(a).

to the appeal in good faith. The appeal will be deemed inadmissible if the appeal committee comes to the view that the appeal is frivolous, vexatious, or an abuse of process.<sup>218</sup>

It is noteworthy that in England, the government rejected an attempt to introduce an amendment to the Standards and Framework Act 1998, which would have required a legally qualified chairperson of exclusion appeal panels, citing grounds of cost and the practical difficulties in convening panels quickly.

#### 2.7.2.2. THE LEGAL STANDING OF SECTION 29 COMMITTEE DECISIONS

Effectively, the appeal committee's determination has the same status as a court order. The school is bound by law to obey the committee's decision.<sup>219</sup> The legal context of the appeal mechanism was recognised and reflected in early drafts of the Act of 1998. The Education (No. 2) Bill provided that an appeal committee would include a practising barrister or solicitor of not less than ten years' standing.<sup>220</sup> However, the Bill was amended to remove this provision. Nevertheless, the Minister has the discretion to include legal professionals as 'suitable persons' should they consider it appropriate to do so.<sup>221</sup> The rationale for omitting such expertise has been questioned, given that appeals frequently involve complex legal and constitutional principles.<sup>222</sup> Similarly, in England, Ferguson and Webber caution that it is 'unrealistic and inappropriate' to believe lay panel members will be able to have a sufficient understanding of the judicial review principles.<sup>223</sup> On this contentious point, a dichotomy of opinion persists.

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<sup>218</sup> The Education Act 1998, s. 29 as amended by The Education (Admission to Schools) Act 2018, s. 7(29F)(1).

<sup>219</sup> The Education Act 1998, s. 29 as amended by The Education (Admission to Schools) Act 2018, s. 7(29D)(11)(a).

<sup>220</sup> The Education (NO. 2) Bill, s. 29 as initiated.

<sup>221</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 126.

<sup>222</sup> Dymna Glendenning, 'Section 29 Appeals: Where do we stand now' (2015b). Paper delivered. Conference Title: Education and the Law. Trinity College Dublin.

<sup>223</sup> Lucinda Ferguson & Naomi Webber, 'School Exclusion and the Law: A Literature Review and Scoping Survey of Practice.' (2015), p. 35.

### 2.7.2.3. SECTION 29 EXPULSION APPEALS POST ZALEWSKI

The *Zalewski v. An Adjudication Officer*, [2021] IESC 24 case concerned a challenge to an alleged unfair dismissal lodged with the Workplace Relations Commission (WRC). The primary focus was the obligation of the adjudication body to implement constitutional fair procedures and a fair hearing when acting quasi-judicially. Questions have arisen regarding the applicability of the legal principles set down by the court on the operation of expulsion hearings. This section presents a detailed analysis of key elements of the Supreme Court deliberations in light of the operation of s. 29 oral hearings.

The court unanimously found that the WRC was administering justice and held this permissible under Article 37 of the Constitution, as such bodies may exercise limited functions and powers of a judicial nature in matters other than criminal matters.<sup>224</sup> Notably, the court held that such bodies must comply with the fundamental components of independence, impartiality, dispassionate application of the law, openness, and, above all, fairness, which are understood to be the essence of the administration of justice, and that the standard of justice administered under Article 37 cannot be lower or less demanding than the justice administered in courts under Article 34.<sup>225</sup>

The Court declared some aspects of the WRC's operation unconstitutional but refrained from striking down the legislation in its entirety. While the case presented a distinct set of circumstances and factors, and the judgment is limited to the WRC, it raises questions on how the courts might view other bodies, such as s. 29 committees, if called upon to examine their constitutionality. Elements of the judgment of interest here include the ruling by the Supreme Court that a blanket rule imposed by the Workplace Relations Act, 2015 s. 41(13) and (14) stipulating that all WRC hearings must be held 'otherwise than in public', was repugnant to the Constitution.<sup>226</sup> While

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<sup>224</sup> Note. Article 37.1. Provides 'Nothing in this constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge, or a court appointed or established as such under this Constitution'.

<sup>225</sup> *Tomasz Zalewski v. The Workplace Relations Commission, an Adjudication Officer [Y], Ireland, and the Attorney General*, [2021] IESC 24, para. 138.

<sup>226</sup> *Tomasz Zalewski v. The Workplace Relations Commission, an Adjudication Officer [Y], Ireland, and the Attorney General*, [2021] IESC 24, para. 148.

s. 29 of the Act of 1998 is silent on the matter, the Courts (Supplemental Provisions) Act 1961 provides that justice may be administered other than in public in the case of minors.<sup>227</sup> Given that attendance at the appeal hearing is restricted by virtue of DOE guidelines, appeal hearings are effectively held in private.<sup>228</sup> The Civil Liability and Courts Act 2004 (as amended)<sup>229</sup> prohibits the reporting, publication or broadcasting of information which might identify a minor. It is noteworthy that the appeal mechanism provides for an appeal to be lodged by a student who has reached the age of 18 years. The application of the provisions of the Civil Liability and Courts Act and associated reporting restrictions could only apply to a judicial review of an appeal hearing and not to the appeal hearing itself. O'Donnell J. criticised the lack of provision for administering an oath in WRC hearings and the absence of express provision for the right to cross-examine witnesses. The former is not provided for at expulsion appeal hearings; the latter is not explicitly prohibited. The learned judge emphasised the necessity for appeal boards to demonstrate independence, impartiality, openness, and fairness.<sup>230</sup> At the same time, the court emphasised the importance of judicial values in decision-making by appeal bodies such as the WRC. It held that those decision-makers are not required to have legal qualifications. Instead, confidence was expressed in WRC adjudication officers as persons with expertise in the area of employment law, practical experience in industrial relations, and the ability to act fairly. The latter maintains the informality of such hearings and stops short of a complete revamp of the WRC; rather, the court reformed procedures to meet the requirements of fairness. Similarly, emphasis is placed on conducting expulsion appeal hearings with the minimum of formality consistent with giving all parties a fair hearing,<sup>231</sup> and s. 29 committee members are not required to have formal legal training.

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<sup>227</sup> The Courts (Supplemental Provisions) Act 1961, s. 45(1)(c).

<sup>228</sup> Note. DOE guidelines govern attendance at the oral hearing. The parents and the student, where the student is aged over 18, can attend the hearing. Two members of the BOM may attend on behalf of the school, or one member of the BOM and the school principal. Two other people can accompany each party to the hearing. The EWO and the SEN Organiser may also attend. See <https://www.gov.ie/en/publication/19941-appeals-against-expulsion-or-suspension-for-a-period-or-periods-totaling-not-less-than-20-school-days-in-a-school-year/#appeal-hearing-attendees>

<sup>229</sup> Civil Liability and Courts Act 2004, s. 40A.

<sup>230</sup> *Tomasz Zalewski v. The Workplace Relations Commission, an Adjudication Officer [Y], Ireland, and the Attorney General*, [2021] IESC 24, para. 138.

<sup>231</sup> The Education Act 1998, s. 29 as amended by The Education (Admission to Schools) Act 2018, s. 7(29F)(1).

While the independence of adjudicating officers was guaranteed in legislation,<sup>232</sup> the provision was undermined when considered in light of s. 40(7) of the Act of 2015, which granted the Minister for Jobs, Enterprise, and Innovation unqualified powers to revoke the appointment of Officers simply stating, ‘The Minister may revoke an appointment under this section.’ O’Donnell J. declared this aspect of the Act to be ‘troubling.’ This provision has now been amended to set out the limited circumstances and detailed procedure for such action by the Minister, an amendment which copper fastens the office's independence. The Zalewski judgement is significant; legislative changes have followed in response to opinions expressed, judicial commentary and the court's decision.

#### **2.7.2.4. THE IMPLICATIONS OF THE ZALEWSKI JUDGEMENT FOR SCHOOL EXPULSION**

In his judgment (delivered on behalf of the four-judge majority), O’Donnell J. thoroughly discussed the administration of justice and the function of Article 37. The decision in Zalewski suggests the likely expansion of quasi-judicial statutory bodies and an extended range of justice administration outside the courts by judges as a result of O’Donnell J’s conclusions. The question of whether s. 29 appeal committee hearings should be encompassed within the definition of Article 37 bodies is contentious. It can be argued that, as a constitutional question of the child’s education, appeal hearings warrant a high standard of justice. Alternatively, it can be reasoned that it is simply something that should remain outside the jurisdiction of the courts. Figure 3 presents a comparison chart of the five-point test set out by the Supreme Court to be applied for the purpose of establishing whether a decision-making body is engaged in the administration of justice and the expulsion appeal mechanism. However, O’Donnell J. held that the proper scope of the administration of justice is not governed simply by analogy with what the courts traditionally did and even less by the form of orders customarily made by them.

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<sup>232</sup> Workplace Relations Act 2015, s. 40(8).

### The McDonald Criteria v. School Expulsion - Comparison Chart

| The McDonald Criteria                                                                                                                                                                            |  | School Expulsion                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------------------------------------------------------------------------------------------------------------------------------------------------|
| (i) A dispute or controversy as to the existence of legal rights or a violation of the law.                                                                                                      |  | A legal dispute relating to the student's entitlement to attend the school they are enrolled in and the school's entitlement to expel them.    |
| (ii) The determination or ascertainment of the rights of parties or the imposition of liabilities, or the infliction of a penalty.                                                               |  | The determination of the s. 29 committee is binding on all parties.                                                                            |
| (iii) The final determination (subject to appeal) of legal rights or liabilities or the imposition of penalties.                                                                                 |  | There is no legislative right to appeal the decision of the s. 29 committee. However, the decision is reviewable by way of judicial review.    |
| (iv) The enforcement of those rights or liabilities or the imposition of a penalty by the court or by the executive power of the State, which is called in by the court to enforce its judgment. |  | The Secretary General of the DOE enforces the decision of the s. 29 committee. [Conscripting the Executive power of the State]. <sup>233</sup> |
| (v) The making of an order by the court, which, as a matter of history, is an order characteristic of courts in this country.                                                                    |  | There is no history of the court making an order regarding school expulsion, which is characteristic of courts in Ireland. <sup>234</sup>      |

Figure 3.

In *Zalewski*, Simons J. referred to the five criteria as ‘essential characteristics of the administration of justice’.<sup>235</sup> However, O’Donnell J. held that the administration of justice is not to be defined by or limited to the areas traditionally dealt with by the courts.<sup>236</sup> The learned judge emphasised that the five-part test developed in *McDonald v. Bord na gCon* must be applied with flexibility to determine whether or not a body is administering justice.<sup>237</sup> Regarding the McDonald criteria,<sup>238</sup> s. 29 hearings deal

<sup>233</sup> Note. It is not necessary that the decision-maker must be able to enforce its decisions itself.

Rather, it is consistent with the exercise of judicial power for the decision-maker to call in aid the executive power of the State to enforce its decisions, per Simons J., para 69.

<sup>234</sup> Note. However, properly understood, the fifth limb looks to whether the decision at issue is one which is characteristic of a court, in the sense of being similar to the type of orders which a court makes, rather than asking whether this specific type of order is one which the courts have made historically, per Simons J., para 105

<sup>235</sup> *Tomasz Zalewski v. The Workplace Relations Commission, an Adjudication Officer [Y], Ireland and the Attorney General*, [2020] IEHC 178, para. 77.

<sup>236</sup> *Tomasz Zalewski v. The Workplace Relations Commission, an Adjudication Officer [Y], Ireland, and the Attorney General*, [2021] IESC 24, para. 96.

<sup>237</sup> *McDonald v. Bord na gCon*, [1965] IR 217.

<sup>238</sup> Note. In *McDonald v. Bord na gCon*, the Supreme Court set out the five-point test to be applied to establish if a decision-making body is engaged in the administration of justice.

with a dispute centred on the entitlement of the student to attend the school or the entitlement of the school to expel the student. It is accepted that matters relating to school expulsion historically were not within the domain of the courts. Therefore, it can be argued that s. 29 appeals are a limited administration of justice for the purpose of Article 37. It is limited by the subject matter under consideration and the limited nature of the remedies available to the committee under the statute.<sup>239</sup> Furthermore, the committee has limitations on its ability to enforce its own decisions.<sup>240</sup> Its decision is also subject to judicial review.

It is acknowledged that the context of the *Zalewsky* employment law case and education law are quite different. It remains to be seen in future litigation if the judgment delivered by O'Donnell J. will transform how Irish courts approach the question of how to determine if the school expulsion appeal mechanism counts as the administration of justice. The principles laid down in *Zalewsky* are at least worthy of consideration here as it is conceivable that these principles may in full or in part be applied by a court to the work of an appeal committee where, for example, appropriate procedures were not followed or where there was a want of independence between the appeal committee and parties to the appeal. Should the courts examine the status of the expulsion appeal hearings at a future date, it may maintain the status quo or alter its legal status.<sup>241</sup> Nevertheless, the deliberations of the court are informative when examining the operation of the mechanism as currently provided. The oral hearing is a critical element of an expulsion appeal mechanism. The firsthand experiences of committee chairpersons, parents, and EWOs are called upon to examine the operation and are reported in chapters 6 and 7.

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<sup>239</sup> Note. Section 29D (9) of the Act of 1998, as amended by s. 7 of the Act of 2018, provides that the decision of an appeals committee shall be the final decision. The committee may allow the appeal [s. 10 (a)] or disallow the appeal [s. 10 (b)]. The committee shall notify the Minister of its decision.

<sup>240</sup> Note. Section 29D (13) of the Act of 1998, as amended by s. 7 of the Act of 2018, provides that the Minister shall forward to the relevant parties a copy of the final decision of the appeals committee and the reasons for its decision, and where the appeals committee has allowed an appeal, a copy of the direction included in the final decision of the appeals committee. Section (14) provides that a BOM shall comply with a direction under subsection as articulated in the committee's decision notice.

<sup>241</sup> Note. Tricia Sheehy Skeffington holds that if viewed through the lens of *Zelewski*, school expulsion may be the kind of thing the Oireachtas might require a court to review by way of a statute, be that the district court or the circuit court. See Maurice Collins, David Gwynn Morgan, Laura Cahillane & Tricia Sheehy Skeffington, '*Quasi-Judicial Decision-Making Post-Zalewski*.' (2021). [Webinar]. The Law Reform Commission.

## 2.8. JUDICIAL REVIEW OF DECISION TO EXPEL

Should a party to an s. 29 appeal be dissatisfied with the outcome, they may apply to the High Court to seek a judicial review of the committee's decision. This section discusses the role of judicial review in Irish law, the prerequisite to exhaust alternative available remedies before doing so, and associated matters. The grounds for judicial review are examined, as is the role of interlocutory injunctions and the idea of mootness in school expulsion judicial review proceedings; concepts of significance that the courts have addressed.

### 2.8.1. THE CONSTITUTIONAL POSITION OF JUDICIAL REVIEW

In Ireland, judicial review is the primary means by which the courts supervise the administration of specialist bodies, such as the Ministerially appointed s. 29 committees,<sup>242</sup> in accordance with the rules of the High Court.<sup>243</sup> Thereby, Ministers and other state organs are subject to the same law, administered by the same courts as a private individual.<sup>244</sup> The constitutional theory of judicial review has long been dominated by the doctrine of *ultra vires*, under which a decision of a public authority can only be set aside if it exceeds the powers granted to it by the Oireachtas.<sup>245</sup> The constitutional status of judicial review is directed by the need to avoid the abuse of power by the executive and protect individual rights. This is achieved by examining decisions of officials and public bodies such as s. 29 committees and secondary legislation, against which ordinary common law remedies apply. The decision criticised must have been taken by a public body, that being a body established by statute or otherwise exercising a public function.<sup>246</sup> The deployment of judicial review in school disciplinary proceedings is a comparatively new occurrence. Prior to the introduction of the Act of 1998, admission to a secondary school was primarily a matter of contract law. However, now that aspects of the mechanism of school

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<sup>242</sup> Fiona J. L. Donson & Darren O'Donovan, *Law and public administration in Ireland*. (Dublin: Clarus Press Ltd.) 2015, p. 555.

<sup>243</sup> Note. The High Court Rules relating to judicial review applications are to be found in Order 84 of the Rules of the Superior Courts.

<sup>244</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 3.

<sup>245</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 395.

<sup>246</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 394.

discipline are regulated by statute (the Act of 1998 and by s. 24 of the Act of 2000), it is now accepted that, in principle, decisions to expel can be subject to judicial review as these decisions have now been invested by these Acts ‘with the requisite public law character’.<sup>247</sup> Although some of the statutory appeals discussed below are appeals against a decision under section 29(1)(c), i.e. a refusal to enrol a pupil, the legal principles apply equally to an appeal against expulsion.<sup>248</sup>

When a statutory body such as a s. 29 committee exercises its statutory power to make a decision within the remit of the competence given to them by statute, a Court is not concerned with whether, in the Court’s view, the decision was right or wrong but rather the legality of the decision under review.<sup>249</sup> It is now settled as a matter of law that the High Court is not permitted to substitute its own view for that of the decision-maker. In *O’Keeffe v. An Board Pleanála*, [1993] 1 IR 39, Finlay C.J., held that the court could not interfere with the decision of an administrative decision-making authority simply because it is satisfied that on the facts as found (i) it would have different inferences and conclusions, or (ii) it believed the case against the decision made by the authority was much stronger than the case for it.<sup>250</sup> The task of the Court is to determine if there was any reasonable basis for the decision reached. Clarke notes that this action is narrow in scope; it can involve the court assessing whether the process leading to the challenged decision was fair. In addition, it may require the court to scrutinise whether or not specific provisions in law governing the decision in question were complied with.<sup>251</sup> Charleton J. observed that the narrow focus of judicial review renders it no more than a ‘sterile desert of procedure’.<sup>252</sup> In the *Waterford VEC v. DOE* case, the learned judge concisely stated the legal principles applicable to a judicial review of school expulsion cases. He highlighted the Court’s supervisory jurisdiction over administrative and judicial tribunals and resolved that the Court is not entitled to usurp any fact-finding powers conferred on these tribunals or to take on

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<sup>247</sup> MD v. Board of Management of a Secondary School, [2024] IESC 11, per Hogan J., para. 19.

<sup>248</sup> Student A.B. ( a minor) v. The Board of Management of a Secondary School, [2019] IEHC 255, para 37.

<sup>249</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 396.

<sup>250</sup> O’Keeffe v. An Board Pleanála, [1993] 1 IR 39, p. 71.

<sup>251</sup> Frank Clarke, ‘*Education in the Courts*’. (2015). Paper delivered. Conference Title: Education and the Law. St. Angela’s College, Sligo.

<sup>252</sup> Tomasz Zalewski v. The Workplace Relations Commission, an Adjudication Officer [Y], Ireland, and the Attorney General, [2021] IESC 24, para. 55.

their function otherwise.<sup>253</sup> In BOM of the *College v. the DOE*, Hedigan J. noted that the obligation to comply with fair procedures in expulsion cases is a dual one where both parties are entitled to fair procedure.<sup>254</sup>

Data provided by the DOE on request show there were three judicial review proceedings lodged to challenge expulsion-related decisions of s. 29 committees during the years 2019-2023; parents initiated two, although one was subsequently withdrawn, while a school initiated the third. In all cases, the initiative failed to secure the desired outcome when viewed from the perspective of the applicant. The 2020 case points to the need to provide parents with information and advice.

Courtroom Challenges to Expulsion Appeal Decisions - (Post-Primary) 2019-2023.<sup>255</sup>

| Year | No. | Section 29 Appeal Committee Decision                             | Appellant | Outcome                                                                                                                                                  |
|------|-----|------------------------------------------------------------------|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2019 | 1   | Appeal to overturn the Board's decision to expel was not upheld  | Parent    | The High Court quashed the committee's decision not to uphold the appeal. A newly constituted committee reheard the appeal and determined not to uphold. |
| 2020 | 1   | The Section 29 appeal was not submitted to the Department        | Parent    | The parent withdrew the challenge                                                                                                                        |
| 2022 | 1   | An appeal to overturn the school's decision to expel was allowed | School    | The Department conceded; the committee's decision was quashed. A newly formed committee upheld the appeal. The student was readmitted to the school.     |

Figure 4.

Initiating a judicial review to challenge the decision of an appeal committee requires access to significant economic and social capital and sound legal advice. While these resources may be available to a school, it is less likely that an aggrieved parent will be so endowed. The matter is discussed in Chapters 6 and 7.

<sup>253</sup> City of Waterford VEC v. Department of Education and Science & Ors., [2011] IEHC 278, para. 9.

<sup>254</sup> Board of Management of the College v. Secretary General of the Department of Education & Ors., [2013] IEHC 358, para. 14.

<sup>255</sup> Note. There were no courtroom challenges to s. 29 expulsion appeal decisions (post-primary) during the years 2021 or 2023. It must be borne in mind that the period reported upon includes the years when school activities were severely affected by the onset of the pandemic.

### 2.8.2. THE REQUIREMENT TO EXHAUST ALTERNATIVE REMEDIES BEFORE JUDICIAL REVIEW

Simons J. emphasised the necessity to exhaust alternative available remedies before seeking judicial review in the *Student A.B.* case. The clear preference expressed is that disputes regarding student disciplinary matters should, as a rule, be dealt with by way of the s. 29 statutory appeal process in the first instance. The learned judge presented persuasive reasons, grounded in both principle and pragmatism, as to why the courts should exercise restraint before considering judicial review proceedings in such matters.<sup>256</sup> He stressed that the courts should have regard for the fact that the Oireachtas has established a statutory appeal process involving a *de novo* hearing before a special committee. He compared favourably the timescale of the s. 29 appeal process, usually taking thirty days (from the date of the receipt of the appeal by the Secretary General), to that of the courts, which would rarely be able to match this period. In addition, he cited the probability of significant legal costs associated with judicial review. He noted that in the instant case, the costs incurred by the parties would likely run to a six-figure sum.<sup>257</sup> He contended that, should a school successfully defend legal proceedings, there is no guarantee the school will recover its legal costs from the other side. Finally, the learned judge highlighted the risk of courtroom proceedings restraining schools from exercising their disciplinary functions:<sup>258</sup>

Were it to become standard practice for aggrieved students and their parents to institute judicial review proceedings in preference to exercising their statutory right of appeal under section 29 of the Education Act 1998, this might have a chilling effect upon schools in the discharge of their disciplinary functions. The board of management of a school might well hesitate before deciding to expel a student lest this result in the school being exposed to significant legal costs. It is preferable, therefore, that disputes in disciplinary matters should normally be dealt with by way of the inexpensive statutory appeal process.

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<sup>256</sup> *Student A.B. (a minor) v. The Board of Management of a Secondary School*, [2019] IEHC 255, paras. 41-44.

<sup>257</sup> Note. The proceedings in *Student A.B. (a minor) v. The Board of Management of a Secondary School*, [2019] IEHC 255 took four days to complete. The court refused leave for judicial review.

<sup>258</sup> *Student A.B. (a minor) v. The Board of Management of a Secondary School*, [2019] IEHC 255, para. 44.

### 2.8.3. LEAVE TO APPLY FOR JUDICIAL REVIEW MUST BE MADE IN GOOD FAITH

Relief by way of judicial review is discretionary. Considerable judicial attention has been attached to the importance of the principle that applications to the High Court for leave to apply by way of judicial review must be made in the utmost good faith. Nevertheless, in *O'Donovan v. BOM of De La Salle College*,<sup>259</sup> Hedigan J. noted that in *de Róiste v. Minister for Defence*, [2001] 1 IR 190, the Supreme Court held that a want of disclosure in respect of one ground of challenge would not necessarily disqualify an applicant from pursuing others, where Lavery J. stated:<sup>260</sup>

I am unable to share the view... that a want of candour in regard to one of the grounds upon which application for certiorari was made disentitles the prosecutor to an order.

Hedigan J. was satisfied that the applicant had established and clearly stated a ground, and the manner in which it was dealt with in the affidavits was unaffected by any want of good faith.

The court will not lightly entertain frivolous matters. In *Murtagh v. Board of Governors of St. Emer's National School*, [1991] 1 IR 482, the Supreme Court refused to interfere with the BOM's decision to suspend the applicant's son for three days for insulting a teacher. Hederman J. dealt with the matter in a summary fashion:<sup>261</sup>

A three-day suspension of a pupil from a national school, ... is not a matter for judicial review. It is not an adjudication on or determining of any rights or the imposing of any liability. It is simply the application of ordinary disciplinary procedures inherent in the school authorities and granted to them by the parents who have entrusted the pupil to the school.

In the same judgment, McCarthy J. doubted that such a decision was amenable to review by the courts. At the same time, O'Flaherty J., stated that the proceedings were a ridiculous waste of public time and should never have been initiated or entertained, but should have been dismissed as entirely inappropriate for judicial review.

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<sup>259</sup> *O'Donovan v. Board of Management of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, para. 34.

<sup>260</sup> *de Róiste v. Minister for Defence*, [2001] 1 IR 190, p. 244.

<sup>261</sup> *Murtagh & anor v. Board of Governors of St Emer's National School*, [1991] 1 IR 482, p. 488.

#### 2.8.4. GROUNDS FOR JUDICIAL REVIEW

The grounds for reversing an administrative decision by way of judicial review are summarised as illegality, procedural impropriety, reasonableness and proportionality, and legitimate expectation.

##### 2.8.4.1. ILLEGALITY

Every executive or administrative action that impacts the legal rights, interests, or legitimate expectations of citizens must have legal justification. In the absence of such authority, an aggrieved party may challenge the action, where the courts will invalidate the offending decision. In *Director of Public Prosecutions v. Fagan*, [1994] 2 IR 265, the issue to be determined by the court was whether a member of An Garda Síochána had a right at common law or under statute to conduct random road traffic checkpoints. A majority of the Supreme Court held that the existence of such power was necessarily implied in a variety of statutory powers conferred by the Road Traffic Acts.<sup>262</sup> In her dissenting judgment, Denham J. seems more in harmony with the rule of law. She observed that a cornerstone of the rule of law is that persons in authority must be able to justify their actions if called upon to do so. In Lord Diplock's words, a decision-maker 'must correctly understand the law that regulates his decision-making power and must give effect to it.'<sup>263</sup> The decision-making power must be exercised exclusively by the administrative authority to whom the Oireachtas has vested it. However, s. 29 of the 1998 Act and s. 24 of the 2000 Act refer to a decision to exclude by the board or a person acting on behalf of the board, which suggests that the board may delegate.<sup>264</sup>

In *Waterford VEC*,<sup>265</sup> Charleton J. emphasised that the appeals committee, being a statutory creation, can only do what the Act of 1998 allows it to do. If it does more, then it risks falling into an excess of jurisdiction. That excess of jurisdiction can deprive its decision of validity. In extreme cases, schools have no choice but to expel for the common good. That said, schools must act within the legal framework. This research reveals that some schools arrange 'informal expulsions' and 'local

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<sup>262</sup> Road Traffic Act 1961, as amended.

<sup>263</sup> *Council of Civil Service Unions v. Minister for the Civil Service*, [1985] A.C. 374, p. 410.

<sup>264</sup> Note. For discussion on participants' perceptions of the power to expel, see sections 5.4 and 7.6.

<sup>265</sup> *City of Waterford VEC v. Department of Education and Science & Ors.*, [2011] IEHC 278.

arrangements,' which circumvent the legal process. No explicit statutory power is afforded to schools to make arrangements of this nature, which interfere with parental constitutional right and their legal obligation to educate their child. Arrangements of this nature circumvent the right of appeal and EWS involvement. There is a dearth of official data available on the extent of informal expulsions in Ireland. The prevalence of informal expulsion and the manner in which it occurs are recurring themes discussed throughout this thesis, particularly in Chapter 7, where the experiences of parents and informally expelled students are examined.

#### 2.8.4.2. PROCEDURAL IMPROPRIETY

BOMs and s. 29 committees must be guided by the principle of natural justice and observe procedural fairness in decision-making. They must follow the procedures expressly laid down in the legislation. The case history regarding procedural requirements is not clear-cut. Hogan and Morgan note that in some cases, procedural requirements have been deemed directory; consequently, a breach of procedural provision may not nullify the decision to expel.<sup>266</sup> This is principally so if the breach has not prejudiced the student or school.

The legislation governing expulsion is silent on the consequences of non-compliance. Hogan and Morgan note that the test of the obligatory nature of a statutory provision is dependent upon the statutory intent and whether compliance with the provision can fairly be said to be essential to the general object intended to be secured by the Act.<sup>267</sup> They refer to *Monaghan UDC v. Alf-A-Bet*, [1980] ILRM 64, where Henchy J. held:<sup>268</sup>

... what the legislature has prescribed, or allowed to be prescribed, in such circumstances as necessary should be treated by the courts as nothing short of necessary, and any deviation from the requirements must, before it can be overlooked, be shown by the person seeking to have it excused, to be so trivial, or so technical, or so peripheral, or otherwise so insubstantial that, on the principle that it is the spirit rather than the letter of the law that matters, the prescribed obligation has been substantially and therefore adequately, complied.

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<sup>266</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 399.

<sup>267</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 399.

<sup>268</sup> *Monaghan UDC v. Alf-A-Bet Productions Ltd*, [1980] ILRM 64, p. 69.

#### 2.8.4.3. REASONABLENESS AND PROPORTIONALITY

The courts employ the doctrine of reasonableness and proportionality in decision-making to examine the merits of the decision rather than the procedure by which it is arrived at. The question asked is whether the decision ‘makes sense.’ Proportionality is a requirement that a decision be proportionate to the aim it seeks to achieve; it may be used as a basis for an argument that a decision is irrational.

The test of unreasonableness or irrationality in judicial review has received considerable attention from the Supreme Court. In the *State (Keegan) v. Stardust Victims’ Compensation Tribunal* [1986] IR 642, Henchy J. set out the test for assessing the reasonableness and the principles to be applied:<sup>269</sup>

1. The impugned decision plainly and unambiguously flies in the face of fundamental reason and common sense.
2. It is indefensible for being in the teeth of plain reason and common sense.
3. The court is satisfied that the decision-maker has breached his constitutional obligations, which directs that he must not flagrantly reject or disregard fundamental reason or common sense in reaching his decision.

In *O’Keeffe v. An Board Pleanála*, [1993] 1 IR 39, the standard of judicial scrutiny employed was grounded on the test established in the *State (Keegan) v. Stardust Victims’ Compensation Tribunal*. Here, Finlay C.J., resolved:<sup>270</sup>

The question arising on this issue falls to be decided in accordance with the principles laid down by this Court in the *State (Keegan) v. Stardust Victims’ Compensation Tribunal*, [1986] IR 642, which are set out in the judgement of Henchy J. in that case, with which in respect of the legal principles applicable, all of the members of the Court specifically agreed.

As articulated by Henchy J. and adapted by Finlay C.J. in *O’Keeffe*, the test lays down a correct rule for the relationship between the courts and administrative bodies. In *Meadows v. Minister for Justice, Equality and Law Reform*, [2010] 2 IR 701, Denham J. held it to be the correct test to apply when the courts are tasked with determining the reasonableness of an administrative decision which affects or concerns

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<sup>269</sup> *State (Keegan) v. Stardust Victims’ Compensation Tribunal*, [1986] IR 642, p. 658.

<sup>270</sup> *O’Keeffe v. An Board Pleanála*, [1993] 1 IR 39, p. 70.

constitutional rights or fundamental rights.<sup>271</sup> The Meadows decision expressly states that proportionality is a means of challenging administrative actions that infringe fundamental rights (both constitutional and conventional).<sup>272</sup> Brady welcomed the Supreme Court's explicit recognition of proportionality as a basis for challenging administrative decisions which intrude on fundamental rights, given that the executive has just as much potential as the Oireachtas to encroach upon constitutionally protected rights.<sup>273</sup> Denham J. held that when fundamental rights are at issue, such rights form part of the court's constitutional jurisdiction in which a reasonable decision is required to be made and, if made, analysed.

Interviewed parents of expelled students were adamant that the decision to expel was unreasonable and lacked a balanced interpretation of the school's code of behaviour. Their views are analysed in Chapter 8.

#### 2.8.4.4. THE DOCTRINE OF LEGITIMATE EXPECTATION

The doctrine of legitimate expectation was developed as a ground for judicial review to protect against haphazard and unfair administrative policy and practice changes.<sup>274</sup> It arises when a person has been led by a policy, promise or representation of a public body to understand that, for example, specific steps will be followed in reaching a decision. In *Glencar Exploration v. Mayo County (No. 2)*, [2002] 1 ILRM. 481, Fennelly J. articulated the three conditions that must be established to show that a public body had failed to respect a legitimate expectation.<sup>275</sup> They can be summarised as:

- (i) the authority has made a representation amounting to a promise or has adopted a consistent practice
- (ii) the expectation is legitimate, meaning it is reasonable, prompted by the conduct of the authority, and lies within the authority's power

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<sup>271</sup> *Meadows v. Minister for Justice, Equality and Law Reform*, [2010] 2 IR 701, p. 744.

<sup>272</sup> Note. Reference to 'fundamental rights' refers to substantive personal rights, as opposed to the constitutional obligation of fair procedure, which is a well-established basis for judicial review of administrative action in Ireland. See *Re Haughey*, [1971] 1 IR 217.

<sup>273</sup> Alan D. Brady, 'Proportionality, Deference and Fundamental Rights in Irish Administrative Law: The Aftermath of Meadows' (2010) 32. *Dublin University Law Journal* 136, p. 138.

<sup>274</sup> David Gwynn Morgan & Gerard Hogan, *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998, p. 860.

<sup>275</sup> *Glencar Exploration p.l.c. v. Mayo County Council (No. 2)*, [2002] 1 ILRM. 481, p. 531.

(iii) the expectation has been unfairly denied

The limits of the doctrine were clarified in *Wylie v. Revenue Commissioners*, [1995] 2 IR 296, where Finlay C.J., held that the doctrine could not confer powers on a statutory authority beyond that permitted by the relevant statute.<sup>276</sup>

The *Board of Management of Presentation College Athenry v. Department of Education and Skills & Ors.*, [2017] IEHC 521 concerned a challenge by judicial review to a decision made by a s 29 appeal committee. There, the High Court considered a claim of legitimate expectation based on advice provided by a former school principal. The parents of a child altered their child's schooling in reliance on advice that enrolment in the Presentation College was conditional on catchment area criteria, allegedly establishing a legitimate expectation of admission. Ní Raifeartaigh J. raised doubts about the applicability of the doctrine in the case at hand.<sup>277</sup> She indicated that its application might be problematic and questioned whether the school could be regarded as a public authority for the purposes of the doctrine, and whether the implementation of an enrolment policy by a school constitutes an exercise of statutory discretion. Although these issues did not require resolution in the case, the judgment highlights the potential complexities in applying the doctrine in the school context and raises questions about whether a school principal should informally expel a student without adhering to established practice.

#### **2.8.5. THE ROLE OF INTERLOCUTORY INJUNCTIONS IN SCHOOL DISCIPLINARY MATTERS**

The cases of *B. v. BOM of St Q's College and C. v. BOM of St Q's College*, [2018] IEHC 664, related to an application for two interlocutory injunctions to secure the reinstatement of two students while the school's disciplinary procedures ran against them. The case concerned students B and C (each due to sit the Leaving Certificate examination the upcoming summer) who, while on the premises of St. Q's College, filmed student A (not a party to the proceedings) apparently engaged in impromptu 'snorting' of what may or may not have been cocaine powder. The footage was uploaded to Snapchat, thereby enabling a (limited, it was claimed) number of persons to witness the 'snorting.' As a result, the students were suspended for twenty days

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<sup>276</sup> *Wylie v. Revenue Commissioners*, [1994] 2 IR 160, pp. 166-167.

<sup>277</sup> *Board of Management of Presentation College Athenry v. Secretary General of the Department of Education and Skills & Ors.*, [2017] IEHC 521, para. 26.

following the initial decision by the BOM to expel them.<sup>278</sup> However, mindful that the disciplinary process should continue against the students, of their right to appeal by way of s. 29 and judicial review, the court accepted that the overwhelming desire of students was to get back to school and focus on their Leaving Certificate examination.

Barrett J. drew heavily on the judgment of Clarke J. in *Okunade v. Minister for Justice, Equality and Law Reform*, [2012] IESC 49, where Clarke J. outlined the principles found to be applicable where a court is asked to grant a stay or interlocutory injunction in judicial review proceedings.<sup>279</sup> With reference to *Okunade*, Barrett J. noted that the overriding objective when proceedings are so tasked was to minimise the risk of injustice.<sup>280</sup> In applying the aforementioned principles, the court accepted that the applicants had established an arguable case in the first instance. In considering where the greatest risk of injustice would lie, the court derived some assistance from O’Sullivan J. in *Wright v. BOM Gorey Community School*, (discussed above), where the Wright siblings were found to be drug users, and neither was facing a watershed state examination. Barrett J. deemed significant that in the present case, the court was not dealing with substance takers but rather unplanned filming by two schoolboys of an impromptu occurrence. In addition, Barrett J. stated that the court was ‘very alive’ to the Special Educational Needs (SEN) of student B, as identified in the pleading.<sup>281</sup> Unlike the case of *Wright*, the court was mindful of the importance of the particular academic year in the lives of the applicants and the limited support available to them as they engaged in home-based study. The court was satisfied that, in keeping with the principles as outlined by Clarke J., if interlocutory relief were granted, the orderly implementation of the disciplinary process would continue, and the public interest in a well-ordered school system where rule-breaking yields consequences and compliance by the school with ordained disciplinary procedures would be protected. Given that the present case did not involve a detailed investigation of fact or complex questions of law, the court felt at liberty to place all due weight on the strength of the case. EWOs of Tusla believed that students B and C would be better back at St. Q’s,

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<sup>278</sup> Note. The suspension was in keeping with the Education (Welfare) Act 2000, s. 24(4) and, para. 10 of the Code of Behaviour and Discipline of St Q’s College.

<sup>279</sup> *Okunade v. Minister for Justice, Equality and Law Reform & Ors.*, [2012] IESC 49, para. 9.42.

<sup>280</sup> *B. (a minor) v. The Board of Management of St Q’s College; C. (a minor) v. The Board of Management of St Q’s College*, [2018] IEHC 664, para. 5.

<sup>281</sup> *B. (a minor) v. The Board of Management of St Q’s College; C. (a minor) v. The Board of Management of St Q’s College*, [2018] IEHC 664, para. 8, point 2(i).

a position the court considered significant and worthy of due regard.<sup>282</sup> The court granted an interlocutory injunction compelling the school to allow the students to continue their education for the academic year pending the full and final determination of the matter. The position adopted by the High Court in affording weight to the EWO's assessment and the critical nature of their intervention is noteworthy. The case demonstrates the willingness, in some contexts, of the Courts to acknowledge the importance of the Leaving Certificate examination and the limitations of available home-school support. The BOM appealed the decision to the Court of Appeal, where Birmingham P. observed that the decision to expel two boys in their Leaving Certificate year was 'irrational,'<sup>283</sup> an observation which may impact future BOM and court decisions in similar cases. The first-hand experience of parents whose children faced expulsion in their final year of school is reported upon in Chapter 7.

#### 2.8.6. MOOTNESS IN SCHOOL EXPULSION JUDICIAL REVIEW

Relief sought by way of judicial review must be made within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made.<sup>284</sup>

In *O'Donovan v. BOM of De La Salle College*, [2009] IEHC 163, the respondents submitted that the applicant had completed his secondary education at an alternative school and had enrolled in a third-level institution. On that basis, they argued that granting the relief sought would be meaningless as it would offer no practical benefit to the applicant and that, in the interests of justice, the court should desist from engaging in a futile exercise. Hedigan J. noted the clarity of the position developed by the courts with reference to *Minister for Labour v. Grace*, [1993] 2 IR 53 and *Barry v. Fitzpatrick*, [1996] 1 ILRM 512, where the Supreme Court endorsed Keane J.'s finding that an order of certiorari is pointless once it ceases to have any effect and one that no court should undertake.<sup>285</sup> While the student had succeeded to a considerable

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<sup>282</sup> B. (a minor) v. The Board of Management of St Q's College; C. (a minor) v. The Board of Management of St Q's College, [2018] IEHC 664, para. 9.

<sup>283</sup> B. (a minor) v. The Board of Management of St Q's College; C. (a minor) v. The Board of Management of St Q's College, [2019] IECA 229, para 17.

<sup>284</sup> Rules of the Superior Courts. Order 84, Rule 21 (1).

<sup>285</sup> *O'Donovan v. Board of Management of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, para. 41.

extent in mitigating the consequences of his expulsion, Hedigan J. held that the decision to expel him should not be allowed to weigh against him in the Court's consideration of his case. The court accepted that the presence of such a serious disciplinary sanction on the record of a young man would inevitably have consequences for his reputation and self-esteem. Hence, Hedigan J. rejected the contention that the case was effectively moot.<sup>286</sup>

## **2.9. CHALLENGING SCHOOL EXPULSION - CASE LAW DEVELOPMENT**

A dissatisfied party may seek to challenge a s. 29 committee's decision by way of judicial review, thereafter to the Court of Appeal, and finally to the Supreme Court. Appeal committees must ensure oral hearings are conducted in accordance with judicial guidance, the provisions of the Act of 1998 as amended, the principles of administrative law as discussed above, and guidance provided by the Minister. Although there have been significant amendments to s. 29 of the Act of 1998, oral hearings remain for appeals against decisions to expel. The jurisdiction exercisable under s. 29 has been defined in Irish case law. The legal principles developed by the court relating to s. 29 challenges to expulsion, suspension, and refusal to enrol apply equally to appeals against expulsion. The cases discussed in this section focus on:

1. The Statutory Interpretation of Section 29 of the Act of 1998
2. Relevant and Irrelevant Factors in School Expulsion Decision-Making
3. The Right to Legal Representation, Cross-Examination of Witnesses and Access to Evidence
4. The Obligation of the BOM to Engage with the EWS
5. The Requirement for the Appeal Committee to Consider School Policies
6. Case Law Pertaining to National Policies Developed Outside of School

### **2.9.1. THE STATUTORY INTERPRETATION OF SECTION 29 OF THE ACT OF 1998**

The jurisdiction of the s. 29 appeal committee was the first issue considered by Irvine J. in *BOM of St. Molaga's School v. Secretary General of the DES*, [2009] IEHC 91. It was submitted that in arriving at its decision, the appeal committee acted *ultra vires*

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<sup>286</sup> O'Donovan v. Board of Management of De La Salle College Wicklow & Ors., [2009] IEHC 163, para. 42.

in purporting to perform a wide-ranging investigation, which was carried out. An order of *certiorari* was sought against the direction made by the appeal committee. To the interpretation of the statute, the judge applied what she termed the ‘informed interpretation rule’, which requires that courts should infer that the legislature, when settling the wording of an enactment, intended the courts to be fully informed as to all such matters as may illuminate the text.<sup>287</sup> Engagement of the rule required consideration by the Court of s. 29 in the context of the Act of 1998 as a whole and against the backdrop of the Constitution, the common law, and the history of the education system in Ireland.<sup>288</sup> Irvine J. turned to Hardiman J.’s judgment in *O’Keeffe v. Hickey* for assistance, particularly Hardiman J.’s observations regarding the indirect role of the Minister in relation to the management and control of schools.<sup>289</sup> The judgment confirmed for Irvine J. the relative lack of authority that the State exerted over the running of schools, which were largely autonomous institutions in many respects. Informed by this, Irvine J. adopted a restrictive interpretation. He rejected the contention that s. 29 of the Act of 1998 intended to ‘realign the relationship between the parties to the education system’ by empowering an executive-appointed appeals committee to conduct a full rehearing of decisions taken by BOMs established by individual schools. The Court had not detected any statutory provisions which might encourage it to this view.<sup>290</sup> The Court was not influenced by the aims of the Act as articulated in the long title.<sup>291</sup> Irvine J. held that it was solely the right of the BOM to make decisions relating to the school’s management and that it was far more likely that s. 29 intended that an appeal committee should have a function akin to that of a professional regulator.<sup>292</sup>

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<sup>287</sup> Board of Management of St. Molaga’s School v. Secretary General of the Dept. of Education and Science & Ors., [2009] IEHC 91, [2010] 1 ILRM. 122, 137.

<sup>288</sup> Board of Management of St. Molaga’s School v. Secretary General of the Dept. of Education and Science & Ors., [2009] IEHC 91, [2010] 1 ILRM. 122, 137.

<sup>289</sup> *O’Keeffe v. Hickey*, The Minister for Education and Science, Ireland, and The Attorney General, [2009] 2 IR 302 [2009] 1 ILRM. 490, p. 513.

<sup>290</sup> Board of Management of St. Molaga’s School v. Secretary General of the Dept. of Education and Science & Ors., [2009] IEHC 91, [2010] 1 ILRM. 122, p. 141.

<sup>291</sup> Note. The long title of the Act of 1998 states, among other matters, ‘An Act to make provision in the interest of the common good for ... to ensure that the education system is accountable to students, their parents and the State for the education provided’.

<sup>292</sup> Board of Management of St. Molaga’s School v. Secretary General of the Dept. of Education and Science & Ors., [2009] IEHC 91, [2010] 1 ILRM. 122, p. 144.

Rodgers contends that the Court appeared to equate the powers of the appeal committee to those of the court when exercising its powers of judicial review, given that the court held that the power granted to the appeals committee was intended to be confined to a right to review the lawfulness and or reasonableness of a decision to refuse enrolment.<sup>293</sup> This case was a landmark case. It was the first High Court review of the operation of s. 29 appeals.

On appeal to the Supreme Court,<sup>294</sup> the respondents relied on the totality of the Act and its long title to argue that the legislation was designed to initiate a radical overhaul of the Irish education system. They asserted that the appeal mechanism provided was intended to give parents, for the first time, the right to challenge a school's decision not to enrol their child, irrespective of whether the decision was made by the lawful application of a valid enrolment policy. They further asserted that the appeals mechanism constitutes a broad and flexible remedy and, as such, is not limited in its scope to reviewing a decision of a BOM. In their submission, the appellants argued that the High Court erred in law by applying an informed interpretation rule to the interpretation of s. 29 in circumstances where the literal interpretation of the said provision did not lead to an absurd or ambiguous result or one plainly contrary to the legislative intent. In accepting the canon of literal construction must be applied, Denham J. held:<sup>295</sup>

As the words of s. 29 are clear, with a plain meaning, they should be so construed. The literal meaning is clear, unambiguous, and not absurd. There is no necessity, indeed it would be wrong, to use other canons of construction to interpret sections of a statute which are clear. The Oireachtas has legislated in a clear fashion, and that is the statutory law ... I would apply a literal interpretation to the section, and thus I am satisfied that an appeals committee has the jurisdiction to conduct a full hearing on an appeal under s. 29 of the Act.

It is now settled that an appeal committee established under the 1998 Act has the power to conduct a full re-hearing on the merits of the case with the jurisdiction to decide on

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<sup>293</sup> Rodgers, M. (2014). Education Judicial Review of Appeals Committees. Irish Law Times, 32(3), 38-45 p. 39.

<sup>294</sup> Board of Management of St. Molaga's National School v. Secretary General Department of Education & Ors., [2010] IESC 57.

<sup>295</sup> Board of Management of St. Molaga's National School v. Secretary General Department of Education & Ors., [2010] IESC 57, para. 24.

the issues raised. The appeal is not limited to a review of the BOM's decision-making process. The parameters established by the courts within which a committee must operate are considered below in the context of appeals against decisions to expel and refuse to enrol.

### **2.9.2. RELEVANT AND IRRELEVANT FACTORS IN SCHOOL EXPULSION DECISION-MAKING**

In the *City of Waterford VEC v. Department of Education and Science & Ors.*, [2011] IEHC 278, Charleton J., considered a challenge by the VEC to the decision of a DOE appeal committee to uphold an appeal relating to the expulsion of a thirteen-year-old student for persistent poor behaviour. The learned judge held that the crucial issue before the court was the jurisdiction of the appeal committee in the context of an absence of guidance from the courts relating to the exercise of the function of appeal committees when dealing with expulsion cases. He noted that a BOM, when deciding whether to expel a student, had to consider factors relevant to that decision and must not consider factors irrelevant to that decision. This is the same obligation that an appeal committee was charged with. Accordingly, the court set out the factors that can be taken into account by a BOM and an appeal committee when considering expulsion as follows.<sup>296</sup>

These factors are:

- a) The behaviour of the pupil and the effect of that behaviour on the school
- b) The track record of the pupil up to the point of the precipitating issue or issues
- c) The attempts by the school to divert, correct, or check the behaviour
- d) The contrition or lack of contrition of the pupil

Charleton J. emphasised that the decision-making body cannot take into account the following:

- a) The alternative educational provision that the EWO may be in a position to offer.
- b) The resources of the school or
- c) external resources

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<sup>296</sup> *City of Waterford VEC v. Department of Education and Science & Ors.*, [2011] IEHC 278, para. 17.

The clarity provided allowed the committee to conduct a *de novo* hearing of the matter under appeal, to examine the student's behavioural record and the school's attempts to divert, correct, or check the student's behaviour in making its decision. However, reservations have been expressed regarding the court's determination that decisions of the BOM and appeal committees should be limited to consideration of the student's behaviour, anything else being irrelevant.<sup>297</sup> Ní Raifeartaigh J. added the age and maturity of the student as a relevant consideration:<sup>298</sup>

... the maturity of a child of 13 or 14 is rather different from a child of 16 or 17, and this should also be factored into a consideration of whether the expulsion of a child is warranted.

However, a consideration of age as a test of maturity may be open to challenge. More recently, in the *Board of Management of B. National School v. The Secretary General of the Department of Education and Skills & Ors.*, [2019] IEHC 738, Humphreys J. rejected much of the criteria previously developed and held:<sup>299</sup>

Whether the school's handling of the child's behaviour is good, bad, or indifferent is irrelevant to the substantive issue, which is whether the child's behaviour warrants expulsion in the light of the school's code of behaviour or policy.

### **2.9.3. THE RIGHT TO LEGAL REPRESENTATION, CROSS EXAMINATION OF WITNESSES AND ACCESS TO EVIDENCE.**

Mahon highlights the necessity of conducting appeal hearings expeditiously, reasonably informally, and in an unintimidating manner. He argues that such appeals should not be trammelled by precedent and legal argument and should not be restricted by the rigid application of the rules of evidence and fair procedure.<sup>300</sup>

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<sup>297</sup> Mark Rodgers, 'Education Judicial Review of Appeals Committees' (2014) 32. *Irish Law Times* 38, p 41.

<sup>298</sup> S.C. (A Minor, Suing by his Mother and Next Friend N.C.) v. Secretary General of the Department of Education and Skills, Sean Slowey, Hilda McHugh and Pat Delea (Respondent) The Board of Management of St. Munchin's College (Notice Party), [2017] IEHC 847, para. 58.

<sup>299</sup> Board of Management of B. National School v. The Secretary General of the Department of Education and Skills & Ors., [2019] IEHC 738, para. 13.

<sup>300</sup> Oliver Mahon, *A User's Guide to the Education Act*. (Ennis, Co. Clare: Clare Education Centre) 2000, para. 97.

In the *State (Smullen & Smullen) v. Duffy and Ors.*, [1980] 2 ILRM 46, the question of legal representation for parents at any meeting or BOM hearing in connection with student suspension was addressed. While this case predates the enactment of the Act of 1998, it provides helpful insight into how the courts may view the question of legal representation at BOM expulsion hearings. The failure of the BOM to permit the applicants to be legally represented at the meeting arranged to consider the matter was claimed to be a denial of natural justice. In refusing the relief sought, Finlay P. held:<sup>301</sup>

... there was no obligation either on the principal or upon the BOM, in this case, to permit any legal representation, whether by a full lawyer or by a member of FLAC, of the prosecutors or of their mother at any meeting or hearing in connection with this suspension. ... in the general provision for the discipline of a school and indeed in the interests of pupils of a school and the relationships which should exist between them and the school authorities and between their parents and the school authorities that communication should, in the first instance at least, be direct and should not preferably, and certainly not as a right, be through legal representatives.

Reiterating *Smullen*, in *Student A and Student B v. a Dublin Secondary School*, [1999] IEHC 47, Kearns J. resolved that parental legal representation was not desirable in meetings or hearings relating to long-term suspension or expulsion and that legal involvement should be kept to a minimum.<sup>302</sup> Accepting that expulsion is the ultimate sanction with very serious consequences for the expelled student, O'Sullivan J. in *Wright v. The BOM of Gorey Community College*, [2000] IEHC 37, was not persuaded of the necessity or desirability of cross-examination by lawyers of student witnesses.<sup>303</sup> The legislation did not preclude cross-examination, but neither did it require it in circumstances, for instance, where the evidence being given was contested. However, Simons J. appears to have left the door open, observing that the issue of whether or not cross-examination should be allowed has not been dealt with definitively. The existence or non-existence of a right to cross-examination should be determined on a case-by-case basis.<sup>304</sup> Nonetheless, O'Sullivan J. held that parties

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<sup>301</sup> *State (Smullen & Smullen) v. Duffy and Ors.*, [1980] 2 I.L.R.M 46, p. 52.

<sup>302</sup> *Student A. and Student B. v. Dublin Secondary School*, [1999] IEHC 47, 53.

<sup>303</sup> *Wright (a Minor) v. The Board of Management of Gorey Community College*, [2000] IEHC 37, para. 24.

<sup>304</sup> *Student A.B. ( a minor) v. The Board of Management of a Secondary School*, [2019] IEHC 255, para. 72.

against whom allegations were made should be afforded a reasonable opportunity to rebut same.<sup>305</sup>

I do accept, however, that the accused should be given a reasonable opportunity to hear the case (i.e., charges and an account of the evidence) against him, to respond with evidence of his own if he wishes and to address the deciding body. I also consider that such a reasonable opportunity includes being given advance notice of the charges and the gist of the evidence upon which they are based so as to enable a considered response to be given, if necessary, after taking legal advice.

Nevertheless, the court held that the balance of convenience favoured the refusal of the reinstatement of the student, notwithstanding the acknowledgement by the court that the case against the student was not made available to the parents in a timely fashion. O’Sullivan J. held: <sup>306</sup>

There is room for an argument ... as to whether the charges and details of the evidence upon which they were based became known to [the parents] only in the course of the proceedings before the [BOM] itself. I am prepared to accept that the Plaintiffs have, at this hearing, established a fair question to be dealt with at the trial of their case.

Similarly, legal representation is not welcome at s. 29 oral hearings. In the BOM of *B. National School v. The Secretary General of the Department of Education and Skills & Ors.*[2019] IEHC 738, the applicant’s solicitor, states that at the appeal hearing, the Chair ‘made it clear that the appeal was to be conducted ... without legal representatives’ and that ‘I did attempt to intervene on two occasions. I was quickly rebuked by the chairperson and reminded that I was present as an observer only and not entitled to make representations or address the committee’.<sup>307</sup> Informed by the respondent’s submission, Humphreys J. observed that solicitors have occasionally been permitted to make submissions in the past, but more generally, their involvement was limited to advising their client. The court was not required to make a finding on the question of the right to legal representation, given that the matter was not a ground

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<sup>305</sup> Wright (a Minor) v. The Board of Management of Gorey Community College, [2000] IEHC 37, para. 25.

<sup>306</sup> Wright (a Minor) v. The Board of Management of Gorey Community College, [2000] IEHC 37, para. 26.

<sup>307</sup> Board of Management of B. National School v. The Secretary General of the Department of Education and Skills & Ors., [2019] IEHC 738, para. 7.

for relief. The learned judge inferred that solicitors were not allowed to make submissions except on exceptional occasions.<sup>308</sup>

While the courts have not settled this matter in relation to school expulsion proceedings, the Supreme Court's recent findings may be persuasive. In *O'Brien v. Personal Injuries Assessment Board*, [2008] IESC 71, the Court held that the right to legal representation did not apply solely to litigation in court; 'it is referable to court proceedings, prior to court proceedings, and in situations where there may be serious consequences for a person, and the Oireachtas has not exercised a constitutional balance excluding legal representation'.<sup>309</sup> The court held that any restriction of the right to legal representation must be addressed clearly in legislation. It could be stated expressly in legislation or inferred if it were compellingly clear from the statute's words. While the Act of 1998 did not explicitly exclude lawyers from participation in oral hearings, the question arises as to whether s. 29 of the Act could be construed so as to confer on the BOM or the s. 29 committee the power to adopt a policy of refusing to permit legal representation at hearings given that the act provides that s. 29 oral hearings must be conducted with the minimum of formality consistent with giving all parties a fair hearing. While the court recognised the right of the accused to be given a reasonable opportunity to hear the case against them and to have their say, it does not recognise the unequal position of the parties at s. 29 or the BOM oral hearing, nor the vulnerable circumstances of unsupported parents many of whom are incapable of mounting a challenge. The above sits uncomfortably with the parents' constitutional rights, particularly when a child is expelled on foot of contested evidence and the parent is unsuccessful in securing an alternative school for their child. This calls into question the practice of discouraging legal representation for parents at expulsion hearings, which may place parents at a significant disadvantage, given that schools have access to legal expertise. A range of decision-makers have expressed their view on the desirability of permitting expert legal input at BOM hearings and s. 29 oral hearings. Their views are reported upon in Chapters 5 and 6. Parents' views on this controversial topic are discussed in Chapter 8.

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<sup>308</sup> Board of Management of B. National School v. The Secretary General of the Department of Education and Skills & Ors., [2019] IEHC 738, para. 8.

<sup>309</sup> *O'Brien v. Personal Injuries Assessment Board*, [2008] IESC 71, [2009] 3 IR 243, p. 44.

#### **2.9.4. THE OBLIGATION OF THE BOM TO ENGAGE WITH THE EDUCATIONAL WELFARE OFFICER**

Despite the high level of autonomy enjoyed by schools in Ireland, they must adhere to statutory requirements. *O'Donovan v. BOM of De La Salle College Wicklow*, [2009] IEHC 163, concerned a judicial review of a decision of a s. 29 appeal committee not to uphold the appeal; the matter was set before Hedigan J. The parents alleged, among other matters, a breach of statutory duty on behalf of the BOM, specifically, a failure to notify the EWO in a timely manner, as was its duty.<sup>310</sup> The BOM conceded on this point. Hedigan J. accepted that the determination of the BOM and the appeal committee were not reached in violation of the ordinary requirements of reasonableness or manifest error of law. However, regarding the alleged breach of statutory duty, the learned judge held the expulsion process to be tainted by the error of the BOM.<sup>311</sup>

... there was nonetheless a plain and unambiguous violation of the requirement under sections 21(4) and 24(4) of the 2000 Act to engage with the educational welfare officer. The role of the educational welfare officer is a vital one. It is to ensure that there is no untoward break in the continuous education of a child where disciplinary procedures such as expulsion or a long period of suspension are in contemplation.

The involvement of the EWO at BOM hearings and s. 29 oral hearings is examined and reported upon in Chapters 5, 6 and 7. This analysis is based on the first-hand experience of EWOs, ETB Directors of schools, BOM, and s. 29 committee chairpersons, parents of expelled students and expelled students.

#### **2.9.5. THE REQUIREMENT FOR THE APPEAL COMMITTEE TO CONSIDER SCHOOL POLICIES**

The management of schools is guided by a host of school policies developed by the BOM in consultation with the education partners.<sup>312</sup> Of particular interest here is the

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<sup>310</sup> The Education (Welfare) Act 2000, s. 21(4) and s. 24(4).

<sup>311</sup> *O'Donovan v. Board of Management of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, para. 56.

<sup>312</sup> The Education Act 1998, s. 15(2)(a) provides that a BOM shall perform its functions in accordance with the policies determined by the Minister. Section 7(4)(b) of the Act provides that the Minister shall make all reasonable efforts to consult with the education partners when carrying out his or her functions.

school's code of behaviour<sup>313</sup> and the admission policy.<sup>314</sup> Students and parents must be aware of the limits of acceptable behaviour, what will occur if those limits are breached, who will deal with the breach and what the possible outcomes may be. All of this must be set out in the school's code of behaviour and appropriately disseminated. The code of behaviour must be prepared in accordance with guidelines issued by the then NEWB.<sup>315</sup> In addition, schools are required to include their expulsion procedures in their code of behaviour.<sup>316</sup>

In *Co. Westmeath VEC v. the Department of Education and Science*, [2009] IEHC 373, O'Keefe J. held that one of the grounds on which the committee decided to allow the appeal was the view of the committee that the enrolment policy of the school may be ultra vires as it did not reflect adequately or at all the right of parents to enrol their child in the school of choice.<sup>317</sup> The learned judge held that the Act of 1998 does not give a parent an absolute right to enrol their child in the school of their choice.<sup>318</sup> He noted that the manner in which this reason was drafted in the committee's decision was directed at the enrolment policy itself; the enrolment policy itself was being impugned. O'Keefe J. resolved:<sup>319</sup>

... having regard to the conclusions I have come to in relation to the ambit of an appeal hearing and the facts to be entertained by such hearing, I conclude that the appeals committee did not act in accordance with its jurisdiction in coming to its decision.

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<sup>313</sup> Note. Pursuant to s. 23 of the Act of 2000, the BOM of each school must prepare and publish a code of behaviour. The Act requires that the school code be developed in accordance with guidelines issued under subsection (3) of the Act. – Subsequently, the NEWB issued guidelines in 2008.

<sup>314</sup> The Act of 1998, as amended by s. 9 of the Act of 2018, provides that all school boards shall develop an admission policy in accordance with the provisions of the Act following consultation with the school partners.

<sup>315</sup> National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'*. (2008). Dublin: National Educational Welfare Board.

<sup>316</sup> National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'*. (2008). Dublin: National Educational Welfare Board, chapter 12.

<sup>317</sup> Note. The appeal committee stated that one of the reasons for its decision to allow the appeal was that the enrolment policy of the school regarding the transfer of students from post-primary schools may have been at variance with the rights of parents to enrol their child in the school of their choice.

<sup>318</sup> *Co. Westmeath Vocational Educational Committee v. the Department of Education and Science*, [2009] IEHC 373, para. 51.

<sup>319</sup> *Co. Westmeath Vocational Educational Committee v. the Department of Education and Science*, [2009] IEHC 373, para. 62.

The judgment restricted the remit of an appeal committee to acting within the same parameters as the BOM at the time of the original decision. The s. 29 committee is obliged to have regard to the same facts and circumstances that obtained at the time of the BOM's decision. The court inferred that the remit of an appeal committee is to ensure that the enrolment policy is followed, but excludes a committee from interrogating that policy. Just two years later, O'Keeffe J. again addressed the limitations on the power of an appeal committee to interrogate a school's enrolment policy. In *Lucan Educate Together National School v. DES*, [2011] IEHC 86, the learned judge again held that a committee did not have the authority to strike down or disregard a provision in the enrolment policy of a school or substitute whatever view on the validity of the policy it considered to be appropriate.<sup>320</sup>

In the *BOM of St. Marnock's National School v. Secretary General of the Department of Education and Skills & Ors.*, [2017] IEHC 683, an appeal committee, allowed the appeal against the refusal of a place to E.C. The committee's decision was mainly grounded on the fact that, despite being required to do so by law, the school did not publish an effective admission policy. The available documentation did not set out the criteria for the selection (of otherwise eligible pupils), where the places in a Speech and Language Class were oversubscribed.<sup>321</sup> Instead, the school published two documents which provided information relating to admission to the class:

1. A document entitled Enrolment Policy
2. An Information Leaflet entitled Referral Information for School Year September 2017

The court noted that the documents did not refer to each other and, importantly, did not make provisions regarding the criteria to be applied to determine priority in the event of oversubscription.<sup>322</sup> The appeal committee resolved that the admission policy could not be used to select anyone if the class were oversubscribed. Nevertheless, the committee applied the policy to determine whether a place should be allocated to E.C.

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<sup>320</sup> *Lucan Educate Together National School v. Department of Education and Science & Ors.*, [2011] IEHC 86, para. 45.

<sup>321</sup> Note. In accordance with s. 15(2)(d) of the Act of 1998, St. Marnock's, as a recognised school, was required to publish a policy on admission to the school. The Education (Welfare) Act 2000, s. 19(1) precludes a recognised school from refusing admission to a student except where such refusal is in accordance with the policy of the recognised school concerned published under the aforementioned section of the Act of 1998.

<sup>322</sup> *Board of Management of St. Marnock's National School v. Secretary General of the Department of Education and Skills & Ors.*, [2017] IEHC 683, para. 48.

on the basis that he was eligible for selection.<sup>323</sup> Coffey J. held that, having found that the school's published Admission Policy did not set out any criteria by which the otherwise eligible pupils could be prioritised for the allocation of the available places, it was wholly unreasonable and irrational to apply that policy, which it had found to be fundamentally deficient and inoperable.<sup>324</sup> Observing that it was unclear whether or not the allocation of a place to E.C. was to be at the expense of some of the successful applicants Coffey J. held that the decision of the committee to recommend that E.C. should be given a place in the class simply because he was eligible to be considered for a place was manifestly unfair to the other thirteen unsuccessful pupils.

Under s. 29 of the Act of 1998, as amended, when hearing and determining an appeal, the committee must have regard to the school's code of behaviour and whether the code complies with s. 23 of the Act of 2000 and the NEWB guidelines.<sup>325</sup>

The committee must also have regard for other relevant policies, the extent to which each of them is implemented and in compliance with any enactment that imposes duties on schools or their board, and any relevant guidelines or policies of the Minister.<sup>326</sup> In addition, the committee shall regard other matters that the appeals committee considers relevant.<sup>327</sup> By granting the committee the power to determine if a policy mentioned above is 'in compliance with any enactment that imposes duties on schools or their board', the question arises as to whether the s. 29 committee now has the power to strike down a school policy. Can the committee determine the lawfulness of such a policy? It has been suggested that constitutional issues may arise should a non-judicial body, such as a s. 29 committee, be permitted to decide on the legal validity of a school policy approved by the BOM, in the absence of a clearly defined authority to do so.<sup>328</sup>

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<sup>323</sup> There were an additional thirteen unsuccessful pupils who fell into the same category as E.C.

<sup>324</sup> Board of Management of St. Marnock's National School v. Secretary General of the Department of Education and Skills & Ors., [2017] IEHC 683, para. 48.

<sup>325</sup> The Education (Admission to Schools) Act 2018, s. 29D(4)(g)(i).

<sup>326</sup> The Education (Admission to Schools) Act 2018, s. 29D(4)(g)(ii).

<sup>327</sup> The Education (Admission to Schools) Act 2018, s. 29D(4)(k).

<sup>328</sup> Mark Rodgers, 'Education Judicial Review of Appeals Committees' (2014) 32. *Irish Law Times* 38, p. 42.

#### 2.9.6. CASE LAW PERTAINING TO NATIONAL POLICIES DEVELOPED OUTSIDE OF SCHOOL

National policies derived outside of schools may impact the facts of an expulsion case. Of interest here is *O'Donovan v. BOM of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, where the appeal committee accepted that, although the applicant's offending conduct could be construed as a prank,<sup>329</sup> the impact of the incident on the teacher in question was such as to merit the most severe sanction available. The committee detailed the factors they had taken into account, including *inter alia* the Equality Authority's Code of Practice on Sexual Harassment and Harassment at Work.<sup>330</sup> Hedigan J. rejected the contention that taking into account factors such as the said Code and the student's educational status were irrelevant considerations which the appeal committee should not have considered.<sup>331</sup>

I cannot accept that the appeals committee lacked jurisdiction to even consider the educational status of the applicant or the issue of sexual harassment; there might well be cases where these issues would lie at the very heart of the determination to be made by them. While the references to these points were both unnecessary and unfortunate in the circumstances of the case, they were not sufficiently grave to deprive the appeals committee of jurisdiction entirely. It seems to me that their decision was predicated on an assessment of the totality of the evidence as opposed to a single erroneous interpretation of the question which they were required to address.

Yet the learned judge expressed the view that reference by the appeal committee to the sexual harassment policy was 'unnecessary and unfortunate' in the circumstances of the case at hand. However, they were not sufficiently grave to deprive the appeal committee of jurisdiction entirely.<sup>332</sup> The learned judge appears to suggest that while these factors were not germane to the circumstances of the particular case, in other

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<sup>329</sup> Note. The offending incident occurred during a school-organised football match. After saving the winning penalty kick, the applicant ran out to the teacher who had taken the kick and pulled the teacher's shorts downwards, resulting in part of the teacher's backside being visible to onlookers. The student was immediately remorseful and apologised to the teacher, who, at the time, did not seem overly perturbed. However, the teacher revised his position, and following receipt of a formal complaint, the school principal recommended expulsion. The BOM viewed the incident as a grave breach of conduct and proceeded to expel the student.

<sup>330</sup> *O'Donovan v. Board of Management of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, para. 15.

<sup>331</sup> *O'Donovan v. Board of Management of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, para. 51.

<sup>332</sup> *O'Donovan v. Board of Management of De La Salle College Wicklow & Ors.*, [2009] IEHC 163, para. 52.

circumstances, they could be relevant to the expulsion of the applicant. The proper parameters within which an appeal committee should conduct its appeal, as articulated by Hedigan J., appear to expose a difference from that pronounced by Charleton J. in the *City of Waterford* case. Charleton J. held that appeal committee decisions must be informed solely by the student's behaviour. However, a sexual harassment policy could be relevant to assessing the student's behaviour.

## **2.10. CONCLUSION**

It has been shown that the fundamental duty of the State under international law and Irish Constitutional law is to provide for free primary education, although various aspirational provisions of international law advocate the extension of this provision to post-primary levels of education. The current judicial philosophy of restrained conservatism has led to a lack of significant change in the duty of the State with regard to the provision of education since the enactment of the 1937 Constitution. Despite the explicit requirement under international law that children should be entitled to participate in decision-making, Irish law has made limited progress in facilitating this, as exemplified by the absence of the right of the student to be heard in expulsion appeal hearings. The stagnation in Irish education law, particularly the failure to incorporate the best interest principle and the right of the child to be heard, underscores the urgent need for legal reform.

Nevertheless, the statutory framework for education in Ireland, which was developed since the introduction of the Act of 1998, has played a significant role in defining students' right to education generally on the basis of equality of opportunity. Section 29 of the Act of 1998 established, for the first time, an inexpensive, accessible first-instance dispute resolution mechanism as a means of protecting against arbitrary or excessive sanctions being imposed, which have the effect of interfering with the child's right to education; although welcome, the mechanism has inherent weaknesses.

The courts have played a significant role in fleshing out the parameters for the expulsion mechanism. Demonstrating an awareness of the problem schools face in managing disruptive behaviour, the courts have, as a matter of general principle, been slow to interfere with the disciplinary authority of schools. They do not demand the strict application of the rules of evidence by schools when investigating breaches of

the behaviour code that lead to expulsion. It is now settled that an s. 29 appeal is an appeal de novo. Regrettably, s. 29 fails to grant formal status to a student of fewer than eighteen years of age. Embracing the notion of students as bearers of human rights, this thesis calls for expelled students to be afforded the right to appeal their expulsion. The recent removal of the facilitation stage of the appeal mechanism is a retrograde step, particularly when statutory support for parents is confined to the involvement of the EWO. Furthermore, the absolute power of the Minister to appoint panel members and establish appeal committees provokes questions regarding the committee's independence. This thesis holds that panel members should be recruited through public competition and should include non-educationalists.

It is generally accepted that s. 29 committees hold a quasi-judicial status, a position of significant legal standing. Parties to the appeal are bound by law to obey the committee's decision; as such, that decision is akin to that of a court. Unfortunately, the Act of 1998 is silent on the need for expulsion-related decision-makers to receive training on the legal context of their decision-making. The Zalewsky Supreme Court case has reformed the long-established checklist approach that guided judges' assessment of whether the examined process had each of the five 'characteristic features' identified in *McDonald v. Bord na gCon* as essential features of the administration of justice. The Court has inserted a more impressionistic/normative approach under which judges will now assess whether an impugned process, considered in the round, counts as the administration of justice. Questions have now been raised regarding the true status of adjudication bodies such as s. 29 committees. The Court's observations may provide helpful guidance for the future development of the appeal mechanism. For example, the Court set out why compelling evidence may need to be given under oath in cases with severe and direct conflict of evidence and accepted that, in limited circumstances, cross-examination of witnesses may be necessary. Currently, no incentive exists to restrain exaggeration or the withholding of important information. Following Zalewski, it may prove difficult to counter the argument that the work of a s. 29 committee involves the administration of justice, given that the committee deals with a constitutionally protected fundamental right. However, attention has also been drawn to the appearance of rigidity of the judgment, which might invite over-interpretation or be read to imply that such bodies must be

designed to conform as closely as possible to Article 34 courts or that the non-judicial actors sitting on them must mimic judges in the procedural decisions that they take.<sup>333</sup> Section 29 appeal committee members are not required to have formal legal training or experience, although individuals with such expertise are not explicitly excluded. This thesis advocates for compulsory training of committee members and the development of robust, comprehensive, statutory-based guidelines to support decision-making.

Currently, an expelled student of seventeen years is denied by law the right to lodge a s. 29 appeal against their expulsion, while that person can give consent for their medical treatment without the necessity to obtain permission for that treatment from their parent or guardian. The limitations of the appeal mechanism may hinder the fair and thorough examination of expulsion cases. Given the limited scope of judicial review, it can be argued that recourse to the lower courts should be available to provide for a full rehearing of the merits of the expulsion. It is acknowledged that most students will be minors; the introduction of an overly formal decision-making process may undermine the objective of ensuring discipline in schools. On the other hand, the adverse consequences of expulsion must also be considered.

The balance between the interests of the child and that of parents in international and domestic law governing education generally aligns, with the exception of the UNCRC, which provides that in all actions concerning the child, the primary consideration should be the best interests of the child. The limitations of the development of law are manifest by the withholding from the child the right to challenge their expulsion from school, and the manner in which the educational rights and interests of parents are allowed to prevail by effectively awarding the sole right of challenge to parents.

While considerable progress has been made in developing a legislative framework for education in Ireland, statutory rights have little value in the absence of compliance. This underscores the critical need for high-quality training for all decision-makers in the context of school expulsion. This theme is further examined throughout the chapters of this thesis. Compliance with the legal framework governing expulsion is examined in detail through the empirical research undertaken. The findings are

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<sup>333</sup> Tom Hickey, 'Zalewski and the future of Irish public law' (2024) 87. *The Modern Law Review* 466, 481.

reported in chapters 5, 6, and 7 below. The following chapter is of importance as it examines school expulsion from a sociological perspective. It investigates the causes and effects of expulsion and engages with Bourdieu's Theory of Practice to analyse the social context within which expulsion decision-making takes place.

### 3.1. INTRODUCTION

The previous chapter established the law governing formal school expulsion in Ireland in order to provide the legal background against which to analyse the research findings. Law does not exist in a vacuum; it is a social phenomenon that is deeply embedded in its historical, social, cultural, and economic context. The broader societal context influences school expulsion decision-making. This chapter adopts a sociological perspective and stresses the interconnectedness of social structures, institutions, and cultural norms. This detailed sociological perspective facilitates a deeper analysis of the research findings and a fuller understanding of expulsion law in practice. School expulsion has received little scholarly attention from the academic community in Ireland. The chapter, therefore, draws on international literature with priority afforded to the well-developed English literature on expulsion. While there are significant differences between the legislative provisions governing expulsion in England and Ireland, the two countries share common law jurisprudence and have similar cultural and educational systems.<sup>1</sup> The international perspective offers a valuable lens through which much can be gained by examining practice and outcomes elsewhere.

The chapter is divided into four sections. Section one discusses Pierre Bourdieu's theory of practice. His contention that the education system's primary aim is its conservation and that it plays a significant role in perpetuating and replicating social inequality is helpful in understanding the deep roots of expulsion. Bourdieu's framework provides a valuable tool to advance the objectives of this study by enabling a deeper understanding of expulsion and providing a basis for examining how expulsion-related decision-making occurs. The chapter discusses invisible forms of power and powerlessness and the related notion of symbolic violence.

In the absence of an accepted definition of expulsion, this chapter discusses various forms of expulsion. Official statistics provide insights into the scale of formal

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<sup>1</sup> Note. There are three noteworthy differences. (i) The power to expel rests solely with the school principal in England. (ii) The Independent review lacks the power to reinstate an expelled student. (iii) Comprehensive statutory-based guidelines are available to guide expulsion decision-making in England.

expulsions, but offer a limited view of the broader issue. Quantitative data from both England and Ireland are presented, illustrating the magnitude of the problem and highlighting current trends in expulsion rates.

The risk of expulsion varies considerably between schools and communities. To shed light on this phenomenon, the forces at play that promote expulsion are examined, as are the reasons put forward by schools. The chapter discusses the adverse consequences of expulsion for the expelled student and their family, consequences which fall most heavily on lower socio-economic class families. The difficulties faced by parents when seeking to secure a place in a school willing to enrol an expelled student are discussed.

Section three examines the experiences of parents in England who challenge the school's decision to expel. The factors that motivate parents to challenge and the barriers they face are discussed. Parents' interpretations of the fairness of the appeal hearing are analysed, as are the financial demands, stress and anxiety placed on families who appeal.

Finally, section four outlines the strategies parents employ when engaging with schools. Emphasis is placed on Bourdieu's notion of linguistic capital, which is helpful in analysing expulsion decision-making. It equips middle and upper-class parents and students to operate effectively in formal settings and reap symbolic benefits by speaking in a way that is natural to them. He contends that those not so endowed are challenged to adopt their natural speech patterns to formal settings and are at greater risk of negative school sanctions. The chapter examines the standing afforded to the voice of parents in education, with particular attention to the voice of marginalised parents.

### **3.2. BOURDIEU'S WORK ON EDUCATION**

#### **3.2.1. THE EDUCATION SYSTEM AS A CONTRIBUTOR TO SOCIAL INEQUALITY**

At the heart of Bourdieu's work on education has been his desire to expose education as a powerful contributor to the maintenance and reproduction of social inequality. This overarching focus has led to a significant theoretical and empirical contribution

to sociological understandings of the relationship between education and society. It must be acknowledged that Bourdieu's ideas have received a somewhat mixed reaction. Some critics discount Bourdieu's reproduction theory in its entirety, while others suggest that some concepts, freed from the baggage of his large theoretical apparatus, still have analytical promise.<sup>2</sup> However, this paper asserts that Bourdieu's theory of practice and social reproduction theory remain vibrant and relevant in contemporary sociological discourse.

Bourdieu argues that the education system's primary goal is its conservation, an objective closely aligned with social and political conservative values. It directly and indirectly contributes to maintaining 'the social order' by promoting certain traditions and beliefs under the illusion of defending the ethos and aims of a particular institution. Its task of conserving 'the social order' is perfectly aligned with and dependent on the objective interests of the dominant classes.<sup>3</sup> Bourdieu holds that schools help perpetuate and legitimise inequalities by shaping students' educational aspirations according to their social position and operating a selection procedure that lacks fairness and transparency:<sup>4</sup>

By giving individuals educational aspirations strictly tailored to their position in the social hierarchy, and by operating a selection procedure which, although apparently formally equitable, endorses real inequalities, schools help both to perpetuate and legitimise inequalities.

Allowing for different ability levels, the significant differences in students' educational experiences and academic outcomes, the risk of school dropout, and the reduced possibility of accessing higher education all underscore the systemic inequality in the Irish post-primary school system:<sup>5</sup>

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<sup>2</sup> Jason D. Edgerton & Lance W. Roberts, 'Cultural capital or habitus? Bourdieu and beyond in the explanation of enduring educational inequality' (2014) 12. *Theory and research in education* 193.

<sup>3</sup> Pierre Bourdieu, & Jean-Claude Passeron, *Reproduction in education, society, and culture* (Vol. 4). (London: Sage Publications) 1990, p. 198.

<sup>4</sup> Pierre Bourdieu, The School as a Conservative Force. In J. Eggleston (Ed.), *Contemporary research in the Sociology of Education* (pp. 32-46). (London: Routledge Publication) 1974, 42.

<sup>5</sup> Áine Hyland, 'We have an unacceptably high level of school suspensions and expulsions.' (2017). Available at <https://www.thejournal.ie/readme/opinion-we-have-an-unacceptable-high-level-of-school-suspensions-and-expulsions-3714434-Nov2017/>

Children of similar ability will have very different educational experiences based on their Eircode. Children who come from less advantaged backgrounds, who may have equal abilities, will have lower levels of literacy and numeracy, less access to arts initiatives, greater risk of early school leaving, and a lower probability of accessing higher education than their more advantaged peers.

Bourdieu shows how the ‘social order is progressively inscribed in people’s minds’ through ‘cultural products’, including the education system.<sup>6</sup> All these contribute to an unconscious acceptance of social differences and hierarchies, a sense of one’s place, and behaviours of self-exclusion.<sup>7</sup> Bourdieu speculates that cultural inertia probably contributes to the widespread perception of education as a liberating force for upward social mobility. He argues that this belief persists even when the indications tend to show education as one of the most effective mechanisms for maintaining the status quo and legitimising social hierarchies under the guise of meritocratic advancement:<sup>8</sup>

... it is, in fact, one of the most effective means of perpetuating the existing social pattern, as it both provides an apparent justification for social inequalities and gives recognition to the cultural heritage, that is, to a social gift treated as a natural one.

While the above may appear commendable to many, where does the right to education stand for those who import the chaos of dysfunctional home life into the classroom and disrupt the learning of the compliant majority?

Bourdieu refers to social ageing as the gradual disinvestment that leads individuals to adjust their aspirations to their objective chances. It compels them to accept their condition, become what they are, and make do with what they have, even if this

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<sup>6</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, p. 471.

<sup>7</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, p. 141.

<sup>8</sup> Pierre Bourdieu, The School as a Conservative Force. In J. Eggleston (Ed.), *Contemporary research in the Sociology of Education* (pp. 32-46). (London: Routledge Publication) 1974, p. 32.

involves self-deception about their current state. This process also involves the emotional acceptance of the loss of all the possibilities they have left behind.<sup>9</sup>

### 3.2.2. BOURDIEU'S THEORY OF PRACTICE

The theoretical foundation, rooted in Bourdieu's work, supports the use of subjectivism and objectivism, which is at the core of this research.<sup>10</sup> Adhering to the Bourdieusian perspective, the study places importance on addressing positionality and adopting a reflexive perspective.

Bourdieu engages the concepts of field, doxa, habitus, and forms of capital to investigate the uses and abuses of power and develop his theory of practice. He uses the term 'field' to describe any setting, social arena, or cultural context where agents (individuals) and their social positions are located. He engages the analogy of a magnetic field to illustrate his concept of a field, showing strong polarised forces and their effects. The concept of habitus, which we will discuss in detail later, plays a crucial role in shaping individuals' actions and perceptions and highlights the powerful influence of social structures.<sup>11</sup> Fields can be large and amorphous, such as the Irish education system, or small and local, such as a school BOM or a s. 29 appeal committee. Each field has a *raison d'être* (reason for being) and operates under a certain logic of practice. The field is characterised by the 'rules of the game,' which are neither explicit nor codified.

This research is primarily located in the fields of law and education. The empirical element engages with representatives of five social fields in order to address the research questions:

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<sup>9</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, pp. 110-111.

<sup>10</sup> Note. For discussion of Bourdieu's key concepts as they pertain to the theoretical framework underpinning this study, see section 4.2.

<sup>11</sup> Pierre Bourdieu, 'Intellectual field and creative project' (1969) 8. *Social science information* 89, p. 89.

- (i) School Boards of Management (3 sectors)
- (ii) Directors of Schools
- (iii) Section 29 Committees (2 sectors)
- (iv) Educational Welfare Officers
- (v) Informally expelled Students
- (vi) Parents of Expelled Students

The findings of the latter interviews are reported in chapters five, six and seven. Bourdieu's key concepts were engaged to have a practical effect on the design of the theoretical framework underpinning the research strategy. His reflections on the operation of social networking and the impact of social capital influenced the selection of participants.

Bourdieu holds that the field is influenced by a mental or cognitive system of structures, which he calls 'habitus', a concept we will discuss in detail later.<sup>12</sup> He refers to fields as markets, where social goods are exchanged, i.e., capital is a social relation. This energy only exists and only produces its effect in the field in which it is produced and reproduced.<sup>13</sup> Because the field is dynamic, valued social and cultural capital forms of agents are also dynamic and arbitrary.<sup>14</sup> Entry into the field depends on accepting, at least implicitly, the rules of the game.<sup>15</sup> Bourdieu has described such acceptance and the logic of practice implied as a kind of illusion, a kind of 'self-deception'. He points out that 'Illusio' (Illusion), understood as immediate adherence to the requirements of a field, is unlikely to be a conscious decision because it is somewhat removed from the discussion. Deciding to discuss an issue requires that one believes the issue merits discussion. 'Illusio' belongs to the order of action, routine, and things that are done and are done because they are things that one does and that have always been done that way.<sup>16</sup> The principles of the field can be seen as the

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<sup>12</sup> Jen Webb, Tony Schirato & Geoff Danaher, *Understanding Bourdieu*. (London: Sage Publications) 2002.

<sup>13</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, p. 113.

<sup>14</sup> Sandra L. Dika & Kusum Singh, 'Applications of social capital in educational literature: A critical synthesis' (2002) 72. *Review of educational research* 31, p. 33.

<sup>15</sup> Michael James Grenfell, *Pierre Bourdieu: Education and Training*. (London: Continuum. Teachers College Record) 2007, p. 68.

<sup>16</sup> Pierre Bourdieu, *Pascalian Meditations*. (California: Stanford University Press) 2000, p. 102.

‘consecrated’ forms of orthodoxy or legitimate’ forms of social action. Membership implies acceptance of the dominant principles of the field:<sup>17</sup>

Practical faith is the condition of entry that every field tacitly imposes, not only by sanctioning and debarring those who would destroy the game but by so arranging things, in practice, that the operations of selecting and shaping new entrants (rites of passage ... etc.) are such as to obtain from them that undisputed, pre-reflexive, naive, native compliance with the fundamental presuppositions of the field which is the very definition of doxa ... That is why one cannot enter this magic circle by an instantaneous decision of the will but only by birth or by a slow process of co-option and initiation, which is equivalent to a second birth.<sup>18</sup>

Doxa is a deep-founded, unquestioned belief that is taken as a norm. It is the combination of orthodox and heterodox norms and beliefs, the unstated, taken-for-granted assumptions or ‘common sense’ behind the distinctions we make.<sup>19</sup> For example, beliefs such as that students with SEN do not belong in mainstream education or that the school principal knows best. Doxa is a set of core values and discourse that a field articulates as its fundamental principles and tends to be viewed as inherently true and necessary. Individuals involved in fields share a tacit adherence to the same doxa, which facilitates the completion of the field. Doxa tends to favour the particular social arrangement of the field, thereby privileging the dominant and accepting their position of dominance as self-evident and universally favourable, therefore tending to reproduce the very structures of the field. For Bourdieu, the ‘doxic attitude’ means bodily and unconscious submission to conditions that are, in fact, quite arbitrary and contingent.<sup>20</sup> It effectively forbids questioning of the principle of belief, which would threaten the very existence of the field.<sup>21</sup> Prevailing doxa informs habitus, a concept discussed throughout this thesis.

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<sup>17</sup> Michael James Grenfell, *Pierre Bourdieu: Education and Training*. (London: Continuum. Teachers College Record) 2007, p. 55.

<sup>18</sup> Pierre Bourdieu, *The logic of practice*. (California: Stanford University Press) 1990a, p. 68.

<sup>19</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, p. 471.

<sup>20</sup> Jen Webb, Tony Schirato & Geoff Danaher, *Understanding Bourdieu*. (London: Sage Publications) 2002, p. xi.

<sup>21</sup> Pierre Bourdieu, *Pascalian Meditations*. (California: Stanford University Press) 2000, p. 102.

According to Bourdieu, habitus is rooted in family upbringing; it is a set of embodied unconscious dispositions that individuals acquire, resulting from the combination of their cultural, economic, and social capital. Primary habitus (habitus of origin) is the collection of dispositions that one absorbs in early childhood, often unnoticed, through familial immersion.<sup>22</sup> Because this learning is an irreversible process, primary habitus forms our fundamental social personality. Habitus of origin is both a springboard and matrix for the subsequent acquisition of a multiplicity of (specific) habitus.<sup>23</sup> In the following chapters, the role of habitus in shaping individuals' actions and perceptions within different fields is discussed. Throughout their lives, agents are in a constant state of evolution, engaging in a broad spectrum of fields, from education to the workplace, etc. As a 'system of lasting dispositions that integrate past experiences, habitus functions at every moment as a matrix of perceptions, appreciations, and actions', a past which survives in the present and tends to perpetuate into the future.<sup>24</sup> Habitus of origin serves as the foundation for the development of other habitus and highlights the significant role of the early environment in shaping our social development.<sup>25</sup> These acquired habitus are gradually integrated into the overall habitus and activated as per the field's demands.<sup>26</sup> Bourdieu holds that dispositions are adjusted to class conditions, presenting themselves as a set of possibilities and impossibilities, as well as relationally defined positions and ranks in the class structure. Therefore, they are always related to, objectively at least, the dispositions associated with the other positions.<sup>27</sup> These dispositions shape not only individuals' behavioural patterns but also their practical understanding of the world within specific contextual frameworks, underscoring the significant influence of habitus.<sup>28</sup> Dispositions, shaped by the history of both group and individual experiences, are

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<sup>22</sup> Pierre Bourdieu, *Outline of a Theory of Practice*. (Cambridge: Cambridge University Press) 1977, pp. 82-83.

<sup>23</sup> Loïc Wacquant, 'Homines in extremis: What fighting scholars teach us about habitus' (2014) 20. *Body & Society* 3, p. 7.

<sup>24</sup> Pierre Bourdieu, *Outline of a Theory of Practice*. (Cambridge: Cambridge University Press) 1977, p. 82.

<sup>25</sup> Pierre Bourdieu, & Jean-Claude Passeron, *Reproduction in Education, Society and Culture*. (London: Sage Publications) 1977, pp. 42-46.

<sup>26</sup> Loïc Wacquant, 'Homines in extremis: What fighting scholars teach us about habitus' (2014) 20. *Body & Society* 3.

<sup>27</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, p. 246.

<sup>28</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, pp. 170-173.

subject to permanent revision; such revision is never radical because it operates on the basis of the premises established in the previous state.<sup>29</sup> They are characterised by a combination of constancy and modifications, which vary according to the individual and their degree of flexibility or rigidity.<sup>30</sup> Habitus is, in essence, not just a ‘structured structure’ but also a ‘structuring structure’.<sup>31</sup> It serves as a mediator between individual subjectivity and the social structures of relations. It encompasses the process of individuals ‘becoming themselves’ by developing attitudes and dispositions, as well as the ways in which individuals engage in practices.<sup>32</sup> Habitus, as a set of norms and expectations unconsciously acquired and internalised as second nature, influences beliefs regarding a system or structure and practice:<sup>33</sup>

The practical world that is constituted in the relationship with the habitus, acting as a system of cognitive and motivating structures, is a world of already realised ends, procedures to follow, paths to take - and of objects endowed with a permanent teleological character.

Habitus, often a collective phenomenon, is shared among groups with similar aims. It constrains but does not determine thought and action, instead disposing a person to act predictably. Bourdieu’s theory emphasises that we are influenced by ‘practical sense’ alongside habitus. When our habitus is in tune with the field, we can react to a situation immediately, as we are in tune with the situation. However, it is acknowledged that habitus changes regularly in response to new experiences and individuals and societies internalise what is tolerable or possible in various spaces relative to their social position in the fields.<sup>34</sup> Practices are never the isolated product of an individual habitus

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<sup>29</sup> Pierre Bourdieu, *Pascalian Meditations*. (California: Stanford University Press) 2000, p. 161.

<sup>30</sup> Pierre Bourdieu, *Pascalian Meditations*. (California: Stanford University Press) 2000, p. 102.

<sup>31</sup> Jason D. Edgerton & Lance W. Roberts, ‘Cultural capital or habitus? Bourdieu and beyond in the explanation of enduring educational inequality’ (2014) 12. *Theory and research in education* 193, p. 198.

<sup>32</sup> Jen Webb, Tony Schirato & Geoff Danaher, *Understanding Bourdieu*. (London: Sage Publications) 2002, p. xii.

<sup>33</sup> Pierre Bourdieu, *The logic of practice*. (California: Stanford University Press) 1990a, p. 53.

<sup>34</sup> Pierre Bourdieu, *In other words: Essays toward a reflexive sociology*. (California: Stanford University Press) 1990b, p. 116.

but always the combined result of habitus and a specific field within which practices are situated.<sup>35</sup>

$$[(\text{habitus} + (\text{capital})) + \text{field} = \text{practice}]$$

### 3.2.3. FORMS OF CAPITAL

For Bourdieu, cultural capital is primarily a concept of relationship that exists in conjunction with other forms of capital; it cannot be appreciated in isolation from other forms of capital, such as symbolic capital and social capital, which together create advantages and disadvantages in society. However, the dynamic nature of the field and the arbitrary nature of valued social and cultural capital must be emphasised. Bourdieu asserts that, generally, the effects of cultural privilege are only spotted in their rawest forms: ‘a good word put in, the right contacts, ... information on the educational system’.<sup>36</sup> He envisages the interconnection of the types of capital and the transfer of one form of capital into another.<sup>37</sup> For Bourdieu, social capital is a collective phenomenon, although it is viewed from the perspective of actors who are exploiting its potential. It is ‘the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalised relationships of mutual acquaintance and recognition’.<sup>38</sup> The volume of social capital possessed by a given agent is related to the size of the network of connections that they can effectively mobilise. The cultural capital of a group of decision-makers would include their formative education, professional experience, and connections with others (‘social capital’) within their profession. The profits that accrue from membership in a group are the basis that makes them possible.<sup>39</sup>

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<sup>35</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, pp. 170-173, p. 101.

<sup>36</sup> Pierre Bourdieu, The School as a Conservative Force. In J. Eggleston (Ed.), *Contemporary research in the Sociology of Education* (pp. 32-46). (London: Routledge Publication) 1974, p. 32.

<sup>37</sup> Diane Reay, ‘A useful extension of Bourdieu’s conceptual framework? Emotional capital as a way of understanding mothers’ involvement in their children’s education?’ (2000) 48. *The Sociological Review* 568, p. 569.

<sup>38</sup> Pierre Bourdieu & Loïc Wacquant, *An Invitation to Reflexive Sociology*. (London: University of Chicago Press). 1992, p. 119.

<sup>39</sup> John G. Richardson, *Handbook of Theory and Research for the Sociology of Education*. (London: Greenwood Press) 1986, p. 249.

Bourdieu sees social capital as the investment of the dominant class to maintain and reproduce group solidarity and preserve the dominant position.<sup>40</sup> A bureaucratic organisation is an effective administrative means for concentrating social capital and transforming quantity, that is, the number of members, into quality organisational effectiveness. The formation of an association can create a sense of solidarity among a mass of persons; it gives the capital that is being accumulated a 'name' and institutionalises it.

#### 3.2.4. THE TRANSMISSION OF CULTURAL CAPITAL TO STUDENTS

Bourdieu asserts that each family indirectly transmits to its children, rather than directly, a certain cultural capital and a particular ethos from which children derive modes of thinking and dispositions.<sup>41</sup> These internalised values help to define students' attitudes towards their schools. It is a system of implicit and deeply internalised values according to social class. It is the root cause of students' initial inequality when faced with examinations and tests and, hence, of unequal achievement.<sup>42</sup> Children may enter the education system, or what is termed pre-school education, already advantaged or disadvantaged, setting out on a journey that may see disadvantage as the norm, to be expected and perhaps eventually justified. Of course, some lower-class students will succeed in the educational system. However, it has been argued that rather than challenging the system, the success of lower-class students will reinforce the prevailing system by underwriting the appearance of meritocracy.<sup>43</sup>

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<sup>40</sup> Nan Lin, 'Building a network theory of social capital' (1999) 22. *Connections* 28, p. 34.

<sup>41</sup> Diane Reay, 'A useful extension of Bourdieu's conceptual framework? Emotional capital as a way of understanding mothers' involvement in their children's education?' (2000) 48. *The Sociological Review* 568, p. 570.

<sup>42</sup> Pierre Bourdieu, The School as a Conservative Force. In J. Eggleston (Ed.), *Contemporary research in the Sociology of Education* (pp. 32-46). (London: Routledge Publication) 1974, p. 33.

<sup>43</sup> Alice Sullivan, 'Cultural capital and educational attainment' (2001) 35. *Sociology* 893, p. 894.

It is generally agreed that parental expectations are crucial in setting students' aspirations.<sup>44</sup> This is particularly the case for students in high-achieving schools.<sup>45</sup> Parental expectations tend to be higher than the students' achievement.<sup>46</sup> Based on research undertaken in Britain, Irwin and Elley have challenged the contention among politicians and policymakers that the individual's willpower is a fundamental or dominant factor in raising aspirations among disadvantaged students. They argue that such rhetoric decontextualises the hopes parents hold for their children.<sup>47</sup> Such a disposition implies that constraints for disadvantaged young people can be overcome by action at the family level. Moreover, they argue that parents' expectations and aspirations are inseparable from the material social and economic contexts in which they are embedded.

Bourdieu argues that schools should be seen in the true light of their social use and emphasises the necessity to bury the myth of a school as a liberating force that guarantees the 'triumph of achievement' over what is obtained by those who come from social elite class backgrounds. He contends that in their proper light, schools must be seen as one of the foundations of domination and the legitimization of domination by the upper class. Notwithstanding, those most actively involved in schools - the cultural producers are the primary victims and beneficiaries of the legitimating illusion.<sup>48</sup> Bourdieu contends that schools are very powerful in reinforcing social divisions and guaranteeing social order.<sup>49</sup> In support of Bourdieu, Thompson holds that the education system 'enables those who benefit most from the system to convince themselves of their intrinsic worthiness while preventing those

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<sup>44</sup> Maeve Thornton, James Williams, Cathal McCrory, Aisling Murray & Amanda Quail, *'Growing Up in Ireland: Design, instrumentation, and procedures for the child cohort at wave two (13 years).'* (2016). Dublin: Department of Children and Youth Affairs, p. 52.

<sup>45</sup> Nicky Jacobs & David Harvey, 'Do parents make a difference to children's academic achievement? Differences between parents of higher and lower achieving students' (2005) 31. *Educational Studies* 431, p. 445.

<sup>46</sup> Martin Pinquart & Markus Ebeling, 'Parental educational expectations and academic achievement in children and adolescents - a meta-analysis (2020) 32. *Educational Psychology Review* 463, p. 463.

<sup>47</sup> Sarah Irwin & Sharon Elley, 'Parents' hopes and expectations for their children's future occupations' (2013) 61. *The Sociological Review* 111, pp. 128-129.

<sup>48</sup> Pierre Bourdieu, *The State Nobility: Elite Schools in the Field of Power*. (California: Stanford University Press) 1989, p. 5.

<sup>49</sup> Loïc J. D. Wacquant, Foreword, In Pierre Bourdieu (Ed.), *The State Nobility: Elite Schools in the Field of Power* (pp. ix-xxii). (Stanford: Stanford University Press) 1998, p. x.

who benefit least from grasping the basis of their deprivation'.<sup>50</sup> Nevertheless, Wacquant cautions against mechanistic visions of action and reminds us that social agents construct reality individually and collectively.<sup>51</sup>

### 3.2.5. FORMS OF POWER

The construct of power, the possession and exercise of statutory-based power and symbolic power (as defined by Bourdieu) is a recurring theme throughout this thesis. The concept of symbolic power and symbolic violence is beneficial when seeking to understand the school expulsion decision-making process, formal and informal, as discussed in chapters five, six and seven. The interviewer-interviewee power dynamic constitutes a critical consideration in socio-legal research, as it directly influences the quality and authenticity of data collected during qualitative interviews. It emphasises the importance of reflexivity and of establishing trust.<sup>52</sup>

Bourdieu sees power as culturally and symbolically created and constantly re-legitimised through an interplay of agency and structure. Symbolic capital is the resources available to an agent on the basis of honour, prestige, or recognition. Bourdieu holds that symbolic capital is power misrecognised as it relates to the conversion of capital into a position of symbolic power.<sup>53</sup> Symbolic power confirms an individual's placement in a social hierarchy. Symbolic power based on misrecognition operates at a deep level that transcends any intent at conscious manipulation by one group or another. It is the process by which power relations come to be perceived not for what they objectively are but in a form which renders them legitimate in the eyes of those subject to the power. Symbolic power maintains its effect through the misrecognition of power relations situated in the social matrix of a given field. Misrecognition is a cultural rather than an ideological phenomenon because it embodies a set of active social processes that anchor taken-for-granted

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<sup>50</sup> John B. Thompson, Editor's Introduction. In Pierre Bourdieu (Ed.), *Language and Symbolic Power* (pp. 1-31). (Cambridge: Polity Press) 1991, p. 24.

<sup>51</sup> Pierre Bourdieu & Loïc Wacquant, *An Invitation to Reflexive Sociology*. (Chicago: University of Chicago Press) 1992, p. 10.

<sup>52</sup> Note. See section 4.4.3.1 below.

<sup>53</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, pp. 112-123.

assumptions into social life. It is the simultaneous neglect of and subjection to structures of power, or, as his translator explains, ‘misrecognition’ combines subjective non-recognition (blindness) with objective recognition (legitimation).<sup>54</sup> Bourdieu refers to misrecognition as recognising violence that is wielded precisely because one does not perceive it as such.<sup>55</sup> Misrecognition is also fundamental for the concept of symbolic violence, which Bourdieu defines as the violence exercised upon a social agent with his or her complicity.<sup>56</sup> Coercion is set up only through the consent that the dominated cannot fail to give the dominator when their understanding of the situation and relation is based only on the knowledge they have in common with the dominator.<sup>57</sup> This insight into the role of consent in power dynamics is essential for an understanding of informal expulsion, as discussed throughout this thesis.

### 3.2.6. CULTURAL DOMINANCE AND SYMBOLIC VIOLENCE

Bourdieu argues that cultural dominance both conceals and amplifies elite class dominance in society, and the middle class depends heavily on educational capital to transfer privilege.<sup>58</sup> He refers to the result of such dominance as symbolic violence. Symbolic violence is defined as a distinct form of constraint that can only be exercised upon a social agent with his or her complicity inasmuch as one does not perceive it as such.<sup>59</sup> It is invisible and silent; it is ‘an almost magical power which enables one to obtain the equivalent of what is obtained through force’.<sup>60</sup> It is applied with the active complicity of those who submit to it, although not voluntarily and consciously. Symbolic violence is produced, reproduced, and considered legitimate through schemes that are engrained in everyone’s habitus.<sup>61</sup> It is determined only to the extent

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<sup>54</sup> Pierre Bourdieu, *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984, p. 566.

<sup>55</sup> Pierre Bourdieu & Loïc Wacquant, *An Invitation to Reflexive Sociology*. (Chicago: University of Chicago Press) 1992, p. 168.

<sup>56</sup> Pierre Bourdieu & Loïc Wacquant, *An Invitation to Reflexive Sociology*. (Chicago: University of Chicago Press) 1992, p. 167.

<sup>57</sup> Pierre Bourdieu, *Pascalian Meditations*. (California: Stanford University Press) 2000, p. 170.

<sup>58</sup> Angela Canny & Miriam Hamilton, ‘A state examination system and perpetuation of middle-class advantage: an Irish school context’ (2018) 39. *British Journal of Sociology of Education* 638, pp. 650-651.

<sup>59</sup> Pierre Bourdieu & Loïc Wacquant, *An Invitation to Reflexive Sociology*. (Chicago: University of Chicago Press) 1992, pp. 167-168.

<sup>60</sup> Pierre Bourdieu, *Language and Symbolic Power*. (Cambridge: Polity Press) 1991, p. 170.

<sup>61</sup> Pierre Bourdieu, *Masculine Domination*. (Cambridge: Polity Press) 2001, p. 33.

that they deprive themselves of the possibility of freedom established by the awakening of consciousness.<sup>62</sup> Symbolic violence is invisible, ‘unrecognised as such, chosen as much as undergone, that of trust, obligation, personal loyalty, ... in a word, all of the virtues honoured by the ethic of honour.’<sup>63</sup> The theory is key to understanding why social hierarchy is accepted by those who suffer from it. The concept is informative in the context of a sociological discussion on the process through which education and schools accept class-based conjectures and classifications without questioning the social structures that produced them and the role of education and schools in sustaining class-based inequality. It is informative in understanding why the school BOM may rubber stamp a decision of a principal to expel, and why the practice of informal expulsion is accepted by those who suffer from it.

It is important to understand that while symbolic power necessitates a dominator, it also requires the acceptance of the dominated in the exchange of social value that occurs between them. This insight into the role of consent in power dynamics is essential for an understanding of informal expulsion, as discussed later.

### 3.3. SCHOOL EXPULSION

This section provides a broad, though necessarily abbreviated, discussion of background issues within which to place the analysis of expulsion from school in the findings’ chapters.

#### 3.3.1. DEFINING SCHOOL EXPULSION

In Ireland, there has been no authoritative definition of the term expulsion.<sup>64</sup> For this study, expulsion is defined as the formal process by which the BOM of a school permanently prevents a student who had previously been enrolled from attending the school. A formal decision by the BOM to expel may be challenged under s. 29 of the Act of 1998. A school principal does not have the authority to order a student to leave

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<sup>62</sup> Pierre Bourdieu, *The State Nobility: Elite Schools in the Field of Power*. (California: Stanford University Press) 1989, p. 4.

<sup>63</sup> John B. Thompson, Editor’s Introduction. In Pierre Bourdieu (Ed.), *Language and Symbolic Power* (pp. 1-31). (Cambridge: Polity Press) 1991, p. 24.

<sup>64</sup> Note. While the legislation does not define expulsion, the Act of 1998, s. 29(1)(a) uses the term ‘permanently exclude,’ while the Act of 2000, s. 24(1) refers to ‘expulsion.’ The relevant amendments enacted in the Act of 2018 have not addressed this anomaly.

the premises on disciplinary grounds or to encourage or advise a parent to withdraw the student from the school voluntarily. Expulsion of this nature is referred to throughout this study as informal expulsion. The terms *de facto*, voluntary, hidden, effective expulsion and off-rolling are commonly used when the student's removal is primarily in the school's interests rather than the students. In England, off-rolling has emerged as a taken-for-granted or common-sense reality that head teachers routinely engage in to circumvent the requirements of the relevant statutory procedures,<sup>65</sup> notwithstanding their authority to expel formally.<sup>66</sup> Informal expulsion, a form of what Bourdieu refers to as symbolic violence, is a process where the school principal imposes a taken-for-granted or common-sense reality in a manner that appears legitimate. This obscures the power relations between the school principal and the school BOM as the expelling authority, ensuring that these power relations are perceived as legitimate in the eyes of the principal.<sup>67</sup> The practice of informal expulsion was thoroughly examined during the interviews with decision-makers. Informal expulsion is not amenable to analysis in the same way as official disciplinary expulsion; consequently, individual incidents and potential patterns are harder to discern and track. The findings, reported in chapters 5, 6, and 7, provide crucial insights that will significantly contribute to the understanding of this issue.

While expulsion may be perceived as the denial of schooling rather than education *per se*, it is acknowledged that it is likely to have a damaging impact on a student's life chances. Dislodged from their peer group and denied access to the mainstream curriculum, the expelled student is exposed to a serious risk of underachievement, unemployment, poverty, and social exclusion.<sup>68</sup> Consequently, it has been argued that disciplinary expulsion has no place in today's education system.<sup>69</sup>

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<sup>65</sup> Elizabeth J. Done & Helen Knowler, 'A tension between rationalities: "off-rolling" as gaming and the implications for head teachers and the inclusion agenda' (2022) 74. *Educational Review* 1322, p. 1323.

<sup>66</sup> The Education Act 2002, as amended by the Education Act 2011, s. 51A(1).

<sup>67</sup> Pierre Bourdieu, & Jean-Claude Passeron, *Reproduction in education, society, and culture* (Vol. 4). (London: Sage Publications) 1990, p. xxii.

<sup>68</sup> Gillean McCluskey, Sheila Riddell, Elisabet Weedon & Mariela Fordyce, 'Exclusion from school and recognition of difference' (2016) 37. *Discourse: Studies in the Cultural Politics of Education* 529, p. 529.

<sup>69</sup> Gillean McCluskey, Sheila Riddell, Elisabet Weedon & Mariela Fordyce, 'Exclusion from school and recognition of difference' (2016) 37. *Discourse: Studies in the Cultural Politics of Education* 529, p. 535.

### 3.3.2. SCHOOL EXPULSION IN PRACTICE

Expulsion, the most severe disciplinary sanction available to schools, should only be used in the most extreme cases of unacceptable behaviour, as stressed by national guidance.<sup>70</sup> The deep roots of school expulsion can be traced to an unequal society. Expulsion falls more heavily on historically disadvantaged groups.<sup>71</sup> Removed from a life of necessity, the upper regions of the social space enjoy an abundance of time, energy and resources to cultivate the symbolic mastery of legitimate academic culture.<sup>72</sup> Endowed with social and economic capital, some parents have enormous resources to invest in their children's education. In contrast, others lack the capacity to engage with the school at the most basic level. Regardless of the level of state investment, the education system cannot provide a level playing pitch; higher-class parents will always outstrip state spending to ensure group dominance. The uneven playing field operates at all levels within the system, in the classroom, the school, and the locality. While expulsion may be necessary in extreme cases, this draconian action must only be tolerated within the legal framework in place and where the school has taken significant steps to address the misbehaviour and to avoid the expulsion of a student.<sup>73</sup>

Expulsion presents a complex, multidimensional problem for governments, with close connections to issues of law and order, criminality, and social control.<sup>74</sup> The accompanying policy discourse has tended to imply that working-class parents' aspirations and practices need to change rather than the education system when it comes to countering the effects of pre-existing social inequalities.<sup>75</sup> In rejecting failures at the system level, the UK government claims that its approach to raising standards and narrowing the gap between social groups has been to deliver both

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<sup>70</sup> National Educational Welfare Board, 'Developing a Code of Behaviour: Guidelines for Schools'. (2008). Dublin: National Educational Welfare Board, para. 12.2.

<sup>71</sup> Russell J. Skiba & Daniel J. Losen, 'From Reaction to Prevention: Turning the Page on School Discipline' (2016) 39. *American Educator* 1, p. 4.

<sup>72</sup> Pierre Bourdieu, The forms of capital. In John G. Richardson (Ed.), *Handbook of theory and research for the sociology of education* (pp. 241-258). (Greenwood Press) 1986, pp. 244-245.

<sup>73</sup> Note. For discussion on the school expulsion process, see section 2.6.1.

<sup>74</sup> Sheila Macrae, Meg Maguire & Linda Milbourne, 'Social exclusion: exclusion from school' (2003) 7. *International Journal of Inclusive Education* 89, p. 91.

<sup>75</sup> Louise Gazeley, 'The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?' (2012) 16. *International Journal of Inclusive Education* 297, p. 299.

excellence and equity. Ignoring the gap between those who struggle to survive and those ‘removed from a life of necessity’, it has attributed shortcomings to individual families and local communities:<sup>76</sup>

These gaps are not mainly caused by the education system itself, which goes a long way to reduce them. They arise principally from what happens outside school, and before a child reaches school. They reflect a variety of factors, including the aspirations and support of parents, of social peers and local communities.

The school-to-prison pipeline term is well established in the literature; it is a commonly used metaphor developed in the USA to broadly describe harsh discipline practices and how schools have become a channel to the juvenile and criminal justice systems.<sup>77</sup> The STPP metaphor points out that school expulsion can place some students at risk of involvement in the juvenile justice system.<sup>78</sup> Time spent in the community with reduced supervision may increase the likelihood of students’ involvement in crime and subsequent imprisonment.<sup>79</sup> On the other hand, it has been shown that schools can positively protect students at risk by providing stability and inclusion; schools can divert students away from crime and involvement with the criminal justice system.<sup>80</sup>

An independent bi-directional association between child mental health and expulsion from school has been demonstrated. Given a plausible relationship between mental health and expulsion, identifying the need, the level, and the type of support the child requires should be prioritised.<sup>81</sup> Early assessment and appropriate support for students

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<sup>76</sup> Great Britain. Cabinet Office, ‘*New opportunities: Fair chances for the future*’ (Vol. 7533). (2009). (London: The Stationery Office).

<sup>77</sup> Russell J. Skiba, Mariella I. Arredondo & Natasha T. Williams, ‘More than a metaphor: The contribution of exclusionary discipline to a school-to-prison pipeline’ (2014) 47. *Equity & Excellence in Education* 546, p. 546.

<sup>78</sup> Kathryn C. Monahan, Susan VanDerhei, Jordan Bechtold & Elizabeth Cauffman, ‘From the School Yard to the Squad Car: School Discipline, Truancy, and Arrest’ (2014) 43. *Journal of Youth and Adolescence* 1110, p. 1110.

<sup>79</sup> Alison Evans Cuellar & Sara Markowitz, ‘School suspension and the school-to-prison pipeline’ (2015) 43. *International Review of Law and Economics* 98, p. 105.

<sup>80</sup> Abigail Tsionne Salole & Zakaria Abdulle, ‘Quick to Punish’ (2015) 72/72. *Canadian Review of Social Policy* 124, p. 126.

<sup>81</sup> Claire Parker, Rebecca Whear, Obioha C. Ukoumunne, Alison Bethel, Jo Thompson-Coon, Ken Stein & Tamsin Ford, ‘School exclusion in children with psychiatric disorder or impairing psychopathology: a systematic review’ (2015) 20. *Emotional and behavioural difficulties* 229, p. 243.

with challenging behaviour is not just a recommendation but a crucial step that may avoid some expulsions and improve their mental health.<sup>82</sup> Expulsion links with aspects of fiscal policy, for, in human capital terms, an undereducated workforce will be less productive and may be more expensive to support.<sup>83</sup>

### 3.3.3. TRENDS IN THE RATE OF EXPULSIONS IN ENGLAND

Official data relating to school expulsion is unreliable, and the rate of unofficial expulsions is impossible to estimate.<sup>84</sup> Official figures significantly underestimate the number of students expelled.<sup>85</sup> Figure 5 shows the expulsion trend in English public-funded schools.<sup>86</sup> While expulsion rates had remained constant or declined during the years prior to the onset of COVID-19, the rate has since risen to 0.11% of the student population.<sup>87</sup>

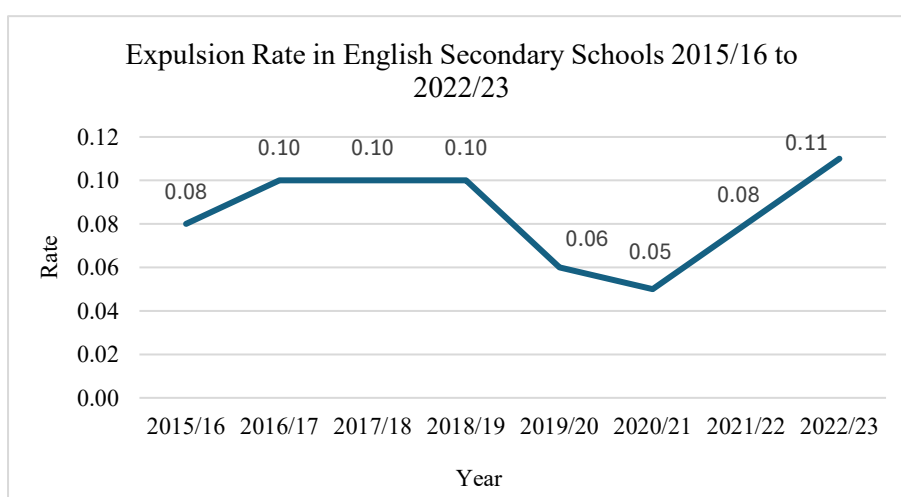


Figure 5.

<sup>82</sup> Tamsin Ford, Claire Parker, Javid Salim, Robert Goodman, Stuart Logan & William Henley, 'The relationship between exclusion from School and mental health: a secondary analysis of the British Child and Adolescent Mental Health Surveys 2004 and 2007' (2018) 48. *Psychological Medicine* 629, p. 638.

<sup>83</sup> Sheila Macrae, Meg Maguire & Linda Milbourne, 'Social exclusion: exclusion from school' (2003) 7. *International Journal of Inclusive Education* 89, p. 91.

<sup>84</sup> Megan Whitehouse, 'Illegal school exclusion in English education policy' (2022) 27. *Emotional and Behavioural Difficulties* 220, p. 226.

<sup>85</sup> Gill, Kiran, Harry Quilter-Pinner & Danny Swift, *Making the difference: Breaking the link between school exclusion and social exclusion*. (London: Institute for Public Policy Research) 2017, p. 13.

<sup>86</sup> Source, <https://explore-education-statistics.service.gov.uk/find-statistics/suspensions-and-permanent-exclusions-in-england#dataBlock-a8ea416a-a56f-41c9-a808-d64a38366311-tables>

<sup>87</sup> Note. The expulsion rate is calculated as the number of expulsions divided by the number of students (x100). A rate of 0.01 would be equivalent to 1 permanent exclusion for every 10,000 pupils.

The extent of informal expulsion in England is unknown.<sup>88</sup> Estimates suggest tens of thousands of students are illegally being ‘lost’ from school registers.<sup>89</sup> In 2013, the Children’s Commissioner for England found that 1.8 per cent of schools admitted to encouraging parents to take their children out of school and educate them at home.<sup>90</sup> In England, approximately 4% of GCSE students leave school before taking their exams. Of these, two out of five reappear on the roll of a different state-funded school.<sup>91</sup> It is unlikely that many parents would voluntarily choose to home-educate their children or send them to another school during their GCSE courses.<sup>92</sup> Approximately one-quarter of secondary schools in England ‘lost’ at least 5 GCSE students; some schools are described as having had exceptional levels of pupil movements for the last two years. These statistics highlight the magnitude of the off-rolling problem. The pressure on schools to ensure the inclusion and safeguarding of all students within the quasi-market school environment promotes informal expulsion.<sup>93</sup>

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<sup>88</sup> Megan Whitehouse, ‘Illegal school exclusion in English education policy’ (2022) 27. *Emotional and Behavioural Difficulties* 220, p. 221.

<sup>89</sup> Gill, Kiran, Harry Quilter-Pinner & Danny Swift, *Making the difference: Breaking the link between school exclusion and social exclusion*. (London: Institute for Public Policy Research) 2017, p. 15.

<sup>90</sup> Maggie Atkinson, ‘Always Someone Else’s Problem.’ (2013). *Office of the Children’s Commissioner’s Report on Illegal Exclusions*. (London: Office of the Children’s Commissioner, p. 26.

<sup>91</sup> See. <https://www.theguardian.com/education/2019/oct/11/one-in-10-pupils-removed-from-school-rolls-to-boost-gcse-results>

<sup>92</sup> Ofsted, ‘*The annual report of Her Majesty’s chief inspector of education, children’s services, and skills 2017/18.*’ (2019).

<sup>93</sup> Megan Whitehouse, ‘Illegal school exclusion in English education policy’ (2022) 27. *Emotional and Behavioural Difficulties* 220, p. 220.

### 3.3.4. TRENDS IN THE RATE OF EXPULSIONS IN IRELAND

The expulsion rate in Ireland is significantly less than the permanent exclusion rate in England.

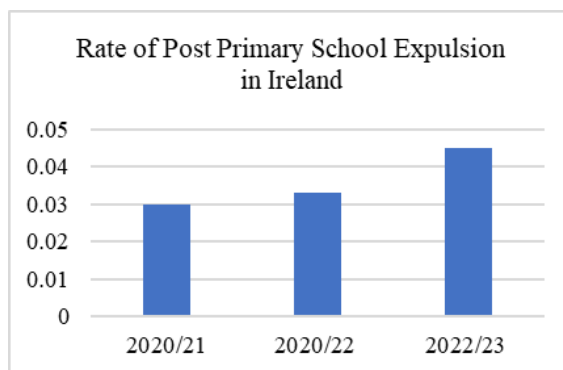


Figure 6.

The annual expulsion rate in Ireland remains low, ranging from around 0.05% to 0.11% in the years since COVID-19. Permanent exclusion rates are higher, ranging from around 0.1% to 0.22%, varying by region since the pandemic.

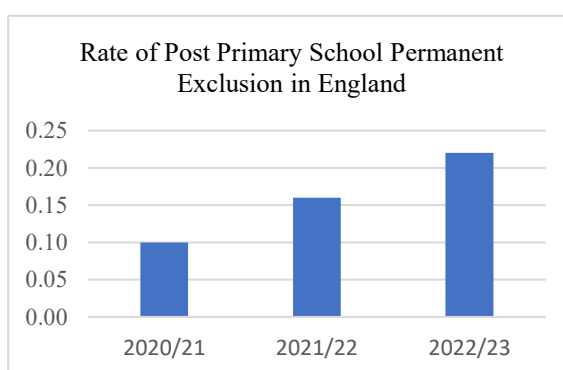


Figure 7.

Despite growing concerns regarding the rate of student expulsion,<sup>94</sup> comprehensive national data on the actual rate of post-primary school expulsion in Ireland is not available. Data to indicate the rate of informal expulsion is unavailable. In accordance with the provisions of the Act of 2000, EWS is obliged to collect and report on data

<sup>94</sup> Áine Hyland, 'We have an unacceptably high level of school suspensions and expulsions.' (2017). Hyland, A. (2017).

relating to formal school expulsion and other matters annually. Recognised post-primary schools are required to submit Annual Attendance Reports (AAR) to provide data for monitoring non-attendance, suspensions, and expulsions.

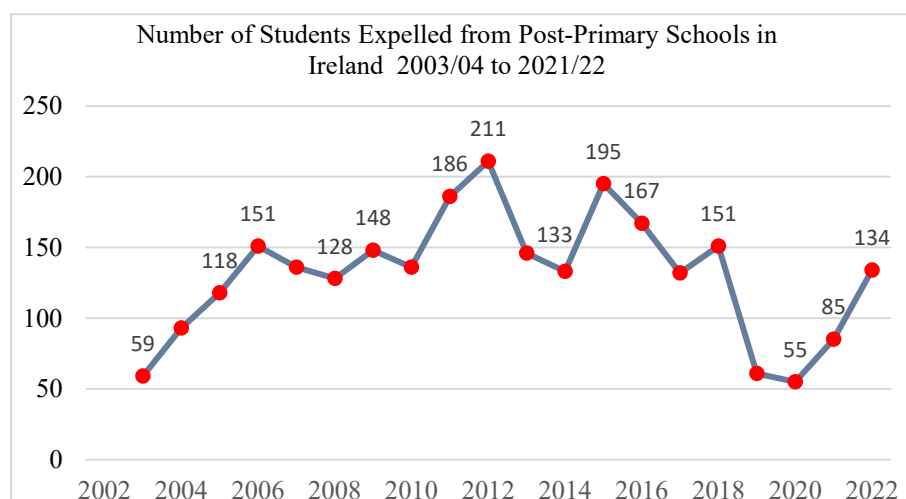


Figure 8.

Formal expulsions have remained relatively uncommon within the post-primary school system and were further reduced during the period most impacted by the pandemic, as shown in Figure 8. Excluding the years affected by the pandemic, there were 1,605 formal expulsions recorded in post-primary schools over the ten years from 2008/09 to 2017/18, with an average of 160.5 expulsions per year.<sup>95</sup>

The expulsion trend expressed as a percentage of the post-primary student population is shown in Figure 9.<sup>96</sup> It is important to note at this point that official figures do not reveal the extent to which students are expelled informally. The latter category is not amenable to analysis; individual incidents and potential patterns are much harder to

<sup>95</sup> Note. Stating that parliamentary questions are a key mechanism of parliamentary accountability, Mr. Peter Finnegan (Clerk of Dáil Éireann) expressed concerns about the adequacy and timeliness of departmental responses to such questions. These concerns are supported by experience here, where data requests on current post-primary school expulsions have not been provided in a substantive or timely manner. See <https://www.rte.ie/news/politics/2025/0523/1514460-taoiseach-parliamentary-questions/>

<sup>96</sup> Source. Tusla Educational Welfare Service Annual Publications Analysis of School Attendance Data in Primary and Post-Primary Schools. Available at: <https://www.tusla.ie/services/educational-welfare-services/publications/research-and-statistics/>

discern and track. The data provided by the EWS is limited in several ways. The age of the expelled students is not provided, nor is the gender, the school type, the time of year the expulsion occurs or the reason for the expulsion. The limitations of the available data represent a significant barrier to gaining a fuller understanding of school expulsion in Ireland.

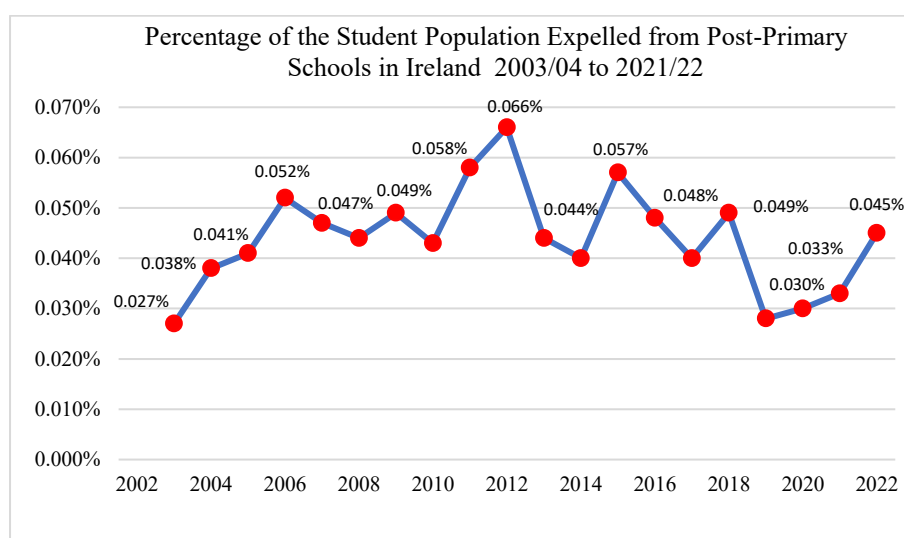


Figure 9.

### 3.3.5. FORCES PROMOTING EXPULSION

Expulsion is not a result of a single factor, but rather a complex interplay of multiple factors at individual, family, school, and societal levels. These factors can have a cumulative effect on a student at risk of expulsion. Schools are not isolated entities; they are influenced by and respond to various economic, cultural, social, moral, and political forces in the broader society.<sup>97</sup> They are influenced by and react to various economic, cultural, social, moral, and political forces. In Ireland, as in England, schools are generally judged based on academic attainment. It is often considered the sole indicator of their performance and can lead to schools' anxieties over image and performance. In policy terms, however, measuring schools' effectiveness regarding their cognitive-intellectual goals is much easier than the broader social welfare goals.

<sup>97</sup> Berni Graham, Clarissa White, Amy Edwards, Sylvia Potter & Cathy Street, 'School exclusion: a literature review on the continued disproportionate exclusion of certain children.' (Department for Education) 2019, p. 17.

Across many jurisdictions, education systems have been shaped by marketisation and managerialism.<sup>98</sup>

The English secondary school system operates within a performance management system, which includes league tables reporting school performance. Headteachers do respond to the incentives generated by the league tables.<sup>99</sup> The presence of students with behavioural difficulties works against the image the school wishes to display.<sup>100</sup> Many of these students are either encouraged to find a school ‘more suited’ to their needs or face sanctions that prevent them from returning to school.<sup>101</sup> Those faced with the former option are regularly transitioned to the latter. Low-achieving students are sometimes informally expelled from English schools to enhance school performance data.<sup>102</sup> The impact of these forms of expulsion, often experienced by highly marginalised young people, can damage their life opportunities and work to reinforce existing injustices. Systemic pressures on schools have resulted in many of the most vulnerable children missing out on mainstream education.<sup>103</sup> In addition, strained school budgets and service reductions contribute to school expulsion in the UK.<sup>104</sup>

The marketisation of education has become increasingly socially acceptable in Ireland.<sup>105</sup> Within a neoliberal climate, schools market themselves on the grounds of academic success and orderly environments. Ireland does not have a formal school league table. However, the concept operates effectively at a local level. Data relating

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<sup>98</sup> Martin Mills, Sheila Riddell & Eva Hjörne, ‘After exclusion what?’ (2015) 19. *International Journal of Inclusive Education* 561, p. 561.

<sup>99</sup> Deborah Wilson, Bronwyn Croxson & Adele Atkinson, ‘What gets measured gets done, Headteachers’ responses to the English secondary school performance management system’ (2006) 27. *Policy Studies* 153, p. 167.

<sup>100</sup> See. Angela Canny & Miriam Hamilton, ‘A state examination system and perpetuation of middle-class advantage: an Irish school context’ (2018) 39. *British Journal of Sociology of Education* 638.

<sup>101</sup> Martin Mills, Sheila Riddell & Eva Hjörne, ‘After exclusion what?’ (2015) 19. *International Journal of Inclusive Education* 561, p. 561.

<sup>102</sup> Elizabeth J. Done & Helen Knowler, ‘A tension between rationalities: “off-rolling” as gaming and the implications for head teachers and the inclusion agenda’ (2022) 74. *Educational Review* 1322, p. 1322.

<sup>103</sup> Ian Thompson, Alice Tawell & Harry Daniels, ‘Conflicts in professional concern and the exclusion of pupils with SEMH in England’ (2021) 26. *Emotional and Behavioural Difficulties* 31, p. 33.

<sup>104</sup> Ted Cole, Gillean McCluskey, Harry Daniels, Ian Thompson & Alice Tawell, ‘Factors associated with high and low levels of school exclusions: Comparing the English and wider UK experience’ (2019) 24. *Emotional and behavioural difficulties*, 374, p. 386.

<sup>105</sup> Selina McCoy & Delma Byrne, ‘Shadow education uptake among final year students in Irish secondary schools: Wellbeing in a high stakes context.’. ESRI Working Paper No.724. (Dublin: Economic and Social Research Institute) 2022, p. 33.

to the top-performing schools in terms of admissions to third-level colleges is published annually and serves as an effective league table.<sup>106</sup> Segregated and stratified, the Irish post-primary system provides its own hierarchical system. As noted by Bourdieu, there is no space in a hierarchical society that is not hierarchised and does not express social hierarchies, none less so than the various parallel second-level school sectors in Ireland, each having its distinct historical origins.<sup>107</sup> The main distinction lies between the publicly owned and maintained ETB and Comprehensive / Community schools and the privately owned secondary schools. The secondary schools primarily serve children from predominantly middle-class families. ETB schools cater disproportionately for children from the lower socio-economic classes and small farm families. Comprehensive and community schools have quite wide catchments and serve comprehensive educational objectives. Middle-class parents generally tend to see these schools as inferior substitutes for their children.<sup>108</sup> Students expelled from a privately owned school may have to move to a publicly owned school to secure a new school placement. Those expelled from an ETB school will have few options.

As schools become sites of increasing accountability and competition, professionals' scope for judgment is narrowed, and their requirements are made more explicit.<sup>109</sup> The workload forced on teachers by much increased non-class contact work has restricted the time available to address individual students' needs.<sup>110</sup>

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<sup>106</sup> See. Feeder schools league tables publication. <https://www.independent.ie/irish-news/feeder-schools-league-tables-2021-how-your-local-school-fared/41216637.html>

<sup>107</sup> Pierre Bourdieu, 'Social space and the genesis of appropriated physical space' (2018) 42. *International journal of urban and regional research* 106, p. 107.

<sup>108</sup> Orla McCormack, Joanne O'Flaherty & Mags Liddy. 'Perception of Education and Training Board (ETB) schools in the Republic of Ireland: an issue of ideology and inclusion.' (2020) 39.4. *Irish Educational Studies* 535, pp. 538-539.

<sup>109</sup> Karen L. Jones, Peter Tymms, David Kemethofer, Joe O'Hara, Gerry McNamara, Stephan Huber, Eva Myrberg, Guri Skedsmo & David Greger. 'The unintended consequences of school inspection: the prevalence of inspection side-effects in Austria, the Czech Republic, England, Ireland, the Netherlands, Sweden, and Switzerland.' (2017) 43. *Oxford Review of Education* 805.

<sup>110</sup> Barbara Skinner, Gerard Leavey & Despina Rothi, 'Managerialism and teacher professional identity: Impact on well-being among teachers in the UK' (2021) 73. *Educational Review* 1, p. 12.

### 3.3.6. RISK OF EXPULSION

The use of expulsion varies significantly in England among schools in similar areas with similar intakes and similar challenges.<sup>111</sup> Schools with the highest expulsion rates tended to be those where misbehaving students were rapidly referred to senior staff rather than handled at the classroom level. Rates of expulsion in England are geographically uneven; a higher proportion of schools in London are engaged in off-rolling.<sup>112</sup> There is a disproportionate rate of school expulsion amongst boys, specific ethnic groups, young people identified as having a SEN, and students in care. In England, secondary school students receiving free school meals (FSM) are those from the lowest-income households.<sup>113</sup> They are around 40% more likely to be expelled than those who are not when controlled for other differences.<sup>114</sup> The peak age for expulsion is 13 to 14 years.<sup>115</sup> The male/female expulsion ratio is 4:1.<sup>116</sup> Many of the expelled students in England come from stressed families experiencing multiple disadvantages.<sup>117</sup> Students in local authority care and those in deprived communities are at greater risk of expulsion.<sup>118</sup> Racial bias in expulsion rates persists; it disproportionately affects Black children and families.<sup>119</sup> Many parents may have been excluded from school or have experienced difficulties at school.<sup>120</sup> Persistent disruptive behaviour is one of the main reasons given for expulsion. However, one

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<sup>111</sup> Steve Strand & John Fletcher, 'A Quantitative Longitudinal Analysis of Exclusions from English Secondary Schools.' (2014). In UO Department of Education Report. University of Oxford.

<sup>112</sup> Ofsted, 'The annual report of Her Majesty's chief inspector of education, children's services, and skills 2017/18.' (2019).

<sup>113</sup> Louise Gazeley, Tish Marrable, Chris Brown, & Janet Boddy, 'Contextualising Inequalities in Rates of School Exclusion in English Schools: Beneath the tip of the ice-Berg' (2015) 63. *British Journal of Educational Studies* 487, p. 487.

<sup>114</sup> Edward Timpson, 'Timpson review of school exclusion.' (2019). p 42.

<sup>115</sup> Berni Graham, Clarissa White, Amy Edwards, Sylvia Potter & Cathy Street, 'School exclusion: a literature review on the continued disproportionate exclusion of certain children.' (2019). Department for Education, p. 34.

<sup>116</sup> Edward Timpson, 'Timpson review of school exclusion.' (2019). p 42.

<sup>117</sup> Berni Graham, Clarissa White, Amy Edwards, Sylvia Potter & Cathy Street, 'School exclusion: a literature review on the continued disproportionate exclusion of certain children.' (2019). Department for Education, p. 24.

<sup>118</sup> Steve Strand & John Fletcher, 'A Quantitative Longitudinal Analysis of Exclusions from English Secondary Schools.' (2014). In UO Department of Education Report. University of Oxford, p. 33.

<sup>119</sup> Hannah Gaffney, David P. Farrington & Howard White, 'Interventions to prevent school exclusion: Toolkit technical report.' (2021), p. 6.

<sup>120</sup> Sheila Macrae, Meg Maguire & Linda Milbourne, 'Social exclusion: exclusion from school' (2003) 7. *International Journal of Inclusive Education* 89, p. 92.

school's severely disruptive behaviour is another's minor disruption.<sup>121</sup> One of the most common childhood neuro-developmental disorders is ADHD, which typically manifests as difficulty coping at school.<sup>122</sup> Some students are being expelled as a result of unidentified, untreated, or poorly managed ADHD; they are wrongly identified as being disruptive when, in fact, they have unsupported needs.<sup>123</sup>

In low-excluding schools, teachers have learned to understand student behaviour in a clinical professional manner, enabling them to detach from confrontational situations. They have a broader menu of strategies and confidence to tackle their difficulties rather than pass them to senior staff. They have developed a cautious and scientific approach; they can observe the classroom dynamics from the student's viewpoint.<sup>124</sup>

### 3.3.7. REASONS FOR EXPULSION

The principal reasons put forward by schools for expulsion in the UK have remained consistent over the past four decades.<sup>125</sup> Persistent disruptive behaviour is the most common reason given. The second most common reason given for permanent and fixed period exclusion is the non-defined 'other'.<sup>126</sup> Additional specific incidents include the breaking of school rules, verbal abuse of the staff, violence to other students, violence to staff, inappropriate sexual behaviour, bullying, and possession of drugs.<sup>127</sup> Such behaviour exposes teachers to high levels of stress and causes severe disruption to the education of other students in the classroom.<sup>128</sup>

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<sup>121</sup> Claire Parker & Tamsin Ford. 'Editorial Perspective: School exclusion is a mental health issue' (2013) 54. *Journal of Child Psychology & Psychiatry* 1366, p. 1366.

<sup>122</sup> Claire Parker, Rebecca Whear, Obioha C. Ukoumunne, Alison Bethel, Jo Thompson-Coon, Ken Stein, and Tamsin Ford, 'School exclusion in children with psychiatric disorder or impairing psychopathology: a systematic review' (2015) 20. *Emotional and behavioural difficulties* 229, p. 238.

<sup>123</sup> See. Fintan O'Regan, 'Exclusion from school and attention-deficit/hyperactivity disorder' (2010) 2. *International Journal of Emotional Education* 3.

<sup>124</sup> Mike McManus, Discipline in Pupils Excluded from School, In Ved P. Varma (Ed.), *Management of Behaviour in Schools* (pp. 218-233). (New York: Routledge Publication) 2014.

<sup>125</sup> See. Imich, 1994; Harris et al., 2000; Strand & Fletcher, 2014; Thomson, 2019; DfE, 2024.

<sup>126</sup> Edward Timpson, 'Timpson review of school exclusion.' (2019). p 42, p. 96.

<sup>127</sup> See. Imich, 1994; Parsons, 1999; Harris et al., 2000; Strand & Fletcher, 2014, Thomson, 2019.

<sup>128</sup> Carl Parsons, *Education, Exclusion and Citizenship*. Taylor & Francis e-Library. (2002), p. 51.

Eighty percent of students surveyed in England had experienced disrupted learning caused by ongoing peer disruption in class.<sup>129</sup> However, such cataloguing does little to capture the reality of the complex social environment and impacting factors which lead to expulsion. There is a very considerable difference between the school experience of a child influenced by a childhood spent in a family where words define the reality of things and that of a working-class child whose scholastic acquisition of a language tends to make their reality unreal by the ‘corrected’ language of the classroom; the language the teacher’s marginal notes stigmatise as ‘vulgar’ or ‘common’.<sup>130</sup> The importance of the teacher-student relationship has also been highlighted in the Irish context.<sup>131</sup>

Expelled students in Ireland articulated strong feelings of rejection by the school through alienation from staff and students prior to being expelled. Rejection was articulated in terms of being left to one side, not getting enough support from teachers, or other more academic students being favoured by teachers. The feelings of rejection formed a continuum from feeling ignored or discouraged by teachers up to formal expulsion from school.<sup>132</sup>

### 3.3.8. CONSEQUENCES OF EXPULSION FROM SCHOOL

Expulsion contributes little to its often-stated goal of improving student behaviour or school safety.<sup>133</sup> Nevertheless, schools need sound disciplinary systems to promote and maintain student learning and provide a safe working environment for those who work there. Cultural beliefs about the role of discipline in schools have become so ingrained that they operate as unchallengeable common-sense presuppositions in professional, political, and policymaking discourse.<sup>134</sup> School expulsion is cited as

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<sup>129</sup> Steve Strand & John Fletcher, ‘A Quantitative Longitudinal Analysis of Exclusions from English Secondary Schools.’ (2014). In UO Department of Education Report. University of Oxford, p. 4.

<sup>130</sup> Pierre Bourdieu, & Jean-Claude Passeron, *Reproduction in education, society, and culture* (Vol. 4). (London: Sage Publications) 1990, p. 119.

<sup>131</sup> Joanne Banks & Emer Smyth, ‘We Respect Them, and They Respect Us: The Value of Interpersonal Relationships in Enhancing Student Engagement’ (2021) 11. *Education Sciences* 634.

<sup>132</sup> Delma Byrne & Emer Smyth, *No Way Back? The Dynamics of Early School Leaving*. (Dublin: The Liffey Press) 2010.

<sup>133</sup> Russell J. Skiba & Daniel J. Losen, ‘From Reaction to Prevention: Turning the Page on School Discipline’ (2016) 39. *American Educator* 1.

<sup>134</sup> Elizabeth J. Done, Helen Knowler & David Armstrong, ‘Grey exclusions matter: mapping illegal exclusionary practices and the implications for children with disabilities in England and Australia’ (2021) 21. *Journal of Research in Special Educational Needs* 36, p. 36.

evidence of an overly punitive approach to school discipline that is accepted and normalised across the English education system.<sup>135</sup> Expulsion often sets off a devastating cascade of adverse events for children and their families, particularly those who lack the resources to mitigate the adverse effects.<sup>136</sup> Students who have been expelled are unlikely to reach the same levels of academic achievement as their peers, making it more difficult for them to progress to further study and work.<sup>137</sup> The quality of alternative provision available to expelled students in the UK has been questioned.<sup>138</sup> It is often not of the standard available in mainstream education.<sup>139</sup> It may, of course, in some cases, be of a higher standard. The impact of school expulsion is well-documented; consequences include the risk of various forms of social exclusion, few educational qualifications, sexual exploitation, exposure to violent crime and grooming by drug gangs, disengagement from the labour market, long-term psychiatric illness, and increased risk of imprisonment.<sup>140</sup>

The consequences of expulsion can also include feelings of rejection and injustice, heightened family stress, conflict with parents at home, stigmatisation within neighbourhoods and anxieties over future prospects.<sup>141</sup> Disengaged expelled students possessed limited horizons, a lack of self-belief and an absence of social capital.<sup>142</sup> It is acknowledged that there is no evidence to confirm that expulsion is the sole cause of the above outcomes or a symptom of underlying drivers.<sup>143</sup> Expulsion marks the

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<sup>135</sup> Carl Parsons, 'School exclusion: the will to punish' (2005) 53. *British Journal of Educational Studies* 187, p. 188.

<sup>136</sup> See: Parsons, 2002; Munn et al., 2001; Munn & Lloyd, 2005; Daniels & Cole, 2010; Daniels, 2011; Parker & Ford, 2013; Mills et al., 2015; Thompson et al., 2021.

<sup>137</sup> Gill, Kiran, Harry Quilter-Pinner & Danny Swift, *Making the difference: Breaking the link between school exclusion and social exclusion*. (London: Institute for Public Policy Research) 2017, p. 21.

<sup>138</sup> See: Lucy Ann Hatton, 'Disciplinary exclusion: the influence of school ethos' (2013) 18. *Emotional and behavioural difficulties* 155, p. 156; Gilleen McCluskey, Sheila Riddell, Elisabet Weedon & Mariela Fordyce, 'Exclusion from school and recognition of difference' (2016) 37. *Discourse: Studies in the Cultural Politics of Education* 529, p. 535.

<sup>139</sup> Berni Graham, Clarissa White, Amy Edwards, Sylvia Potter, Cathy Street & Damian Hinds, *'Timpson review of school exclusion: consultation outcome.'* (2019), p. 8. Department for Education.

<sup>140</sup> Ian Thompson, Alice Tawell & Harry Daniels, 'Conflicts in professional concern and the exclusion of pupils with SEMH in England' (2021) 26. *Emotional and Behavioural Difficulties* 31, p. 32.

<sup>141</sup> Pamela Munn & Gwynedd, Lloyd, 'Exclusion and Excluded Pupils' (2005) 31. *British Educational Research Journal* 205.

<sup>142</sup> Harry Daniels & Ted Cole, 'Exclusion from school: short-term setback or a long term of difficulties?' (2010) 25. *European Journal of Special Needs Education* 115, p. 128.

<sup>143</sup> Steve Strand & John Fletcher, *'A Quantitative Longitudinal Analysis of Exclusions from English Secondary Schools.'* (2014). In UO Department of Education Report. University of Oxford, p. 4.

end of formal education for eighty percent of those expelled in England.<sup>144</sup> Expelled students who had been ‘bought back into’ education, training, and employment were articulate in describing their future ambitions. This progress was, in many instances, linked to the contributions of staff from different professional backgrounds who would act as champions for a young person who had limited capacity to navigate what appeared to be very complex patterns of education/training provision.<sup>145</sup>

### 3.4. PARENTS’ EXPERIENCE OF THE APPEALS SYSTEM

#### 3.4.1. PARENTS’ MOTIVATION TO APPEAL

During the 2010/11 school year in England, approximately eleven percent of expulsions were appealed. Of these appeals, ninety-five percent were heard, and thirty-one percent were successful, with one-third of these successful appeals resulting in reinstatement. These statistics underscore the significant challenge parents face in the school expulsion appeals process.<sup>146</sup> Middle-class parents are more likely to appeal than those from poorer backgrounds; the more privileged the occupational group, the more likely the parents will appeal.<sup>147</sup> This disparity in access to the appeal mechanism may be due to educational or cultural barriers among less privileged parents. It underscores the urgent need for support and advocacy for these parents, ensuring a fair and equitable process for all.<sup>148</sup> Critics of the law relating to expulsion appeals in England argue that the process is cumbersome and misleads parents into thinking redress is likely in a timely fashion.<sup>149</sup>

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<sup>144</sup> Lucy Ann Hatton, ‘Disciplinary exclusion: the influence of school ethos’ (2013) 18. *Emotional and behavioural difficulties* 155, p. 156.

<sup>145</sup> Harry Daniels & Ted Cole, ‘Exclusion from school: short-term setback or a long term of difficulties?’ (2010) 25. *European Journal of Special Needs Education* 115, p. 127.

<sup>146</sup> Department for Education, ‘Permanent and fixed period exclusions from schools in England: 2010/11 year.’ Department for Education. (2012).

<sup>147</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 137.

<sup>148</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 138.

<sup>149</sup> Richard Harris & Carl Parsons, ‘School exclusion and English remedies: A failure to protect children’ (2014) 17. *Education Public Law and the Individual* 20, p. 20.

The primary motivation for parents who appeal an expulsion is a desire to have a decision they perceive as wrong and unjust overturned.<sup>150</sup> The forms of redress sought include reinstatement into the school and formal recognition of the school's failings in supporting the student.<sup>151</sup> Some parents alleged the school did not adequately consider their child's problems and emotional challenges, such as family difficulties or alleged bullying by another student, in their decision-making.<sup>152</sup> The motivation to appeal was sometimes rooted in the belief that the support services failed their child and that the school failed to recognise and make adequate provision for their child's SEN. A belief that their child was no longer wanted in the school and that the school was using the expulsion as a 'back door' to remove them motivated some parents to appeal. Some parents felt that schools were predisposed to believe the parents were responsible for the student's behaviour,<sup>153</sup> rather than the school accepting any responsibility.<sup>154</sup> The motivation for some parents hinged on the wish to hold the school accountable for its actions and have the expulsion removed from their child's school record.<sup>155</sup> Some of the reasons for appealing do not fit with the rationale for the appeal process and may point to a misunderstanding of its purpose and range of possible outcomes.<sup>156</sup> In England, the Independent Review Panel (IRP) has the sole task of checking that the headteacher's decision to expel and the governing body's acceptance of that decision was lawful. The review is not concerned with the decision's merits; its only focus is on how it was reached. This means that the IRP does not assess the fairness or appropriateness of the decision but rather ensures that the correct procedures were followed in reaching the decision.

Parents sometimes change their position during the appeal hearing and accept that reinstatement would not be in their child's best interest. For example, they may

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<sup>150</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1307.

<sup>151</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1301.

<sup>152</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 136.

<sup>153</sup> Note. Research conducted in England confirms the tendency for schools to blame the parents for the student's misbehaviour, with parents being perceived as incompetent (Gazeley, 2012).

<sup>154</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1301.

<sup>155</sup> Claire Wolstenholme, Michael Coldwell & Bernadette Stiell, '*Independent Review Panel and First-tier Tribunal Exclusion Appeals Systems*.' (2014). Department for Education, p. 51.

<sup>156</sup> Lucinda Ferguson & Naomi Webber, '*School Exclusion and the Law: A Literature Review and Scoping Survey of Practice*.' (2015), p. 35.

conclude that the school had little interest in meeting their child's needs or that the home-school relationship had deteriorated beyond repair.<sup>157</sup>

### 3.4.2. DIGNITY AT STAKE: PARENTS' EXPERIENCE OF APPEAL HEARINGS.

Parents involved in school expulsions do not constitute a homogeneous group; there are variations in the specific circumstances surrounding their child's expulsion, their educational background, social capital, and their degree of engagement with the expulsion process.<sup>158</sup> They may come to the appeal with a history of involvement with education services, and some parents may have been expelled themselves.<sup>159</sup> In England, the voice of the school appears to speak louder and with more perceived authority at appeal hearings than that of parents.<sup>160</sup> Some parents felt the process was inequitable, with a bias towards schools.<sup>161</sup> Harris et al. concur and report that in nearly fifty appeal hearings observed, they found bias in the appeal outcome. Some cases were marked by a degree of unconscious bias in the school's favour by the manner in which the panel addressed the evidence and reached its determination.<sup>162</sup>

There is often a significant difference in social class between professionals engaged in the expulsion process, such as the appeal panel members who occupy the same social and cultural spaces and have a shared understanding of how a school should function and how a young person should behave therein. Social class has been found to shape parent-professional interaction within the school exclusion process.<sup>163</sup> Parents see themselves as outsiders and perceive the appeal panel as insiders representing the

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<sup>157</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1297.

<sup>158</sup> Louise Gazeley, 'The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?' (2012) 16. *International Journal of Inclusive Education* 297, p. 301.

<sup>159</sup> Sheila Macrae, Meg Maguire & Linda Milbourne, 'Social exclusion: exclusion from school' (2003) 7. *International Journal of Inclusive Education* 89, p. 92.

<sup>160</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1304.

<sup>161</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1301.

<sup>162</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 165.

<sup>163</sup> Louise Gazeley, 'The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?' (2012) 16. *International Journal of Inclusive Education* 297, p. 308.

powerful and the status quo.<sup>164</sup> In support of this assertion, it has been argued that IRP hearings present a distinctly uneven playing field slanted in the school's favour due to participants' differing levels and types of cultural and social capital.<sup>165</sup> The tendency to associate the student's behaviour with the parent promotes the perception that the quality of parenting of those involved in these processes remains a strong focus, and judgements are made that are sometimes underpinned by assumptions that are both classed and gendered.<sup>166</sup>

While the appeal involves a review of the decision-making process followed by the school in deciding to expel, the exact focus appears to vary across oral hearings.<sup>167</sup> Should a review panel feel it necessary to review the student's behaviour, which led to the expulsion, some parents would find this challenging as it involves revisiting their child's regression; similarly, the expelled student may find the review distressing.<sup>168</sup> Parents' lack of understanding of the customs and practices in schools and the details of school processes is a significant factor impacting the power dynamic during expulsion proceedings. Parents may be challenged by the social class shape of the parent-professional interaction within hearings; this may affect the outcome and, ultimately, the parents' experience of the process. Parents and students should be forewarned that the behaviour that led to expulsion may be re-examined at an oral hearing. The lack of attention afforded to the impact of social class on parent-professional interaction in school expulsion processes permits intergenerational educational disadvantage to be perpetuated.<sup>169</sup>

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<sup>164</sup> Mary Gilbride, 'The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education.' (2013), p. 123. (Doctoral thesis, Maynooth University).

<sup>165</sup> Christy Kulz, 'Mapping the Exclusion Process: Inequality, Justice, and the Business of Education.' (2015). In Communities Empowerment Network, p. 72.

<sup>166</sup> Louise Gazeley, 'The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?' (2012) 16. *International Journal of Inclusive Education* 297, p. 298.

<sup>167</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1302.

<sup>168</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1302.

<sup>169</sup> Louise Gazeley, 'The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?' (2012) 16. *International Journal of Inclusive Education* 297, p. 298.

A minority of parents entering the appeal process in England were confident the hearing would be conducted fairly. The primary reason for the mistrust appeared to have been ‘the way the school dealt with their case before reaching the appeal stage, coupled with parents’ apparent failure to perceive the appeal stage as independent.’<sup>170</sup> The manner in which the hearing was conducted commonly led parents to believe the panel had pre-judged the case; therefore, their view would not impact the determination.<sup>171</sup> In line with the appeals’ success/failure rate, some eighty-two percent retained their pessimism post-hearing, while successful appellants regarded the hearing as fair. Harris et al. report that parents felt out of their depth during the hearing; they sometimes had difficulty understanding what was said and trouble keeping up with the pace of proceedings. Some parents reported feeling outnumbered, intimidated, or nervous. Some felt frustrated, angry, and unable to concentrate. A minority of parents reported feeling calm and confident.<sup>172</sup> In the absence of clarity on what the panel will focus on, proceedings would benefit from prehearing negotiations to develop a mutual understanding of the clear focus and remit of the appeal.<sup>173</sup> Predictably, those who expressed the most satisfaction with the process were the parents in cases where the panel directed the school to reconsider the decision; in such cases, panel members were described as sympathetic and professional.<sup>174</sup>

### 3.4.3. THE PHYSICAL AND FINANCIAL COST OF EXPULSION APPEALS

When parents act as advocates and mount an appeal, it impacts ‘the social, emotional and financial wellbeing of the family’.<sup>175</sup> The costs of undertaking an appeal are considerable; it may involve hours of preparation for the oral hearing, learning to negotiate the system, loss of time from work, the financial expense of engaging legal

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<sup>170</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 160.

<sup>171</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 164.

<sup>172</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, pp. 160-161.

<sup>173</sup> Nick Hodge & Claire Wolstenholme, ‘I didn’t stand a chance: how parents experience the exclusions appeal tribunal’ (2016) 20. *International Journal of Inclusive Education* 1297, p. 1302.

<sup>174</sup> Nick Hodge & Claire Wolstenholme, ‘I didn’t stand a chance: how parents experience the exclusions appeal tribunal’ (2016) 20. *International Journal of Inclusive Education* 1297, p. 1306.

<sup>175</sup> Katherine Runswick-Cole, ‘The Tribunal was the most stressful thing: more stressful than my son’s diagnosis or behaviour: the experiences of families who go to the Special Educational Needs and Disability Tribunal (SENDIST)’ (2007) 22. *Disability & Society* 315, p. 327.

advisors, and expenses associated with attending the hearing.<sup>176</sup> Generally, it is mothers who act as advocates for the expelled child. Mothers shoulder the greatest burden while managing a young person at home who may be as challenging at home as at school.<sup>177</sup> Conducting expulsion appeal hearings in a relatively informal manner minimises stress and anxiety and promotes fairness by permitting parents to present their cases most effectively.<sup>178</sup>

### 3.5. THE VOICE OF MARGINALISED PARENTS IN EDUCATION

Following public consultation, the Green Paper on Education was published in 1992, outlining the government's policy and charted a course for the future development of education in Ireland. Recognising parents as the primary educators of their children,<sup>179</sup> and the potential for parents to play a critical role in the management of schools, the paper proposed that parent representatives be included in the school BOM to ensure that they had direct involvement in decision-making in schools.<sup>180</sup> Consultation with parents was promoted generally, including developing the behaviour and disciplinary policies. It was recommended that all parents should have a close relationship with their children's school to support their children's learning. The proposals were subsequently given effect by the enactment of the Act of 1998, which gave formal recognition to the voice of parents. In the context of this thesis, 'parents' voice' refers to how parents frame and communicate their opinions to a school and how they become involved with the institution. Parents' rights in Ireland are represented entirely in terms of individual parents' rights. Their views are often obtained as an aggregate.

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<sup>176</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1307.

<sup>177</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1303.

<sup>178</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 151.

<sup>179</sup> Note. The Constitution of Ireland Art. 42.1 Recognises that the primary and natural educator of the child is the Family and guarantees to respect the inalienable right and duty of parents in this regard.

<sup>180</sup> Department of Education. *Education for a Changing World: Green Paper on Education* (Dublin: Stationery Office) 1992, p. 155.

### 3.5.1. STRATEGIES OF ENGAGEMENT BY PARENTS

The strategies engaged by parents in their endeavours to communicate with schools and to advocate on behalf of their children are grounded in broader notions of what it means to be a good and responsible parent.<sup>181</sup> Linguistic exchanges can express relations of power with variations in accents, intonation, and vocabulary, revealing different positions in the social pecking order; words spoken in certain circumstances have a force and a conviction they would not have elsewhere.<sup>182</sup> From a Bourdieusian standpoint, language is an essential component of the concept of habitus. The linguistic habitus embodies the cultural predisposition to speak in a particular manner, a specific linguistic competence, that is, the competence to speak properly and the social capacity to use this competency appropriately. Defining the language of the middle and upper class as linguistic capital, an elaborate code, Bourdieu asserts that the ‘linguistic norm’ of middle-class communities and schools is that against which all other ‘linguistic practices are objectively measured’. He describes linguistic capital as a form of symbolic capital that signifies both wealth and authority.<sup>183</sup> By considering some of the typical speech practices of individuals from different class backgrounds when they find themselves in formal or official encounters, Bourdieu determined that people from upper-class backgrounds are endowed with a linguistic habitus which enables them to respond with relative ease to the demands of the most formal or official occasion. He explains that low cultural capital (and the related low inclination to increase cultural capital through education) condemns students from lower socio-economic class groups to negative school sanctions; those who are unable to adapt to the language of schools are generally those who schools most frequently sanction.<sup>184</sup>

Acknowledging that there are circumstances in which students from lower socio-economic class groups can speak fluently and confidently, Thompson points to the congruence between the linguistic habitus of the upper classes and the demands of

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<sup>181</sup> Sue Saltmarsh & Amy McPherson, ‘Un/satisfactory encounters: communication, conflict, and parent-school engagement’ (2022) 63. *Critical Studies in Education* 147, p. 158.

<sup>182</sup> John B. Thompson, Editor’s Introduction. In Pierre Bourdieu (Ed.), *Language and Symbolic Power* (pp. 1-31). (Cambridge: Polity Press) 1991, p. 1.

<sup>183</sup> Pierre Bourdieu, *Language and Symbolic Power*. (Cambridge: Polity Press) 1991, pp. 45-46

<sup>184</sup> Pierre Bourdieu, *Language and Symbolic Power*. (Cambridge: Polity Press) 1991, p. 62.

formal settings, which leads to confidence and fluency in speech and attests to the fact that the conditions in which they are speaking concur pretty closely with the conditions which endowed them with the capacity to speak and hence reap symbolic benefits by speaking in a way natural to them. Lower-class students must generally try to adapt their linguistic style to the demands of formal settings. As a result, tension and anxiety often accompany their speech, and they tend to correct expressions so that they concur with the dominant norms; alternatively, this may lead to hesitation, resulting in silence in official settings,<sup>185</sup> such as meetings with the school principal or senior staff, BOM or EWO. In the Irish context, pupils are positioned by schools differently according to the way they speak.<sup>186</sup> For many lower socio-economic class children, a high level of politeness and formality in pupil/teacher interactions requires them to be proficient in a language register that is not valued by their peers or valuable in non-school space interactions.<sup>187</sup>

Bourdieu also highlights the problematic manner in which linguistic capital functions symbolically within school space, the distribution of which he contends is one of the most unequal of all distributions and results in significant prestige for those who can successfully use it. Bourdieu concludes that, for those who fail in this field, ‘there is no worse dispossession, no worse privation, perhaps, than that of losers in the symbolic struggle for recognition’.<sup>188</sup> The contention that the lack of recognition of certain groups of children by schools results in the continuing reproduction pattern of educational inequality has been challenged.<sup>189</sup> The relative lack of cultural capital makes it difficult for lower-class parents to succeed in communicating effectively with schools. Within the contemporary debate, parents’ voices of educationally disadvantaged students are unheard.<sup>190</sup>

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<sup>185</sup> John B. Thompson, Editor’s Introduction. In Pierre Bourdieu (Ed.), *Language and Symbolic Power* (pp. 1-31). (Cambridge: Polity Press) 1991, pp. 21-22.

<sup>186</sup> Gerry MacRuaric, ‘Big mad words’ – schools, social class and children’s perceptions of language variation. In Jim Deegan, Dymphna Devine & Anne Lodge, (Eds.), *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* (pp. 144-163). (Dublin: Institute of Public Administration) 2004, p. 160.

<sup>187</sup> Gerry MacRuaric, ‘Where words collide: social class, schools, and linguistic discontinuity’ (2011) 32. *British Journal of Sociology of Education* 541, p. 551.

<sup>188</sup> Pierre Bourdieu, *Pascalian Meditations*. (California: Stanford University Press) 2000, p. 241.

<sup>189</sup> Gerry MacRuaric, ‘Where words collide: social class, schools, and linguistic discontinuity’ (2011) 32. *British Journal of Sociology of Education* 541, p. 558.

<sup>190</sup> Joan Hanafin & Anne Lynch, ‘Peripheral voices: Parental involvement, social class, and educational disadvantage’ (2002) 23. *British Journal of Sociology of Education* 35, p. 36.

### 3.5.2. JUSTIFICATION FOR PARENTS' VOICE

Apart from the obvious, right-based argument that every decision-making process should take account of the opinions of those affected by a decision, there is an extensive literature base supporting the contention that parental involvement enhances student educational achievement. Parental involvement leads to students receiving more individual help and learning more effectively.<sup>191</sup> However, parental involvement in education is structured by social, economic, and cultural mechanisms.<sup>192</sup> Involvement in school was regarded as unsatisfactory by some parents. Boards of Management, representative committees, home-school links initiatives, general meetings, parent/teacher meetings and casual visits to school were all criticised by working-class parents.<sup>193</sup> The concept of the marketplace now embodied within education endorses the notion of parents 'acting in their child's best interests, a desire that is encouraged and legitimised through the promotion of values of the market, choice and individualism in education.'<sup>194</sup> Educational policy, aimed at combating educational disadvantage, would benefit from the inclusion of the voice of marginalised parents and avoid the 'piecemeal liberal approach' emanating from debate among homogeneous groups of middle-class academics and professionals.<sup>195</sup> These more powerful groups, who possess the most beneficial cultural, social, and economic capital, exert a disproportionate influence on education policy.<sup>196</sup> Middle-class parents exploit their knowledge of the education system, their skills, and

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<sup>191</sup> William H. Jeynes, 'A meta-analysis: The relationship between the parental expectations component of parental involvement with students' academic achievement' (2024) 59. *Urban Education* 63.

<sup>192</sup> Ross Goldstone, William Baker & Katherin Barg, 'A comparative perspective on social class inequalities in parental involvement in education: structural dynamics, institutional design, and cultural factors' (2023) 75. *Educational Review* 976, p. 988.

<sup>193</sup> Joan Hanafin & Anne Lynch, 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35, p. 46.

<sup>194</sup> Andrew Wilkins, 'Citizens and/or consumers: mutations in the construction of concepts and practices of school choice' (2010) 25. *Journal of Education Policy* 171, p. 186.

<sup>195</sup> Joan Hanafin & Anne Lynch, 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35, p. 47.

<sup>196</sup> Mary Gilbride, 'The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education.' (2013), p. 10. (Doctoral thesis, Maynooth University).

positional advantage in pursuing their self-serving interests and advantage for their children.<sup>197</sup>

### 3.5.3. EDUCATIONAL DISADVANTAGE AND PERIPHERAL PARENTS

The emphasis on understanding educational disadvantage and failure has shifted from a focus on the student's social and cultural background to the schooling process. Nevertheless, levels of parental engagement vary considerably, depending on the parents and the context in which they engage with the school. Parental involvement in schools is not explicitly classed, yet there are two distinct strands with two distinct rationales.<sup>198</sup> One is directed at working-class parents and comprises interventions such as home-school community links<sup>199</sup> and early school-leaving interventions.<sup>200</sup> Here, the rationale derives from a cultural deficit model of explaining educational failure. Explicitly 'classed', such initiatives seek to involve parents perceived to be on the periphery.<sup>201</sup> The second strand of involvement aims to include all parents in activities such as membership in parents' representative bodies, school BOM and parent councils. Middle-class parents are most involved in these activities; they are most visible, 'proximal to schools.'<sup>202</sup> Schools are generally managed and controlled by middle-class and upper-middle-class people (trustees, BOM, teachers, and professionals from local authorities) entrusted with the school's continued existence.<sup>203</sup> Although school governance is provided under legislation, school owners, trustees, and teacher representatives are effectively awarded control of the

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<sup>197</sup> Stephen J. Ball & Carol Vincent, 'New class relations in education: the strategies of the "fearful" middle classes.' In Jack Demaine (Ed.), *Sociology of Education Today* (pp. 180-194). (Hampshire: Palgrave Publishing) 2001.

<sup>198</sup> Joan Hanafin & Anne Lynch, 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35, p. 35.

<sup>199</sup> See. The Home School Community Liaison scheme. Available at. <https://www.tusla.ie/tess/information-for-parents-and-guardians-tess/home-school-liaison-community-liaison/>

<sup>200</sup> See. School Completion Programme. Available at. <https://www.tusla.ie/services/educational-welfare-services/scp/>

<sup>201</sup> Joan Hanafin & Anne Lynch, 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35, p. 35.

<sup>202</sup> Joan Hanafin & Anne Lynch, 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35, p. 36.

<sup>203</sup> Kathleen Lynch & Marie Moran, 'Markets, Schools, and the Convertibility of Economic Capital: The Complex Dynamics of Class Choice' (2006) 27. *British Journal of Sociology of Education* 27, p. 226.

schools.<sup>204</sup> Failure of lower-class parents to participate in the schooling process lies with the structures and practices of the school system as it operates, at least in the working-class areas.<sup>205</sup> The contention that the poor educational performance of children of working-class parents is linked to a lack of parental interest in education has been rejected.<sup>206</sup> The core message of lower-class parents in Ireland regarding their children's early school leaving was that while they valued education and wanted to see their children progress, they were significantly constrained by what they perceived as an unsupportive and discriminatory education system and the need to prioritise surviving everyday life in their challenging world over education.<sup>207</sup> Parents of pupils in primary schools in disadvantaged areas in Ireland felt that parent councils were token bodies, that their roles on committees and BOM lacked executive power and that, for the most part, they were required merely to 'rubber-stamp' decisions already made by school authorities.<sup>208</sup>

Those involved in parent forums in England were described as an elite group, generally white, middle-class women, with few connections to the wider parent body.<sup>209</sup> The relative 'impermeability' of schools to most parents' voices has been advanced as the reason for the limited role played by parent forums and the obstacles faced by parents seeking to submit any controversial views.<sup>210</sup> The school's agenda generally takes precedence over that of parents, and parents seldom challenge that arrangement.

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<sup>204</sup> Note. The Education Act 1998, s. 14(1) provides for the establishment of a BOM (where practicable). While the numerical composition of BOM members will vary according to school type (ETB-managed schools, up to twelve members; C&C schools, ten members; Voluntary Secondary Schools, eight members), the number of parent representatives is two.

<sup>205</sup> Joan Hanafin & Anne Lynch, 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35, p. 46.

<sup>206</sup> Joan Hanafin & Anne Lynch, 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35, p. 36.

<sup>207</sup> Gavin Doyle & Elaine Keane, 'Education comes second to surviving': parental perspectives on their children's early school leaving in an area challenged by marginalisation' (2019) 38. *Irish Educational Studies* 71, p. 82.

<sup>208</sup> Joan Hanafin & Anne Lynch, 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35, p. 46.

<sup>209</sup> Carol Vincent & Jane Martin, 'School-based parents' groups - a politics of voice and representation?' (2000) 15. *Journal of Education Policy* 459, pp. 474-475.

<sup>210</sup> Carol Vincent & Jane Martin, 'School-based parents' groups - a politics of voice and representation?' (2000) 15. *Journal of Education Policy* 459, p. 475.

### 3.6. CONCLUSION

The adverse consequences of school expulsion are severe for those who do not have the resources to mitigate them. Expulsion is associated with a wide range of social problems; it can limit educational opportunities or undermine a young person's ability to exercise their right to education. The distribution of social capital among decision-makers in the expulsion process is often uneven. This risks contamination of decision-making through unintentional bias influencing decisions and the risk of failure to meet the required standard of fairness. Bourdieu's outline of the utility value of various forms of capital and their impact on the power structure provides a valuable tool to explore the assumptions and tensions operational at the practice level. His explanation of how advantages and disadvantages are passed down from parents to children and how cultural contexts mediate such processes is helpful in understanding why students from lower socio-economic class families are more vulnerable to expulsion.

Research findings in England indicate that some parents do not fully understand the remit of the appeal mechanism. This underscores the critical need for information, support, and advocacy for parents, particularly those who may be poor or inarticulate, to ensure a fair and equitable process. It is essential that these parents receive the necessary support to ensure that all parents who appeal do so on an equal basis and to mitigate the risk of practices and judgments that fail to meet expected standards of fairness. In addition, parental experience of the appeal process in England points to the need for additional training of appeal reviewers to ensure oral hearings are conducted in the absence of bias. This would assist in alleviating the cost in human terms of mounting an appeal. Given the seriousness of the consequences of expulsion for the student, their family and society, the necessity to develop detailed statutory-based guidelines for decision-makers and parents is evident.

The compliant majority, hardworking and committed students, should be free to pursue their studies unhindered in the absence of persistent classroom disruption. However, it is clear that through expulsion, schools contribute to the reproduction of inequality and contribute to a range of social problems that will likely emerge and require state intervention and resources. Notwithstanding the short and mid-term risks, expulsion removes (for those who fail to find an alternative school) the primary route through

which students from lower socio-economic class families may enhance their life prospects.

Schools are understandably concerned with maintaining a good public image to ensure their survival. It is also acknowledged that teachers often operate in a complex, challenging social environment. Nevertheless, schools must be held accountable for their actions. The absence of detailed data relating to all aspects and forms of expulsion undermines accountability systems and weakens efforts to safeguard students. This thesis calls for a robust data collection system to ensure policymakers have access to reliable data on which to develop policy.

Linguistic exchanges can express relations of power. There is little evidence that the voice of parents is awarded due standing in the field of education. The chapter argues in favour of enhancing the standing of the parents' voices in recognition of their status as the primary educators of their children. The contention that expulsion contributes little to its often-stated goal of improving student behaviour or school safety can draw support from the enduring principal causes of expulsion. Despite significant numbers of student expulsions, persistent breaches of the school code of behaviour have remained the primary cause of expulsion over the last four decades. The question remains: Is expulsion acceptable in a modern democratic society, particularly when considered in the context of a state-funded school system and the broad-ranging commitments offered in wordily wholesome school mission statements?

The following chapter describes the methodologies engaged to access the opinions and lived experiences of decision-makers involved in school expulsion and expulsion appeals.

## CHAPTER 4. RESEARCH METHODOLOGY

### 4.1. INTRODUCTION

This research aims to describe, analyse, and gain an understanding of school expulsion and the law in Ireland. The chapter describes the methodologies adopted to address the research questions. The research questions that have guided the study.

- i. What is the current legal framework for school expulsion in Ireland?
- ii. Are school BOMs adequately equipped to engage in the school expulsion process as provided for in law?
- iii. Are Section 29 appeals conducted with due regard to the principle of natural justice and informed by the children's rights agenda?
- iv. How adequate is the legislative provision in supporting parents to vindicate their duty/right to have their children educated?

The chapter is divided into six sections, each outlining a particular aspect of the methodology. The first section discusses the theoretical framework for the study. Section two considers the concepts of positionality and reflexivity, which are of significance in the context of this study. The various elements of the strategies of inquiry and the reasoning for employing these strategies are discussed in section three. In addition, it outlines the rationale for adopting an interdisciplinary socio-legal mixed-method approach, citing the potential to access rich data and a deep understanding of the complexities of school expulsion. The fourth section focuses on empirical data collection and analysis methods used. Section five addresses ethical standards relating to socio-legal research. Issues relating to the generalisation of qualitative research findings and the limitations of the research study are discussed in section six.

A Bourdieusian approach partially frames the study. On various occasions, it has been stated that Bourdieu's theory of practice is essentially a theory of research practice.<sup>1</sup> His work on cultural, social, and linguistic capital has formed the overarching theoretical framework for this research. While the study has engaged a reflexive perspective, this is not to renounce objectivity but rather to embrace subjectivism and

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<sup>1</sup> Michael James Grenfell, *Pierre Bourdieu: key concepts*. (London: Routledge Publication) 2014, p.213.

objectivism at appropriate junctures while being self-aware that the researcher can employ their thoughts and feelings in their practice.<sup>2</sup>

The research methodology is a mixed-methods interdisciplinary socio-legal study. As an interdisciplinary socio-legal project, this research calls upon the disciplines of law, education, and sociology. The research strategy embraces a mixed-methods approach, presented in four phases:

Phase 1 Doctrinal analysis of the law relating to school expulsion.

Phase 2 Review of social science literature relevant to school expulsion.

Phase 3 Empirical research utilising semi-structured interviews to capture the lived experience of decision-makers interacting with the legal framework, parents, and expelled students.

Phase 4 Analysis of quantitative data relating to formal expulsions and s. 29 appeals.

Particular attention is afforded to analysing traditional doctrinal legal and empirical research as essential elements. The impact of the COVID-19 pandemic on the empirical aspect of the study is outlined. The chapter describes the populations from which interviewees were drawn and the selection methods adopted. It considers issues associated with the researcher as an insider. The theoretical basis of the data-collection process and the reasoning for adopting these methods are discussed. The chapter outlines the rationale for embracing the thematic analysis approach to analysing the interview data. The ethical issues that have been encountered during the research and the manner in which these issues were addressed are discussed. Finally, the chapter outlines the study's limitations and strategies adopted to address them.

#### **4.2. RESEARCH THEORETICAL FRAMEWORK**

Bourdieu's key concepts are engaged to practical effect in this research. This thesis undertakes an objective study of the law relating to expulsion, together with a subjective examination of the law in practice as presented by interviewees. Bourdieu offers strong support for this approach. He seeks to break with the salient traditions conceptualised in terms of the subjectivist and objectivist approaches, which he saw

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<sup>2</sup> Pierre Bourdieu & Loïc Wacquant, *An Invitation to Reflexive Sociology*. (Chicago: University of Chicago Press) 1992.

as the standard approach to studies in the social sciences. He highlights the necessity to bypass the mutual antagonism between subjectivism and objectivism, arguing that both are essential, as both offer only one side of an epistemology necessary to understand the social world.<sup>3</sup> He holds that to focus on either overlooks the significance of the other and constitutes a particular (skewed) interpretation of the social world.<sup>4</sup> Bourdieu describes the 'opposition' between subjectivism and objectivism as artificially dividing the social sciences, which he describes as being 'the most fundamental and the most ruinous'.<sup>5</sup> He claims the world cannot be condensed to phenomenology or social physics; both must be engaged in order to constitute an authentic theory of practice. Bourdieu developed his theory of practice to account for what he saw as an 'ontological complicity' between objective structures (for example, law) and the internalised structures, which comprise a system of dispositions which generate individuals' perceptions, appreciations and practices.<sup>6</sup> While phenomenology examines the conscious experience as experienced from the subjective point of view, it cannot go beyond describing what specifically characterises the 'lived' experience of the social world, the world as self-evident, 'taken for granted'.<sup>7</sup> This is because it excludes the link between objective structures and the internalised structures of the individual participant. Legal theorists consider their discipline an objective endeavour in line with other fields of science. Objective scientists seek to eliminate personal biases, prior commitments, and emotional involvement. Claims of the objectivity of legal doctrine and even objectivity of jurisprudence are common. Grosswald Curran puts forward an example of this kind of reasoning:<sup>8</sup>

To the extent that we associate law with science, we may hold and convey the hope that objectivity resides in law. Objectivity implies impartiality, and impartiality suggests a lack of arbitrariness, fairness, and justice. ... what can justify law if the law is not objectively and scientifically, verifiably justifiable?

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<sup>3</sup> Pierre Bourdieu, *The logic of practice*. (California: Stanford University Press) 1990a, p. 25.

<sup>4</sup> Michael James Grenfell, *Pierre Bourdieu: key concepts*. (London: Routledge Publication) 2014, p.44.

<sup>5</sup> Pierre Bourdieu, *The logic of practice*. (California: Stanford University Press) 1990a, p. 25.

<sup>6</sup> Pierre Bourdieu, *The logic of practice*. (California: Stanford University Press) 1990a, p. 53.

<sup>7</sup> Pierre Bourdieu, *The logic of practice*. (California: Stanford University Press) 1990a, p. 25.

<sup>8</sup> Grosswald Curran, V. (2002). *Comparative Law An Introduction*. Durham, North Carolina: Carolina Academic Press.

Nevertheless, absolutism in phenomenology and positivism (objectivity) have evolved, and there is now a degree of mutual recognition on both sides. Phenomenologists accept the existence of ‘social facts’ such as the body of laws, and many positivists accept that subjectivity plays a role in legal situations.

Objectivity means having no subjective feelings in favour (or to the disadvantage) of one of the parties.<sup>9</sup> Mindful of the requirement to maintain an objective stance throughout the research process, the researcher has paid attention to and embraced the concepts of positionality and reflexivity as an aid to maintaining objectivity.

#### 4.3. POSITIONALITY AND REFLEXIVITY

Positionality is regarded as integral to the qualitative research process.<sup>10</sup> It refers to the position of the researcher within the research.<sup>11</sup> The term ‘insider’ is acknowledged as an accurate reflection of the researcher's position here.<sup>12</sup> Although now retired, the researcher has forty years of teaching experience and remains a registered teacher with the Teaching Council post-retirement. The doctrinal analysis and the empirical components of the study were conducted while the researcher was employed in a full-time teaching capacity. The final analytical work and the writing-up were completed following the researcher's retirement. Having served on multiple school BOMs, the researcher continued in this governance role throughout the duration of the study. This positioning provided the researcher with ongoing, direct engagement with school expulsion.

Paying attention to how positionality assisted and constrained the cogeneration of knowledge aided the researcher in making each research interaction more effective.<sup>13</sup> Positionality is reflexive in nature. Reflexivity is a necessary component of ethical

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<sup>9</sup> Mark Van Hoecke, Objectivity in Law and Jurisprudence. In Jaakko Husa, Mark Van Hoecke (Eds.), *Objectivity in law and legal reasoning* (pp. 3-20). (London: Hart Publishing) 2013, p. 6.

<sup>10</sup> Andrew Gary Darwin Holmes, ‘Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide’ (2020) 8. *Shanlax International Journal of Education*, 1, p. 8.

<sup>11</sup> Maggi Savin-Baden & Claire Howell Major, *Qualitative research: The essential guide to theory and practice*. (London: Routledge Publications) 2013.

<sup>12</sup> Andrew Gary Darwin Holmes, ‘Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide’ (2020) 8. *Shanlax International Journal of Education*, 1, p 5.

<sup>13</sup> Jessica Soedirgo & Aarie Glas, ‘Toward active reflexivity: Positionality and practice in the production of knowledge’ (2020) 53. *PS: Political Science & Politics* 527, p. 258.

research.<sup>14</sup> It is a form of critical thinking that involves questioning what is considered to be valid and valuable research.<sup>15</sup> Reflexivity is also concerned with questioning relationships within the research context and developing an awareness of the relational power dynamics that shape strategies for obtaining informed consent and the research data. In addition, it involves addressing the issues of identity and positionality by explicitly stating the researcher's assumptions and finding strategies for questioning them.<sup>16</sup> Given that researchers focus their research on a myriad of factors and that positionality influences how research is conducted, its outcomes, and results, omitting the researcher's positionality would deprive the reader of the opportunity to determine how important these factors might be.<sup>17</sup> Positionality and reflexivity are acknowledged as concepts of ethical importance, which also assist in maintaining objectivity. The concepts are addressed throughout this thesis.

#### 4.4. STRATEGY OF INQUIRY - RESEARCH DESIGN

The mixed methods design employed here utilises a multilayered approach that incorporates doctrinal legal analysis, empirical data, and quantitative data.

- a. The doctrinal analysis relates to a statutory provision, the deliberations of the higher courts, and academic publications in pursuit of establishing the objective reality of the law on school expulsion.
- b. The qualitative empirical data was accessed through forty-four semi-structured interviews conducted with ten discrete groups, as shown in Figure 10.
- c. Quantitative data relating to the rate of formal post-primary school expulsions, s. 29 appeals and the outcome of such appeals was accessed to reflect the degree of protection afforded to rights bearers.

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<sup>14</sup> Lee Ann Fujii, *Interviewing in social science research: A relational approach*. (New York: Routledge) 2017, p. 23.

<sup>15</sup> Sandra Corlett & Sharon Mavin, Reflexivity and researcher positionality. In Catherine Cassell, Ann L Cunliffe, Gina Grandy (Ed.), *The SAGE handbook of qualitative business and management research methods: History and traditions* (pp. 377-398). (London: Sage Publications) 2021, p. 379.

<sup>16</sup> Lisa Lazard & Jean McAvoy, 'Doing reflexivity in psychological research – What's the point? What's the practice?' (2017) 17. *Qualitative Research in Psychology* 159, p. 160.

<sup>17</sup> Caitlin Wilson, Gillian Janes & Julia Williams, 'Identity, positionality and reflexivity: relevance and application to research paramedics' (2022) 7. *British Paramedic Journal* 43, p. 44.

Chart of Participant Groups

| Interviewee                            | No of Interviews | Gender Breakdown |
|----------------------------------------|------------------|------------------|
| Chairperson DOE s. 29 Appeal Committee | 6 Interviewees   | M/F 5/1          |
| Chairperson ETB s. 29 Appeal Committee | 4 Interviewees   | M/F 3/1          |
| Chairperson C&C School BOM             | 3 Interviewees   | M/F 3/0          |
| Chairperson ETB School BOM             | 6 Interviewees   | M/F 4/2          |
| Chairperson VSS School BOM             | 6 Interviewees   | M/F 5/1          |
| Educational Welfare Officer (EWO)      | 6 Interviewees   | M/F 2/4          |
| ETB Director of Schools (DOS)          | 3 Interviewees   | M/F 0/3          |
| Informally Expelled Student            | 4 Interviewees   | M/F 3/1          |
| Parents (Formally Expelled Student)    | 3 Interviewees   | M/F 1/2          |
| Parents (Informally Expelled Student)  | 3 Interviewees   | M/F 0/3          |
| Total Number of Interviews Conducted   | 44 Interviewees  | M/F 27/17        |

Figure 10.

#### 4.4.1. MIXED METHODS RESEARCH

It has been argued that a mixed method approach, which combines doctrinal and non-doctrinal analysis, can be employed to understand the law better.<sup>18</sup> A mixed-methods research approach was employed here in two facets. Regarding the empirical element of this study, the mixed-methods approach involved collecting both qualitative and quantitative data and drawing conclusions about the insight that emerged from the combined data.<sup>19</sup> Quantitative data relating to the rate of formal expulsion and s. 29 appeals were accessed to provide a fuller account of school expulsion in Ireland.

Mixed methods strengthen the research findings and enhance the understanding of the phenomenon under consideration, thereby enhancing the validity of the research.<sup>20</sup>

<sup>18</sup> Rita Abhavan Ngwoke, Ibiene P. Mbano & Helynn Oriaifo, 'A critical appraisal of doctrinal and Non-doctrinal legal research methodologies in contemporary times' (2023) 3. *International Journal of Civil Law and Legal Research* 8, p. 8.

<sup>19</sup> John W. Creswell & J. David Creswell, *Research design: Qualitative, quantitative, and mixed methods approaches*. (London: Sage Publications) 2023, p. 5.

<sup>20</sup> Alysia Blackham, 'When law and data collide: the methodological challenge of conducting mixed methods research in law' (2022) 49. *Journal of Law and Society* 87, 87-104

This approach can provide a more comprehensive and nuanced understanding when multiple perspectives and methods are employed.<sup>21</sup> It supports the principle of ‘syncretism’, which involves attempting to reconcile opposing principles and viewpoints to answer research questions.<sup>22</sup> Despite its growth and development, a number of controversial issues have limited its widespread acceptance.<sup>23</sup> While rejecting the anything-goes assertion, it is accepted that this study's practical demands call for flexibility and adaptiveness in determining the best research approach.<sup>24</sup> Researchers should embrace pragmatism and employ the combination of methods and procedures that work best to answer particular research questions.<sup>25</sup> The paradigm of pragmatism is engaged as the philosophical underpinning for using mixed methods.<sup>26</sup>

#### 4.4.2. DOCTRINAL LEGAL RESEARCH

The traditional doctrinal scholarship, which focuses on the normative purpose of the law, has been the predominant legal research model in common law jurisdictions. Doctrinal or theoretical research, as undertaken here, asks what the formal law is in a specific area.<sup>27</sup> It involves close textual scrutiny and critical reasoning based on legislation, legal rules, and case law to illuminate ambiguities within rules, organise them logically and coherently, and explain their interrelationship.<sup>28</sup> The analysis may highlight multiple possible readings and contradictions in existing law. The focus is

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<sup>21</sup> Lok Raj Sharma, Sandesh Bidari, Dinesh Bidari, Sushil Neupane & Rambabu Sapkota, ‘Exploring the mixed methods research design: types, purposes, strengths, challenges, and criticisms’ (2023) 5. *Global Academic Journal of Linguistics and Literature*, 3, p. 10.

<sup>22</sup> Burke Johnson & Robert Gray, A history of philosophical and theoretical issues for mixed methods research. In Abbas Tashakkori & Charles Teddlie (Eds.), *Sage handbook of mixed methods in social and behavioural research* (2nd ed., pp. 69-94), 2010, p. 71.

<sup>23</sup> John W. Creswell, Controversies in mixed methods research. In Norman K. Denzin & Yvonna S. Lincoln (Eds.), *Strategies of qualitative inquiry* (pp. 101-134). (London: Sage Publications) 2013, p. 101.

<sup>24</sup> Jennifer C. Greene, Valerie J. Caracelli & Wendy F. Graham, ‘Toward a Conceptual Framework for Mixed-Method Evaluation Designs’ (1989) 11. *Educational Evaluation and Policy Analysis* 255, p. 257.

<sup>25</sup> Burke Johnson & Anthony J. Onwuegbuzie, ‘Mixed methods research: A research paradigm whose time has come’ (2004) 33. *Educational Research* 14, p. 17.

<sup>26</sup> Abbas Tashakkori & Charles Teddlie, *SAGE handbook of mixed methods in social & behavioral research*. (London: Sage Publications) 2010, p. 15.

<sup>27</sup> Ian Dobinson & Francis Johns, Legal Research as Qualitative Research. In Mike McConville & Wing Hong Chui (Eds.), *Research methods for law* (pp. 18-47). (Edinburgh: Edinburgh University Press) 2017.

<sup>28</sup> Paul Chynoweth, Legal Research. In Andrew Knight & Les Ruddock (Eds.), *Advanced Research Methods in the Built Environment* (pp. 28-37). (Oxford: Wiley/Blackwell) 2008, p. 29.

on making the law understandable and discovering what it is, not what it should be.<sup>29</sup> The doctrinal analysis will encompass analytical and normative arguments and will provide legal professionals and others with reliable, accessible information which should inform legal decision-making. It assists in the consistency of understanding and implementation of the law and provides quick answers to legal questions.<sup>30</sup> It is concerned with the internal effectiveness of a legal system, which refers to the consistency and coherence of the legal norms and definitions.<sup>31</sup> The doctrinal analysis assumes that the legal system is entirely or relatively autonomous and that the discipline represents a sufficiently independent field that can legitimately be explained by reference to its own sources.<sup>32</sup>

However, critics of the inward-looking nature of doctrinal research refer to the ‘claustrophobic world of legal scholarship’,<sup>33</sup> a perspective which it is claimed appears indifferent to questions concerning the consequences of law as a social phenomenon.<sup>34</sup> It has been criticised for being highly theoretical, technical, uncritical, and conservative.<sup>35</sup> There are questions regarding what represents appropriate sources of legal analysis and their relative weight. Questions have also been raised concerning its consideration of justice or policy analysis and the extent to which it can incorporate social science evidence on the effects of regulations.<sup>36</sup> It must be acknowledged that it helps predict how legal principles, concepts and doctrines will be interpreted. It has

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<sup>29</sup> Martin Dixon, ‘A Doctrinal Approach to Property Law Scholarship: Who Cares and Why?’ (2014) 3. *Property Law Review* 160.

<sup>30</sup> Rita Abhavan Ngwoke, Ibiene P. Mbanjo & Helynn Oriaifo, ‘A critical appraisal of doctrinal and Non-doctrinal legal research methodologies in contemporary times’ (2023) 3. *International Journal of Civil Law and Legal Research* 8, p. 10.

<sup>31</sup> Wendy Schrama, ‘How to carry out interdisciplinary legal research. Some experiences with an interdisciplinary research method’ (2011) 7. *Utrecht Law Review* 147, p. 148.

<sup>32</sup> Christopher McCrudden, ‘Legal Research and the Social Sciences’ (2006) 122. *Law Quarterly Review* 632, p. 635.

<sup>33</sup> Note. The term “claustrophobic world of legal scholarship” is used to explain the narrow and insular nature of legal scholarship, which can focus excessively on technical details and legal minutiae.

<sup>34</sup> Roger Cotterrell, ‘Subverting Orthodoxy. Making Law Central: A View of Sociolegal Studies’ (2002) 29. *Journal of Law and Society* 632, p. 633.

<sup>35</sup> Rita Abhavan Ngwoke, Ibiene P. Mbanjo & Helynn Oriaifo, ‘A critical appraisal of doctrinal and Non-doctrinal legal research methodologies in contemporary times’ (2023) 3. *International Journal of Civil Law and Legal Research* 8, p. 10.

<sup>36</sup> Christopher McCrudden, ‘Legal Research and the Social Sciences’ (2006) 122. *Law Quarterly Review* 632, p. 635.

been suggested that doctrinal analysis incorporates an element of subjectivity, given that it results from the individual analysis of the researcher.<sup>37</sup>

In adopting a subjective stance, a doctrinal researcher may import personal perceptions about the subject matter under consideration. Consequently, different researchers may reach an entirely different determination on the same question while conducting their analysis with rigour. Doctrinal research is without support from social evidence. Therefore, research projection may be far removed from social reality. This is a significant limitation, given that the law can act as an instrument of social transformation. Significantly, in the context of this study, doctrinal research fails to examine the actual practice of lower courts and administrative bodies with judicial and quasi-judicial functions, such as s. 29 committee hearings, due to poor reporting or restrictions on reporting. Doctrinal research neglects factors that lie outside the strict confines of law, which may have a bearing on the legal principle, theory, or doctrine.<sup>38</sup> For example, public outcry may be a significant extra-legal factor shaping the law. It has been argued that formal law is just one entry into the decision calculus of individuals responsible for applying it.<sup>39</sup> Doctrinal research may fail to encapsulate the actual practice and attitudes of people who implement the law on school expulsion. Nevertheless, doctrinal research remains an essential aspect of legal scholarship. It supports the foundation for developing legal theory and the practice of law. Crucially, it provides the foundation upon which socio-legal research is based.<sup>40</sup>

#### 4.4.3. INTERDISCIPLINARY SOCIO-LEGAL RESEARCH

Socio-legal research, as undertaken here, is an interdisciplinary approach to analyse the law and the relationship between the law and broader society. Combining doctrinal research with empirical research in law ensures that legal analysis makes a valuable contribution to knowledge generation. It portrays an accurate picture of the law in

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<sup>37</sup> Rita Abhavan Ngwoke, Ibiene P. Mbano & Helynn Oriaifo, 'A critical appraisal of doctrinal and Non-doctrinal legal research methodologies in contemporary times' (2023) 3. *International Journal of Civil Law and Legal Research* 8, p. 10.

<sup>38</sup> Ilene H. Nagel, 'The legal/extra-legal controversy: Judicial decisions in pretrial release' (1983) 17. *Law & Society Review* 481, p. 511.

<sup>39</sup> Ilene H. Nagel, 'The legal/extra-legal controversy: Judicial decisions in pretrial release' (1983) 17. *Law & Society Review* 481, p. 511.

<sup>40</sup> Rita Abhavan Ngwoke, Ibiene P. Mbano & Helynn Oriaifo, 'A critical appraisal of doctrinal and Non-doctrinal legal research methodologies in contemporary times' (2023) 3. *International Journal of Civil Law and Legal Research* 8, p. 14.

action. On the one hand, some doctrinalists deem interdisciplinary research amateurish, dabbling with theories and methods the researchers do not fully comprehend.<sup>41</sup> On the other hand, it has been argued that legal theory has long encompassed an open-ended licence to reach outside lawyers' immediate practical concerns with legal doctrine.<sup>42</sup> An interdisciplinary approach becomes essential since legal propositions have roots in economic, social, political, and psychological factors.<sup>43</sup> Accepting that there is frequently a 'gap' between actual social behaviour and the behaviour required by the law, it has been argued that identifying these 'gaps' is vital to enhance the law's potential as a vehicle for socio-economic justice.<sup>44</sup> It can determine the reasons behind the failure of law in the real world. It can also serve as a significant resource in the form of social feedback to policy framers, legislators, and the judiciary so that they can better enforce, legislate, and interpret the law. Therefore, engaging socio-legal research to examine the operational facets of law intended to bring socio-economic transformation in society is as important as doctrinal legal analysis, given the emphasis on the impact of law on people.<sup>45</sup> Empirical research serves to bring the law into reality by building theoretical understandings of law as a social and political phenomenon. It offers a more sophisticated solution to problems than can be presented by doctrinal research alone.

#### 4.4.4. RATIONALE FOR ENGAGING INTERDISCIPLINARY SOCIO-LEGAL RESEARCH

The questions to be answered by this study call for both internal and external perspectives, as encompassed by socio-legal interdisciplinary research. External effectiveness is concerned with the potential difference between the legal reality and the actual reality. Here, qualitative data accessed by semi-structured interviews are utilised to assess aspects of the actual reality by asking the parents and professionals

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<sup>41</sup> Douglas W. Vick, 'Interdisciplinarity and the Discipline of Law' (2004) 31. *Journal of Law and Society* 163.

<sup>42</sup> Roger Cotterrell, 'Subverting Orthodoxy. Making Law Central: A View of Sociolegal Studies' (2002) 29. *Journal of Law and Society* 632, p. 634.

<sup>43</sup> P. Ishwara Bhat, 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles' [2019]. *Idea and Methods of Legal Research* 88-91. Oxford University Press.

<sup>44</sup> Rita Abhavan Ngwoke, Ibiene P. Mbano & Helynn Oriaifo, 'A critical appraisal of doctrinal and Non-doctrinal legal research methodologies in contemporary times' (2023) 3. *International Journal of Civil Law and Legal Research* 8, p. 11.

<sup>45</sup> Rita Abhavan Ngwoke, Ibiene P. Mbano & Helynn Oriaifo, 'A critical appraisal of doctrinal and Non-doctrinal legal research methodologies in contemporary times' (2023) 3. *International Journal of Civil Law and Legal Research* 8, p. 11.

about their experiences of the expulsion and appeal processes. Cahillane and Schweppe present a broad definition that views social-legal scholarship as ‘driven by an underlying jurisprudential committed to studying law in context’.<sup>46</sup> This definition aligns with the aims of this study and is adopted here, which acknowledges that the law does not exist in a social vacuum. This study primarily concerns the law in practice and the workings of the institutions involved with school expulsion in contemporary Irish society. Education law presumes that the s. 29 committee is independent and that parents are capable of mounting a s. 29 challenge. These are legal presumptions. To test if this reflects reality, it is necessary to leave the pure legal dimension and embrace the openness of socio-legal research, which has the potential to highlight possible gaps in the application of the law. It can highlight factors impacting the use and under-use of the law by those intended as its beneficiaries. This may include inactivity or a lack of willingness by those assigned to enforce the law. Alternatively, it may be opposed by those intended as beneficiaries for various reasons, such as lack of awareness, lack of social capital necessary to engage in a legal process, fear of future discrimination, lack of financial resources or available time. Qualitative research can potentially expose the weaknesses in the operation of the law, which impact rights holders.

#### **4.5. DATA COLLECTION AND ANALYSIS**

##### **4.5.1. THE IMPACT OF THE COVID-19 PANDEMIC ON DATA COLLECTION**

The preferred data collection method of this study involved conducting semi-structured face-to-face interviews. The arrival of the COVID-19 pandemic in Ireland and the implementation of unprecedented social distancing measures coincided with the planned start date for the fieldwork. The restrictions relating to in-person social interaction, coupled with the closure of all schools and persistent uncertainty, significantly disrupted the study's progress.<sup>47</sup> Therefore, it was not possible to conduct face-to-face interviews. At that stage, planning was at an advanced stage. Following initial contact, most participants agreed to participate in the study and received and

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<sup>46</sup> Laura Cahillane & Jennifer Schweppe, *Legal Research Methods. Principles and Practicalities*. (Dublin: Clarus Press) 2016, p. 109.

<sup>47</sup> Note. The Irish Government directed that all schools close from 6 pm on March 12<sup>th</sup>, 2020, to slow down the spread of the COVID-19 virus. Schools did not reopen until August 2020.

reviewed the information sheet and consent form. Ensuring the continuity of the project was a priority; subsequently, it became necessary to adapt the methodology and embrace remote data collection. The rapid digitalisation and developments in face-to-face online communication platforms paved the way for alternative online interviewing. The latter and the limited use of telephone interviewing proved a workable alternative. The participant recruitment element of the fieldwork was somewhat incomplete when the pandemic arrived. There has been much commentary on the potential for online platforms to assist in research participant recruitment.<sup>48</sup> However, given the sensitivities surrounding school expulsion, such methods were not utilised here; instead, a shift to snowballing was used to recruit the remainder of hard-to-reach participants.<sup>49</sup>

The use of new techniques to conduct interviews online has some benefits and drawbacks. Online interviewing eliminates geographical limitations and offers a fast, convenient space for the interviewer and interviewee to meet without necessitating travel and associated costs.<sup>50</sup> The preference for utilising traditional face-to-face interviews as the preferred mode of data collection was informed by the realisation that no other interview method can take full advantage of social cues offered by interviewees. Social cues, such as voice, intonation, and body language, can give the interviewer significant additional information, complementing the verbal answer of the interviewee.<sup>51</sup>

Sensitive inquiries were required to ascertain if potential participants had access to the resources necessary to engage in the interview online and, if so, whether the participant had reservations based on a lack of trust in online platforms or the sensitivity of the topic under discussion. Of necessity, telephone interviewing provided a means of accessing the views of three hard-to-reach participants. This included one participant who did not have internet access and one who lacked the digital skills to participate safely online. One participant chose to be interviewed by telephone as they lacked the

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<sup>48</sup> Mike Allen, *The Sage encyclopedia of communication research methods*. (London: Sage Publications) 2017.

<sup>49</sup> Note. For a discussion on snowball sampling, see section 4.5.5.3 below.

<sup>50</sup> Raymond Opdenakker, 'Advantages and disadvantages of four interview techniques in qualitative research. Forum Qualitative Sozialforschung/Forum' (2006) 7. *Qualitative Social Research* Art. 11.

<sup>51</sup> Raymond Opdenakker, 'Advantages and disadvantages of four interview techniques in qualitative research. Forum Qualitative Sozialforschung/Forum' (2006) 7. *Qualitative Social Research* Art. 11. para. 2.1.

confidence to discuss personal sensitive issues surrounding expulsion online. In addition, two online interviews were impacted by poor connectivity; the second half of these interviews was completed by telephone. Telephone interviewing did not permit the researcher to access the situation in which the interviewee was situated or clues emanating from body language. Nevertheless, social cues such as voice and intonation were available. However, the shortcomings of telephone interviewing can restrict the ability to create a good interview atmosphere.

The interview questions can potentially bring individual participants back to difficult moments in their lives. Given that events move faster and the researcher has limited opportunity to observe body language, the requirement to avoid carelessness in online communication has been highlighted.<sup>52</sup> It was recognised that the ending of an interview was important, and care was taken to check how the participant felt after the interview.

Some participants wanted to chat informally when the interview was over. Contact details of additional available supports were to hand during interviews and detailed on the participant information sheet (Appendix III). The majority offered to resume the interview if the researcher required additional information. This was taken as an indication that they felt the interview was conducted in a friendly, respectful manner. The interviews were not scheduled back-to-back; the conversations were allowed to end naturally. The interview concluded by referencing the consent form they signed and sincere expressions of respect and gratitude for the individual's contribution to this study. Without exception, interviewees maintained an enthusiastic, cooperative standpoint throughout the interview, reaffirming the ethical and participant-centred approach that guided the conduct of the interviews.

#### **4.5.2. SEMI-STRUCTURED INTERVIEWS**

The objective of this research is mainly exploratory and based on understandings, opinions, attitudes, and experiences of the school expulsion process. Therefore, semi-structured interviews were chosen in preference to more structured data collection methods because of the requirement for open-ended questions.

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<sup>52</sup> Hilary Engward, Sally Goldspink, Maria Iancu, Thomas Kersey & Abigail Wood, 'Togetherness in separation: Practical considerations for doing remote qualitative interviews ethically' (2022) 21. *International Journal of Qualitative Methods* 1, p. 2.

The discrete interview schedules are presented in Appendices VIII to XIV.

|                                                  |                 |
|--------------------------------------------------|-----------------|
| Chairpersons of the Board of Management          | (Appendix VIII) |
| Education and Training Board Director of Schools | (Appendix IX)   |
| Education Welfare Officers                       | (Appendix X)    |
| Section 29 Appeal Committee Members              | (Appendix XI)   |
| Parents of Formally Expelled Students            | (Appendix XII)  |
| Parents of Informally Expelled Students          | (Appendix XIII) |
| Informally Expelled Students                     | (Appendix XIV)  |

The semi-structured interviews facilitate the establishment of a rapport with the interviewee before exploring complex and potentially difficult personal material.<sup>53</sup> In the context of this research, interviewing was perceived as an essential means of collecting data that would be particularly difficult to obtain otherwise.<sup>54</sup>

Phenomenology is the philosophical study of human experience dedicated to comprehending consciousness in its unfiltered, raw form.<sup>55</sup> The phenomenological approach embraced here emphasises the meaning people ascribe to phenomena, and highlights the value of constructing the meaning of lived experience by engaging in a descriptive study.<sup>56</sup> The interviews yielded a rich insight into people's experiences, opinions, values, attitudes, and feelings,<sup>57</sup> while granting the researcher latitude and allowing a dialogue to develop with the interviewee. This allowed respondents to answer on their own terms while providing a degree of structure for comparability. The dialogue between the interviewer and respondents allowed for nuances to be captured and for questions to be adapted when necessary.<sup>58</sup> It enabled the researcher to probe for more detailed responses.<sup>59</sup> Interviewees were afforded the opportunity to

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<sup>53</sup> Alan Morris, *A practical introduction to in-depth interviewing*. (London: Sage Publications) 2015, p. 9.

<sup>54</sup> Martyn Hammersley & Paul Atkinson, *Ethnography: principles in practice*. (London: Routledge Publication) 1989, p. 102.

<sup>55</sup> Shaun Gallagher, What Is Phenomenology? In *Phenomenology* (pp. 1-10). Palgrave Philosophy Today. (London: Palgrave Macmillan) 2022, pp. 2-3.

<sup>56</sup> David E. Gray, *Doing research in the real world*. (London: Sage Publications) 2014, p. 382.

<sup>57</sup> May, T. (2011). *Social research: issues, methods and process*, p. 131. Buckingham: Open University Press.

<sup>58</sup> David E. Gray, *Doing research in the real world*. (London: Sage Publications) 2014, p. 382.

<sup>59</sup> Tim May, *Social research: issues, methods and process*. (Buckingham: Open University) Press) 2011, p. 134.

reflect on their experiences and understandings without having to commit to writing. This was helpful as the topic discussed is sensitive, sometimes personalised, and confidential. Participants appeared to enjoy discussing their experiences and understanding; the majority were thankful for the opportunity to discuss issues of concern to them.

The primary purpose of the interview is to ascertain facts and beliefs. However, interviewing is not simply a data collection process; it is an instance of social interaction, a method of data production while gathering information on a person's knowledge, values, and attitudes.<sup>60</sup> Knowledge was constructed during the interview through mutual collaboration between the interviewer and interviewee. The interview schedule was informed by the academic literature and the professional experience of the researcher; it was used to guide the interviews. Not all questions were asked of each participant; the order was sometimes adjusted depending on how the interview progressed. To ensure the interview was meaningful, the researcher adjusted his responses in such a way as to match the interview context with the interviewee.<sup>61</sup> This semi-structured approach allowed for occasional diversion into new pathways, which, although not anticipated initially, helped meet the research objectives.

It was anticipated that a period of approximately one hour would be required to gather data at the appropriate level of depth. This period proved optimum as it was likely that it may have been difficult for participants to concentrate for a more extended period, given that being interviewed was likely an unusual experience for some of the respondents. Mindful that it is a privilege to be given access to the participant's social world, the interviewer adopted an empathic but natural stance. The researcher was conscious of the necessity to communicate to respondents that their participation and answers were valued. The interviewer was aware of the potential for sensitive issues under discussion to elicit strong emotions; however, no problematic issues arose. The interviews were generally researcher-led, although occasionally respondent-led. It is acknowledged that the researcher is not simply a passive vessel through which

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<sup>60</sup> Jody Miller & Barry Glassner, *The Inside and the Outside: Finding Realities in Interviews*. In David Silverman (Ed.), *Qualitative Research: Theory, Method and Practice* (pp. 131-148). (London: Sage Publications) 2011, p. 136.

<sup>61</sup> Katja Vähäsantanen & Jaana Saarinen, 'The power dance in the research interview: manifesting power and powerlessness' (2013) 13. *Qualitative Research* 493, p. 508.

knowledge is transmitted but rather a site of and an occasion for interpretative practice.<sup>62</sup>

#### 4.5.2.1. AUDIO RECORDINGS OF INTERVIEWS AND TRANSCRIPTION

Notwithstanding the move to online interviewing and the availability of voice-to-text transcription associated with this technology, it was decided to audio-record the interviews as an unintrusive way of recording the data. This decision was informed by the understanding that consent for audio recording had been received from a number of participants prior to the move to online interviewing and the anticipated reluctance by some interviewees to permit a full video recording of the interview.<sup>63</sup> The audio recordings were transferred to a computer and transcribed verbatim using Microsoft Word to facilitate the analysis. For identification purposes, they were assigned a code rather than an identifiable name.

Audio recording offers several advantages. It captures an accurate, verbatim account of the whole conversation, as well as the tone of voice, emphasis, pauses, and the like. This allowed the researcher to give full attention to listening, consider how the interviewee approached the discussion, and respond to questions.<sup>64</sup> The use of transcripts assists in counteracting the risk of the researcher becoming infatuated with the field by providing physical and emotional space between the researcher and the field.<sup>65</sup>

It is acknowledged that recording interviews can make respondents feel less relaxed and forthcoming, and that recordings can never completely record an interaction.<sup>66</sup> Prior to commencing the interview recording, interviewees were explicitly informed

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<sup>62</sup> James A. Holstein & Jaber F. Gubrium, Animating interview narratives. In David Silverman (Ed.), *Qualitative Research* (pp. 149-167). (London: Sage Publications) 2011, pp. 150-151.

<sup>63</sup> Note. Contact with some hard-to-reach participants prior to and during the COVID-19 pandemic informed the view that some participants would be unwilling to participate if the interview was video recorded.

<sup>64</sup> Sue Arthur, Martin Mitchell, Jane Lewis & Carol McNaughton Nicholls, Designing Fieldwork, In Jane Ritchie, Jane Lewis, Carol McNaughton Nicholls & Rachel Ormston (Eds.), *Qualitative research practice: A guide for social science students and researchers* (pp. 147-176). (London: Sage Publications) 2014, p. 172.

<sup>65</sup> Sophie Tessier, 'From field notes, to transcripts, to tape recordings: Evolution or combination?' (2012) 11. *International Journal of Qualitative Methods* 446, p. 450.

<sup>66</sup> Gísli Thorsteinsson & Brynjar Ólafsson, 'A survey on students design decisions in Design and Craft education in Icelandic schools' (2011) 18. *Techné Series-Research in Sloyd Education and Craft Science A* 153, p. 156

that the recording was about to begin. The recorder was then activated and placed out of view, and the researcher ignored it. The researcher deleted the audio recordings from the recorder immediately after transcription. Mindful of the importance of nonverbal communication, every effort was made to record pauses and tone of voice during transcription. Here, tone refers to the emotional attitude conveyed through the variation of participants' voices. It played a crucial role in interpreting participants' intent and enhanced the researcher's understanding of responses.

#### 4.5.3. THE INSIDER RESEARCHER DEBATE

As referenced by Bourdieu, the educational system has become a central stake in reproducing power structures. Those who submit to the forms of power wielded by the system contribute to its efficacy.<sup>67</sup> An insider-researcher may be defined as a scholar who is native to the research and who conducts research involving populations of which they are a member.<sup>68</sup> As a professional educator and insider with knowledge of how schools operate, the researcher was confronted with the challenge of critiquing a system he was part of for many years. In addition, it is accepted that the researcher is an 'insider' in terms of the social class perspective.<sup>69</sup>

A significant advantage of insider research is the 'pre-understandings' the researcher may bring to the design of the study, which can facilitate the development of research questions based on a rich understanding of the research topic.<sup>70</sup> Pre-understandings can range from a nuanced perspective to observation and detection of nonverbal gestures such as embarrassment and discomfort at an interview.<sup>71</sup> However, as an insider researcher, I am mindful of the concept of 'researcher bias', where the researcher's values and experiences may influence all aspects of the research design, for example, bias in participant selection, research questions, data collection procedures and selective reporting. Bias may emanate from the difficulty associated

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<sup>67</sup> Pierre Bourdieu, *The State Nobility: Elite Schools in the Field of Power*. (California: Stanford University Press) 1989, pp. 3-5.

<sup>68</sup> Grace Chammas, 'The Insider-Researcher Status: A Challenge for Social Work Practice Research' (2020) 25 *The Qualitative Report* 537, p. 537.

<sup>69</sup> Pierre Bourdieu, *The State Nobility: Elite Schools in the Field of Power*. (California: Stanford University Press) 1989, p. 3.

<sup>70</sup> Jenny Fleming, 'Recognizing and resolving the challenges of being an insider researcher in work-integrated learning' (2018) 19. *International Journal of Work-Integrated Learning*, 311, p. 312.

<sup>71</sup> Christina Chavez, 'Conceptualizing from the inside: Advantages, complications, and demands on insider positionality' (2008) 13. *The qualitative report* 474, p. 479.

with data analysis, such as failure to recognise patterns due to acquaintance with the research community, the risk of drawing premature conclusions based on familiarity with the jargon used or on preconceived ideas and the desire for positive outcomes.

The researcher was keenly aware of the necessity to guard against bias emanating from insider status. Acknowledging the presence of this challenge assists in mitigating its potential influence. This included recognising the power dynamic at play during interview, the requirement to remain neutral and resist the temptation to share subjective experiences, and the requirement that data be rigorously interpreted to ensure credibility. The voluntary nature of participation, steps to maintain privacy, and confidentiality also assisted in maintaining a neutral stance. The assistance of a 'critical friend' who interrogated and challenged assumptions and the feedback provided by my academic supervisors proved invaluable. No single research approach will be absent from bias; all have inherent biases and limitations. The deliberate use of multiple methods, with countering biases as employed here, strengthens the validity of research results.<sup>72</sup>

#### 4.5.3.1. INTERVIEWER - INTERVIEWEE POWER DYNAMIC

The relationship between interviewer and interviewee is increasingly being conceptualised as a power relation.<sup>73</sup> It is accepted that a researcher is never a neutral, objective data collector but rather an individual who influences their access to and the relationship with the studied groups and individuals.<sup>74</sup> Researchers hold a privileged status within the research process regardless of their other salient identities.<sup>75</sup> The researcher's status influences much of the research process, including the questions to be asked, who is invited to contribute, and the research methods employed. The privileged status of the researcher affords them significant power. Consequently, the

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<sup>72</sup> Jennifer C. Greene, Valerie J. Caracelli & Wendy F. Graham, 'Toward a Conceptual Framework for Mixed-Method Evaluation Designs' (1989) 11. *Educational Evaluation and Policy Analysis* 255, p. 256.

<sup>73</sup> Katja Vähäsantanen & Jaana Saarinen, 'The power dance in the research interview: manifesting power and powerlessness' (2013) 13. *Qualitative Research* 493, p. 494.

<sup>74</sup> Maarja Kaaristo, 'Everyday power dynamics and hierarchies in qualitative research: The role of humour in the field' (2022) 22. *Qualitative Research* 743, p. 744.

<sup>75</sup> Målfrid Råheim, Liv Heide Magnussen, Ragnhild Johanne Tveit Sekse, Åshild Lunde, Torild Jacobsen & Astrid Blystad, 'Researcher-researched relationship in qualitative research: Shifts in positions and researcher vulnerability' (2016) 11. *International journal of qualitative studies on health and well-being* 1, p. 1.

researcher has a considerable role in creating and refining knowledge. It is incumbent on the researcher to be mindful of their place in the research process to guard against the risk that the research may be reproducing existing power frameworks that marginalise unrepresented groups. Although the power differential is a basic, undeniable feature of qualitative research which advantages the researcher, power is not inherently problematic. As noted by Edwards and Holland, the interviewer seeks to establish an interaction beyond a conversational exchange, where the interviewees feel sufficiently safe to talk honestly about their experiences and understandings.<sup>76</sup> Here, the interviewer exercised power to produce an atmosphere where the interviewee experienced positive rapport through questioning and probing answers. To mitigate the power differential, the interviewer engaged in a relational interviewing technique to build a working relationship whereby the interviewer and interviewee arrived at mutually agreeable terms for interacting, listening, and conversing with one another in an open and honest dialogue that embodied core values of respect, inclusiveness, honesty, empathy, and cooperation. The researcher sought, on the one hand, to create togetherness and, on the other, to establish differences.<sup>77</sup> The researcher experienced an interdependency with the interviewees and displayed a measure of humility in acknowledging and appreciating the voluntary nature of interviewee participation while also being mindful of the power dynamics at play in light of ethical considerations.

#### **4.5.3.2. THE INTERVIEWER EFFECT**

The task of the interviewer was to provide guidance and clarification without affecting the responses. It must be acknowledged that there is a question regarding the interviewer's role, interviewer bias, the interviewer's effect on the interviewee, and, hence, the type of material collected. It is acknowledged that data do not exist independent of the medium through which they are interpreted, be that a set of assumptions or the interest that has led to the decision to collect such data. However, it would be misleading to regard it simply as a source of bias that must be entirely removed. The issue cannot be wholly avoided when interviews are used as a data

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<sup>76</sup> Rosalind Edwards & Janet Holland, *What is qualitative interviewing?* (London: Bloomsbury Academic) 2013, p. 77.

<sup>77</sup> Katja Vähäsantanen & Jaana Saarinen, 'The power dance in the research interview: manifesting power and powerlessness' (2013) 13. *Qualitative Research* 493, p. 494.

collection method. The researcher was mindful that bias could creep into the interview in many ways. Care was taken to approach each interview with an element of standardisation. The interviews were guided by a participant interview protocol developed to introduce the interview and assist standardisation (See Appendix II). Questions were asked in the same way and with the same tone of voice to avoid communication of reaction to responses. There was no observable evidence of social desirability bias creeping into participants' responses.

#### **4.5.4. SAMPLING STRATEGY**

This study aims to develop an understanding of school expulsion across post-primary education in Ireland. Given the regional nature of the ETB administrative areas, the uneven geographical distribution of the post-primary student population, and the necessity to protect participants from indirect identification, a regional approach was adopted to recruit participants for the empirical element of the study. The geographical distribution of the post-primary students was relied upon as a basis for selecting balanced representation. The geographical area was divided into three regions, taking into account county boundaries and the administrative size of each ETB. For details of geographical areas, see Appendix IV, Research Geographical Regions. Regions 1, 2, and 3 have similar post-primary student populations. The selection process sought to ensure gender balance representation of large and small, rural, and urban schools. Prior to the introduction of the Act of 2018, the Act of 1998 provided that the first instance of appeal was to the DES or the ETB board, depending on the school type. To ensure appropriate representation, a review of the number of students attending each sector reveals that the ratio of students attending ETB appeal schools,<sup>78</sup> to DES appeal schools are 1:3.<sup>79</sup>

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<sup>78</sup> Note. ETB appeal schools refer to schools managed by ETBs. Here, the first instance of s.29 appeal is to the ETB.

<sup>79</sup> Note. The term 'DES appeal schools' refers to schools where the first instance of s.29 appeal is to the DES. These include traditional secondary education, as well as community and comprehensive schools.

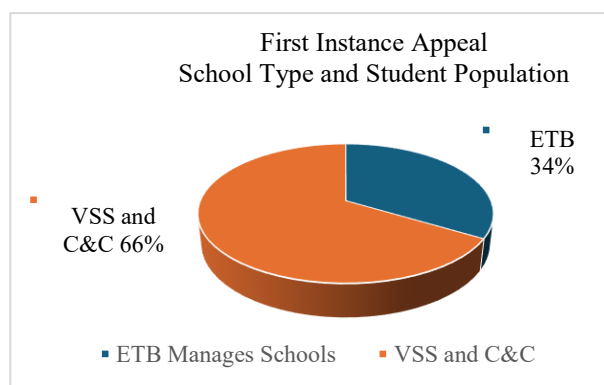


Figure 11.

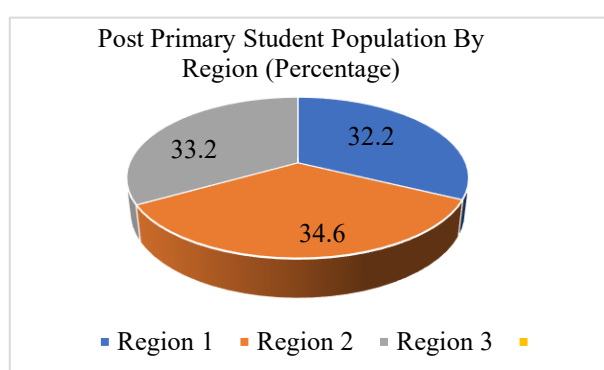


Figure 12.

Research in England shows that the ratio of boys to girls excluded is 4 to 1.<sup>80</sup> There is no official data on the gender breakdown of expelled students in Ireland. A review of the gender breakdown of the student population enrolled in the two types of appeal schools shows that DOE appeal schools enrol 1% more girls, while ETB appeal schools enrol 1% more boys than their counterparts. Given the small enrolment differential, the gender breakdown of school appeal types is not included here as a participant selection criterion.

<sup>80</sup> Audrey Osler, Cathy Street, Marie Lall & Kerry Vincent, *'Not a problem? Girls and exclusion from school.'* (2002). Leicester: University of Leicester. New Policy Institute and Centre for Citizenship Studies in Education. school, p. 13.

### Section 29 Appeals - School Type and Student Gender

ETB Schools Male 50.1% - Female 49.9%

DOE Schools Male 49.1% - Female 50.9

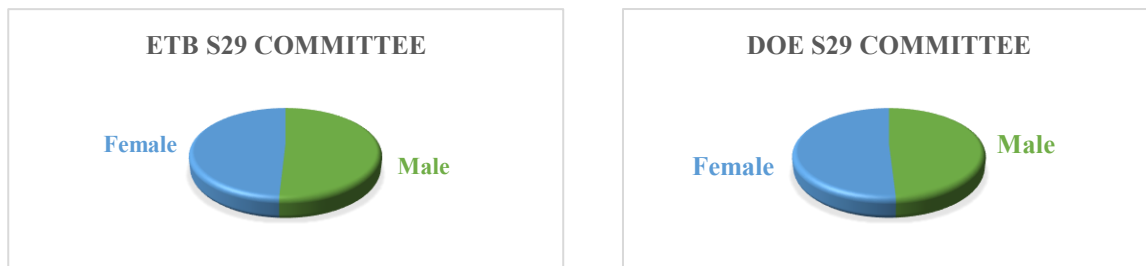


Figure 13.

Informed by the above analysis, it was decided that each region should have equal representation of participants. Given the relatively small number of s. 29 committee chairpersons, DES (16), and EWOs (approximately 110) involved in the expulsion process, no inclusion or exclusion criteria have been developed that may directly or indirectly contribute to identifying individual participants.

#### 4.5.5. PARTICIPANT SELECTION

A key consideration in the research design was to include interviewees holding many distinct positions in school expulsion processes in the sample to ensure that a broad range of perspectives could be considered. Informed by the understanding that the current legal framework does not assign school principals a formal decision-making role in the expulsion process, principals were not included in the sample groups. However, findings from the empirical component of the study revealed that principals nonetheless play a significant role in informal expulsions. In light of this evidence, it is acknowledged that incorporating their perspectives may have enriched the analysis and provided a broader understanding of the dynamics surrounding informal exclusion practices.

Section 29 committee members are selected from school inspectors, retired inspectors, and retired principals; the gender ratio of this study's committee members is 1:4 in

favour of males.<sup>81</sup> There is no publicly available data on the gender composition of s. 29 committees. Research indicates that school leadership continues to be male-dominated, despite teaching being a female-majority profession. Men are approximately twice as likely as women to become post-primary principals.<sup>82</sup> Principalship is a well-established pathway to inspectorship.<sup>83</sup> Historically, the Department of Education inspectorate was predominantly male, with only 15.5% of inspectors being female in 1991.<sup>84</sup> However, the current inspectorate is mainly female, with 74.5% of members being women. Legislative provisions aim to promote gender balance on school boards.<sup>85</sup> However, there is no national dataset, systematic survey, or official government report documenting the gender breakdown of membership at the national level. School boards generally include two parents and two teacher representatives, one male and one female, in each case. A random, non-scientific review of a selection of post-primary school BOM suggests a notable pattern in board gender composition. In single-gender schools, board membership appears to be predominantly aligned with the gender of the student body. In contrast, co-educational schools tend to exhibit boards in which male members are disproportionately represented. The BOM chairpersons interviewed served on boards of both single-gender and co-educational schools; the gender ratio was 4:1 in favour of males.

While the forementioned provides contextual insight into the predominance of males among school boards and appeal committee members, any attempt to compare the gender identities of the study cohort with those of potential committee members would be speculative and did not feature as a selection criterion.

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<sup>81</sup> Department of Education and Youth. Department of Education Inspectorate Report 2024: Appendix 2 - Inspectorate staff as at 5 September 2024. (2025). Government of Ireland. Available at [https://assets.gov.ie/static/documents/09fe3ad4/Appendix\\_2\\_-\\_Inspectorate\\_Staff\\_as\\_at\\_1\\_September\\_2025.pdf](https://assets.gov.ie/static/documents/09fe3ad4/Appendix_2_-_Inspectorate_Staff_as_at_1_September_2025.pdf)

<sup>82</sup> Mary Cunneen & Judith Harford, The Principal route: gender matters. In Kay Fuller & Judith Harford (Eds.), *Gender and Leadership: Women achieving against the Odds*. (pp.147-174). (Oxford: Peter Lang). 2016, p. 148-149.

<sup>83</sup> Department of Education, *Inspectorate Profile: Ireland*. (pp. 1-17). Standing International Conference of Inspectorates, 2024, p.7. Government of Ireland. Available at [https://sici-inspectorates.org/swfiles/files/SICI\\_InspectorateProfile\\_2024\\_Belgium\\_Ireland.pdf?utm\\_source](https://sici-inspectorates.org/swfiles/files/SICI_InspectorateProfile_2024_Belgium_Ireland.pdf?utm_source)

<sup>84</sup> Jim Gleeson, Gender Equality in Education in The Republic Of Ireland (1984-1992). Available at [https://archive.oireachtas.ie/1992/APPENDIX\\_01031992\\_1.html?utm\\_source](https://archive.oireachtas.ie/1992/APPENDIX_01031992_1.html?utm_source)

<sup>85</sup> The Education Act 1998, s. 14(5).

Given the small sample size of the individual groups interviewed, the distinctiveness of the positions held by the interviewees, and the sensitivities surrounding some of the cases, it has been necessary to limit the description of specific roles and cases in order to maintain anonymity and confidentiality.

#### **4.5.5.1. PARTICIPANT RECRUITMENT STRATEGY**

The participant selection was influenced by a desire to address potential geographical, school type and size variables. This approach presented practical challenges in light of the public health emergency prevalent at the time of conducting the fieldwork. Accessing the views of decision-makers and those affected by expulsion was paramount. Given the sensitive nature of the research topic, initial researcher-participant contact was generally direct. The task was to secure their cooperation; potential participants were given a brief verbal outline of the project's aims and offered an assurance of anonymity. The sample size was monitored as the fieldwork progressed, and the data were studied as it was collected until it was clear that perspectives were being repeated and data saturation was complete.

Gatekeepers are individuals at research sites who provide access and allow individuals to engage in the research within their administrative area. Given the sensitive nature of the research topic, organisational consent was secured from a number of ETBs and the Educational Welfare Service (EWS) of Tusla. Where a Gatekeeper was utilised, an introductory email, an information letter and consent forms were provided for the gatekeeper's consideration. In keeping with best practice, the researcher maintained control of participant recruitment; the task was not handed over to a third party. As a condition of the Tusla Research Ethics Committee's (TREC) ethical approval, the EWS circulated an invitation to EWOs to participate in the study. To mitigate against the possibility of over-recruitment or under-recruitment of EWOs, the researcher closely monitored the response to the invitation and notified relevant parties immediately when the quota of six participants was reached. Had the EWS recruitment initiative resulted in under-recruitment, the researcher would have invited EWOs to participate in the research project. This research did not involve children. Nevertheless, the Children First 2017 online training was completed as a condition of the TREC approval. Participants have not received monetary payments or reimbursements.

#### 4.5.5.2. PURPOSEFUL SAMPLING

Selecting participants for qualitative research is unique in that the focus is on accessing individuals with specific knowledge.<sup>86</sup> The researcher did not seek to sample participants on a random basis. Purposeful sampling was employed here, focusing on strategically recruiting research participants so that those sampled are relevant to the research questions. Denscombe defines the term as applying to circumstances when the researcher already knows something about the particular individuals and deliberately selects specific people because they are likely to produce the most valuable data.<sup>87</sup> The non-probability element of purposive sampling mitigates generalisation.

#### 4.5.5.3. SNOWBALLING SAMPLING

In a search for a holistic view of school expulsion, there was a limited reliance on snowball sampling to access a small number of hard-to-reach participants. These participants were particularly sensitive to the topic under discussion and articulated a strong desire for anonymity, typically demonstrating feelings of stigmatisation and vulnerability. This proved challenging because of the limited social contact permitted during the COVID-19 pandemic. The dominant characteristic of the snowball sample is dependent on a selection bias.<sup>88</sup> A number of existing participants referred a small number of other potential participants to the researcher. Snowball sampling, as Bourdieu developed it, depends on social networks and social capital.<sup>89</sup> Social capital relies on membership in a group and provides each member with the backing of collectively owned capital, a credential which entitles them to credit.<sup>90</sup> Snowballing uses natural social networks, which are linked to the power relationship between the researcher and the researched.<sup>91</sup> It is acknowledged that there are far-reaching consequences to the use of snowballing in terms of social capital, power relations, and

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<sup>86</sup> Ann Williams, 'How to ... Write and analyse a questionnaire' (2003) 30. *Journal of Orthodontics* 245, p. 246.

<sup>87</sup> Martyn Denscombe, *The good research guide: for small-scale social research projects*. (London: McGraw-Hill: Open University) 2007, p 17.

<sup>88</sup> Charlie Parker, Sam Scott & Alistair Geddes, A. *Snowball sampling*. Sage research methods foundations. (London: Sage Publications) 2019, p. 4.

<sup>89</sup> Note. Cross-reference to the discussion of Bourdieu's concepts.

<sup>90</sup> Pierre Bourdieu, The forms of capital. In John G. Richardson (Ed.), *Handbook of theory and research for the sociology of education* (pp. 241-258). (Greenwood Press) 1986.

<sup>91</sup> Noy Chaim, 'Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research' (2008) 11. *International Journal of Social Research Methodology* 327, p. 329.

the reproduction of social systems. The researcher assessed this risk on an individual case basis and proceeded to recruit only when this risk was deemed low. The sampling considered the well-being of the subjects, ensuring they were comfortable sharing their experiences without the risk of marginalisation. The degree of confidence extended to potential recruits by the involvement of a trusted referrer was an essential influence in the decision of hard-to-reach individuals to become willing participants.

There are questions regarding the validity of research that utilises snowballing due to the mode of recruitment; nevertheless, researchers have a responsibility to consider using sampling strategies such as snowballing, which can transcend traditional research methods to access the views of marginalised individuals and groups.<sup>92</sup> The potential for referrer bias is acknowledged and accepted as necessary to access hidden populations' experiences of school expulsion in circumstances where the standard sampling approaches were impossible. Snowball sampling is criticised for being limited to existing networks, as researchers are limited to recruiting participants from a particular social environment.<sup>93</sup> As a form of convenience sampling, it has been criticised for its lack of external validity, impact on generalisability, and representation.<sup>94</sup> Nevertheless, snowballing is a strategy through which counter-narratives can be told.<sup>95</sup>

#### **4.5.6. RECORDS OF SCHOOL EXPULSION AND SECTION 29 EXPULSION APPEALS**

Department of Education databases regarding school enrolment were accessed and utilised to inform the regionalisation of the geographical division and participant selection. Quantitative data sets relating to formal school expulsion rates, s. 29 appeals and the outcome of such appeals were accessed through a Parliamentary Question; ethical concerns do not arise here as this information is currently available to the public on request.

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<sup>92</sup> Xeturah M. Woodley & Megan Lockard, 'Womanism and snowball sampling: Engaging marginalized populations in holistic research' (2016) 21. *The Qualitative Report* 321, p. 323.

<sup>93</sup> Xeturah M. Woodley & Megan Lockard, 'Womanism and snowball sampling: Engaging marginalized populations in holistic research' (2016) 21. *The Qualitative Report* 321, p. 323.

<sup>94</sup> Charlie Parker, Sam Scott & Alistair Geddes, A. *Snowball sampling*. Sage research methods foundations. (London: Sage Publications) 2019, p. 4.

<sup>95</sup> Xeturah M. Woodley & Megan Lockard, 'Womanism and snowball sampling: Engaging marginalized populations in holistic research' (2016) 21. *The Qualitative Report* 321, p. 327.

#### 4.5.7. DATA ANALYSIS - THEMATIC ANALYSIS OF INTERVIEW DATA

Braun and Clarke developed the thematic mode of analysis, which was utilised here as a qualitative research method of data analysis that can be used across a range of research questions and is compatible with the phenomenological approach.<sup>96</sup> Thematic analysis is a technique of identifying, analysing, and reporting patterns and themes within data.<sup>97</sup> It was helpful for summarising key features of the large data set, as it assisted the researcher in taking a well-structured approach to handling data, thereby contributing to producing an organised report. It provided a means of systematically analysing the qualitative data, allowing the researcher to explore the data in depth while preserving an effective and visible audit trail, thereby boosting the rigour of the analytical process. The systematic engagement undertaken mitigated the risk of cherry-picking and selecting ‘patterns’ in the text to align with predetermined ideas about their meanings.<sup>98</sup>

The first step in the analysis process involved the researcher becoming immersed in the data in order to become acquainted with the depth and breadth of the content.<sup>99</sup> Successful immersion necessitated active and repeated reading of the data, searching for meanings and patterns. The next step involved coding the dataset. Coding is the process of identifying themes in participants' accounts of their experiences and attaching labels (codes) to index them. A code is the smallest data analysis unit that captures specific meanings relevant to the research questions within the dataset. Identifying codes typically involves the researcher highlighting a word, phrase, sentence, or paragraph that describes a specific phenomenon, hereafter referred to as a code. The codes identified were brief but offered sufficient detail to stand alone. An inductive coding practice was embraced, where the coding takes the dataset as the starting point for engaging with meaning. The codes evolved through the coding process as the researcher's understanding of meaning in relation to the dataset developed.

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<sup>96</sup> Virginia Braun & Victoria Clarke, ‘Using Thematic Analysis in Psychology’ (2006) 3. *Qualitative Research in Psychology* 77.

<sup>97</sup> Virginia Braun & Victoria Clarke, ‘Using Thematic Analysis in Psychology’ (2006) 3. *Qualitative Research in Psychology* 77, 79.

<sup>98</sup> Morse, J. M. (2010). “Cherry picking”: Writing from thin data. *Qualitative health research*, 20(1), 3-3, p. 3.

<sup>99</sup> Virginia Braun & Victoria Clarke, *Thematic Analysis: A Practical Guide*. (London: Sage Publications) 2022, p. 35.

As descriptive labels for pieces of information, codes were the fundamental building blocks of what became the themes. The codes informed the emerging themes by highlighting the commonality among the data items, singular, or related meanings. A theme captures something important about the data relating to the research question. It represents a level of patterned responses or meaning within the dataset. The themes identified and analysed reflect the content of the entire data set and provide a rich, detailed, in-depth description of participants' knowledge, attitudes, beliefs, and experiences of the school expulsion process. While analysing data and confirming findings, there was also an openness to actively disconfirm where evidence to support disconfirming was identified as the researcher continued to reanalyse the data.

Braun and Clarke challenge the hypothesis that themes reside within the data and emerge or are discovered by the researcher.<sup>100</sup> Instead, they acknowledge the researcher's active role in identifying patterns/themes in their selection and reporting. Of necessity, some depth and complexity were omitted. Nevertheless, a detailed overall description has been maintained. Braun and Clarke applaud this approach when investigating an under-researched area. Given that the data was collected through semi-structured interviews, which the researcher conducted, the researcher came to the analysis with some knowledge of the data and initial analytic thoughts. However, the researcher did not come to the data with pre-conceived themes.

#### 4.5.8. RELIABILITY AND VALIDITY

Reliability refers to the 'replicability' of the study's findings; if the study were repeated under the same circumstances, would the same results emerge? Validity refers to the degree to which the findings are substantiated and accurately reflect the phenomenon being scrutinised.<sup>101</sup> It relates to the truth value of the research findings; in summary, are the reported results true?<sup>102</sup> The principal driving force that informed the design of the interview schedule was the search for credibility by ensuring that the

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<sup>100</sup> Virginia Braun & Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3. *Qualitative Research in Psychology* 77.

<sup>101</sup> Jane Lewis, Jane Ritchie, Rachel Ormston & Gareth Morrell, Generalising from qualitative research. In Jane Ritchie, Jane Lewis, Carol McNaughton Nicholls (Eds.), *Qualitative research practice: A guide for social science students and researchers* (pp. 347-366). (London: Sage Publications) 2013, p.354.

<sup>102</sup> Clive Seale, *Researching Society and Culture*. (London: Sage Publications) 2012, p. 528.

findings could be trusted, which involved addressing the issues of reliability and validity. Attention was afforded to strengthening the validity of the research instrument by ensuring the questions' content directly concentrated on the research objectives, in other words, that the instrument measured what it claimed to measure. Arksey and Knight outline measures which strengthen validity. The interviewer embraced these measures during interviews.<sup>103</sup>

- a. Using interview techniques that build rapport and trust, thus giving participants scope to express themselves.
- b. Prompt interviewees to illustrate and expand on their responses.
- c. Ensuring that the interview process was sufficiently long for the topics to be explored in depth.

It has been argued that applying the concepts of reliability and validity rigidly would be a mistake, as interviews come from a qualitative perspective.<sup>104</sup> Originality may also be seen as an indicator of the quality of qualitative research, with external validity being of lesser importance.<sup>105</sup> This is because when a new phenomenon is discovered, its importance can only be judged by its contribution to an existing body of knowledge or theory.<sup>106</sup> In the case of this study, the existing body of knowledge is school expulsion law.

#### **4.6. ETHICAL STANDARDS IN SOCIO-LEGAL RESEARCH**

Codes of ethical conduct that go beyond statutory protection and cover interviewees' anonymity, protection from harm, and informed consent have been embraced here. The study received ethical approval from the University College Cork Social Research Ethics Committee (SREC) and also from the Tusla Research Ethics Committee (TREC). As such, it is guided by SREC research ethics guidelines and the conditions of TREC ethical approval.

It has been argued that online data collection does not necessitate a new set of ethical approaches, given that most ethical concerns related to online interviewing are

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<sup>103</sup> Hilary Arksey, & Peter T. Knight, *Interviewing for social scientists: An introductory resource with examples*. (London: Sage Publications) 2012.

<sup>104</sup> David E. Gray, *Doing research in the real world*. (London: Sage Publications) 2014, p. 388.

<sup>105</sup> Clive Seale, *Researching Society and Culture*. (London: Sage Publications) 2012, p. 533.

<sup>106</sup> Clive Seale, *Researching Society and Culture*. (London: Sage Publications) 2012, p. 533

comparable to those in face-to-face contexts.<sup>107</sup> The need for ‘an increased awareness of and commitment’ to the already established ethical principles applied across social research has been emphasised.<sup>108</sup>

Participants have a right to know what the research is about. Consequently, they were provided with an information sheet introducing the researcher to the participants. It outlines the study aims, explains why the requested data is needed, details how the information will be used, and assures interviewees that strict measures will be implemented to maintain anonymity and confidentiality. (See Appendix III). Given the sensitive nature of the topic under discussion, the ethical standard of anonymity and confidentiality was essential. Adequate time was allowed for consideration of the request to participate. The measures outlined above were also considered necessary as part of building trust between the researcher and participants. The researcher verbally outlined the nature of the research and addressed issues the interviewee identified before each interview commenced. As an aid to protect participants' identity, the study findings are reported on a national basis. In addition, when reporting on individual participant's contributions to the study, geographical locations, grades/rank of employment, gender, or details of involvement in particular cases have not been disclosed.

#### **4.6.1. INFORMED VOLUNTARY CONSENT**

Individuals were asked to participate in the study based on informed, voluntary consent. This was accomplished by giving each participant an information sheet explaining the research aims, the researcher's identity, why the data was required, how it would be used, and how it would be managed. The voluntary nature of participation was again emphasised before each interview. Potential participants were allocated a minimum cooling-off period of one week after receiving the information sheet to decide whether to participate in the study. The information sheet is accompanied by an informed consent form, which participants were asked to sign once they had read

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<sup>107</sup> Jim Thomas, Reexamining the ethics of internet research: Facing the challenge of overzealous oversight. In Mark D. Johns, Shing-Ling Chen & Jon G. Hall (Eds.), *Online social research: Methods, issues, and ethics* (pp. 187-201). (Oxford University Press) 2004, p. 187.

<sup>108</sup> Hilary Engward, Sally Goldspink, Maria Iancu, Thomas Kersey & Abigail Wood, 'Togetherness in separation: Practical considerations for doing remote qualitative interviews ethically' (2022) 21. *International Journal of Qualitative Methods* 1.

the information sheet and decided to participate. (See Appendix V Participant Consent Form). The consent form asked participants to confirm their participation was on an informed, voluntary, anonymous basis and to permit the researcher to quote their contribution within the text of the thesis and in conference papers and publications.<sup>109</sup> In light of the prevailing circumstances, the interviews were conducted virtually; consequently, some participants were invited to submit the completed, signed consent form electronically. Alternatively, and in a minority of cases, the researcher was willing to audio-record the verbal consent at the start of the interview.

Participants were informed of their right to withdraw at any stage of the interview and review interview questions in advance. Participants were also given the opportunity to review on request and amend the transcript of their interview if they so desired. In addition, they were told that they may withdraw their consent within two weeks post-interview. The above, coupled with the measures adopted to protect identity and data protection standards, contributed to mitigating potential power dynamic imbalance.

Thorough, well-informed engagement and negotiations with gatekeepers were a vital part of the research fieldwork preparation. The gatekeepers agreed to facilitate this research on an informed, voluntary consent basis. (See Appendix VI Gatekeeper Information Letter and Appendix VII Gatekeeper Consent Form). They acted as intermediaries between the researcher and participants in order to facilitate recruitment and demonstrate their understanding of the necessity of protecting the voluntary nature of the consent of participants. While it was necessary to secure the voluntary consent of relevant gatekeepers, it was essential to protect the voluntary nature of the consent of participants. To this end, the researcher was keenly aware of the importance of ensuring that figures of authority did not appear to endorse or encourage participation in the research. The gatekeeper's role was limited to an enabler rather than an advocate. It is acknowledged that endorsement or encouragement by figures of authority could cause difficulties, such as employees associating with the research to enhance their prospects while pursuing promotional opportunities. Conversely, potential participants were not led to believe they may be viewed less favourably should they have declined to participate.

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<sup>109</sup> Note. Physical voluntary consent forms were converted to an anonymous electronic format, and the researcher shredded the original forms.

#### **4.6.2. PRIVACY, ANONYMITY, AND CONFIDENTIALITY**

Given the sensitive nature of the topic under consideration and the requirement to protect all participants from reputational damage, the ethical implications of the study are regarded as significant. It is acknowledged that safeguarding participants' privacy, anonymity, and confidentiality is a key ethical concern. Therefore, all reasonable efforts have been implemented to maintain the anonymity and confidentiality of participants. To this end, each participant was assigned a code (for example, S01 for a student, P01 for a parent and so on), which was used for interview recordings, transcription, and reference to the participant during the data analysis phase. Pseudonyms are utilised in the thesis write-up. While the research project gathered personal identifiable information, including age and gender, identifying information will not be sought.

#### **4.6.3. LIMITATIONS TO ASSURANCES OF CONFIDENTIALITY**

In addition to the obligations set out in Children First: National Guidance for the Protection and Welfare of Children 2017 and the Children First Act 2015, the researcher accepts the ethical requirement that there be explicit limits to assurances of confidentiality.<sup>110</sup> It may be necessary to break confidentiality. The public good may trump the right to privacy of the participant if the researcher has a genuine belief that a participant is a risk or a danger to themselves or a risk to somebody else, or if there is a child whose welfare or safety is at risk of the behaviour of the individual in question. Participants were informed upfront of the potential for certain disclosures to be reported and agreed to participate in the research in full knowledge of the consequences of disclosure of the type mentioned above. However, the researcher was cognisant of the obligation to keep the breach of privacy to a minimum and to limit the disclosure to the appropriate authority had the matter arisen.

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<sup>110</sup> Note. As a Teaching Council registered teacher, the researcher is a mandated person under the Children First Act 2015, s. 4. The Act places a legal obligation on mandated persons to report any knowledge, belief, or reasonable suspicion that a child has been harmed, is being harmed, or is at risk of being harmed to Tusla. The Act defines harm as assault, ill-treatment, neglect, or sexual abuse.

#### 4.7. GENERALISATION OF QUALITATIVE RESEARCH FINDINGS

Generalising involves developing general statements from specific cases.<sup>111</sup> It is the process of reasoning and drawing conclusions from particular instances, making inferences about what cannot be observed on the basis of what can be observed.<sup>112</sup> This is achieved by intense critical examination of the connections between individuals' unique, uncommon lived experiences and the commonality of groups and social relationships that partially define those experiences.<sup>113</sup>

The prospect of generalisation can be challenged in both qualitative and quantitative research since findings are always embedded within a context. In qualitative studies, the issue is particularly controversial.<sup>114</sup> The traditional standpoint of the methodological literature on generalisation from qualitative research (GQR) is exemplified by Lincoln and Guba, who argued that 'the only generalisation is: there is no generalisation'.<sup>115</sup> Such reservations cast doubt on the essential worth of qualitative research results and, by extension, their utility in guiding practice, policy, and future research.<sup>116</sup> However, more recently, scholars have argued that there is ample justification for GQR.<sup>117</sup> Maxwell defines internal generalisation as a generalisation within the setting, group, or population that is the subject of the study. In this context, sampling is broadly defined and not limited to random sampling and regarded as critical for internal generalisation.<sup>118</sup> It has been argued that the assessment of generalisation should not be based on the sample size but on the criteria for selecting

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<sup>111</sup> Thomas A. Schwandt, *Dictionary of qualitative inquiry* (2nd ed.). (London: Thousand Oaks, Sage Publications) 2001.

<sup>112</sup> Denise F. Polit & Cheryl Tatano Beck, 'Generalisation in quantitative and qualitative research: Myths and strategies' (2010) 47. *International Journal of Nursing Studies* 1451, p. 1452.

<sup>113</sup> Thomas A. Schwandt, *Dictionary of qualitative inquiry* (3rd ed). (London: Sage Publications) 2007, p. 129.

<sup>114</sup> Denise F. Polit & Cheryl Tatano Beck, 'Generalisation in quantitative and qualitative research: Myths and strategies' (2010) 47. *International Journal of Nursing Studies* 1451, p. 1452.

<sup>115</sup> Yvonna S. Lincoln, Egon G. Guba, *Naturalistic inquiry*. (London: Sage Publications) 1985, p. 110.

<sup>116</sup> James W. Drisko, 'Transferability and Generalization in Qualitative Research' [2024]. *Research on Social Work Practice* 1.

<sup>117</sup> Ian H. Falk & John Guenther, 'Designed generalization from qualitative research' (2021) 26. *The Qualitative Report* 1054, p. 1055.

<sup>118</sup> Joseph A. Maxwell, 'Why qualitative methods are necessary for generalization' (2021) 8. *Qualitative Psychology* 111, p. 116.

the participants to ensure representativity, and that discoveries within the data guide the sampling.<sup>119</sup>

Mindful of how quickly social norms and legislative provisions can change over time and the factors mitigating against claims for complete generalisation as discussed above, it is argued that the findings presented here are deserving of *moderatum* generalisation. Although *moderatum* generalisation is inherently modest, it cannot be taken to occur naturally and automatically in the process of doing research, nor be left to the reader's discretion. To this end, the researcher applied sampling criteria to support generalisation and ensured that the selected participants matched exactly the population to which the research refers. In addition, saturation was reached for each sampling criterion. In support of the claim of *moderatum* generalisation, attention is drawn to the research design, the broad sample engaged, the geographical spread of participants, the range of school types engaged with, the broad spectrum of decision-makers consulted, the careful description of the setting and the people who participated in the study and the mode of data collection.

#### **4.7.1. RESEARCH LIMITATIONS**

The limitations and exclusions of this study are outlined in detail throughout this chapter. It is acknowledged that there is a question regarding interviewer bias, the interviewer's effect on participants and, hence, the data collected. As a professional educator, the researcher holds the status of 'research insider' with intimate knowledge of how schools operate. As such, he was confronted with the challenge of maintaining objectivity while critiquing a system he had been part of for many years. In addition, it is accepted that the researcher is also an 'insider' in terms of the social class perspective. Being cognisant of the above, the voluntary dimension of the research was emphasised, and interviewees were reminded that they had the power to determine their engagement level and withdraw from/reduce participation if they wished.

Notwithstanding the arrival of online interviewing, the in-depth interviews were very time-consuming and, on occasions, emotionally draining when sustaining a high level

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<sup>119</sup> Florentina Scârnci-Domnişoru, 'From Sample to Population Generalization in Qualitative Research' (2024) 29. *The Qualitative Report* 2362, p. 2369.

of engagement with individuals as they relayed their first-hand expert experience of dealing with this sensitive topic.

The principal mode of participant selection employed was the purposive sampling technique and, of necessity, the limited use of snowballing to access the views of marginalised, difficult-to-reach individuals. The researcher deliberately selected participants on the basis that they had particular experiences and knowledge, and on accessibility within the available timeframe. This is not a random method of selection. Therefore, claims of external validity, generalisability, and representation are considered injudicious as respondents are unlikely to be representative of the survey population.

All research involves measurement; the qualities included are objectivity, reliability, and validity.<sup>120</sup> Objectivity is the willingness and ability to examine evidence dispassionately; it is based on the reality of the social phenomenon without any biased judgments. This norm has been criticised because it appears to call for disinterested investigations that are free from any evaluative judgments. This thesis aimed to study what is and not what ought to be. However, it is acknowledged that all research methods have inherent biases and limitations. The limitations and advantages concerning objectivity are discussed throughout the chapter. However, as experts and authoritative agents, interviewees offered persuasive testimony that provided a foundation for the study's findings.

#### **4.8. CONCLUSION**

The primary strength of the study is its originality. Here, originality should be seen as an indicator of the quality, with external validity being of lesser importance. The research design commenced with overarching exploratory research questions, which were slightly amended to reflect what emerged as most feasible and relevant. The research was conducted within the socio-legal scholarship tradition, with the meanings and interpretations of actors in the process regarded as central.

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<sup>120</sup> Rosaline S. Barbour, *Introducing Qualitative Research*. (London: Sage Publications) 2008.

The demonstrated proficiency and comprehensiveness of statements offered by interviewees on the topic under examination significantly reduced the possibility of misinterpretation by the researcher.

The semi-structured interviews enabled the researcher to access the authentic opinions of decision-makers with years of professional experience aligned to school expulsion and the honestly expressed in-depth understanding of expulsion by parents and students. The thematic mode of analysis enabled the researcher to gain a deep understanding of the topic by developing themes. The themes were based on participants' advanced opinions and provided a rich, detailed, in-depth account. They focused on participants' knowledge, attitudes, and beliefs about the expulsion process and the personal, social, educational, and future consequences of expulsion. The certainty and conviction of participants' understanding of the topic under scrutiny, accessed through semi-structured interviews, set against the doctrinal analysis of the law and the review of academic literature on expulsion, grounded the findings in this study.

As previously mentioned, all research methods have inherent biases and limitations; the deliberate use of multiple methods, with offsetting or counteracting biases, represents a major strength of this study and strengthens the validity of the findings.

Although claims of full generalisability and representation are not professed here, it should be borne in mind that selection criteria were guided by the geographical distribution of the post-primary student population and a decision to recruit participants associated with each major school type in proportion to the study populations.<sup>121</sup>

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<sup>121</sup> Note. A noteworthy omission from this research is the multi-denominational Educate Together Post-Primary schools. At the time of writing, twenty-three schools provided education for approximately three per cent of the post-primary student population.

## 5. CHAPTER FIVE

### EXPULSION DECISION-MAKING, FORMAL AND INFORMAL, WITH PARTICULAR REFERENCE TO THE ROLE, PERCEPTION AND EXPERIENCE OF BOM CHAIRPERSONS, EDUCATIONAL WELFARE OFFICERS AND DIRECTORS OF SCHOOLS.

#### 5.1. INTRODUCTION

This chapter primarily focuses on addressing the research question regarding whether school Boards of Management (BOMs) are adequately equipped to engage in the school expulsion process as mandated by law. Particular attention is afforded to the application of legal principles relevant to school expulsion decision-making,<sup>122</sup> in the context of the right to education,<sup>123</sup> and the right to be heard.<sup>124</sup> A broad perspective has been adopted by considering the views of Chairpersons of School Boards of Management (Chairpersons of BOMs), Educational Welfare Officers (EWOs), and ETB Directors of Schools (DOSs), all of whom had first-hand experience in expulsion decision-making.

The BOM chairpersons' interviews took place within the context of their roles as chairpersons of the body responsible for expulsion decision-making. Factors that hamper a BOM from acting impartially have been identified, though it is not suggested that all boards fulfil their duties uniformly. The board's involvement in a case of formal expulsion begins when the principal, acting as secretary to the board, convenes an expulsion hearing, where they present their case and recommend expulsion. The chapter examines the BOM's role in reviewing the principal's recommendation to expel and provides a comprehensive analysis of the principal's influence on the BOM's consideration of the recommendation. Particular emphasis is placed on the composition, recruitment, and training of BOM members.

The Educational Welfare Service (EWS) ensures that each child attends a recognised school or otherwise receives a certain minimum education.<sup>125</sup> The chapter examines the nature and impact of EWS involvement in expulsion cases and explores constraints on greater involvement. Moving beyond formal expulsion, attention is given to non-

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<sup>122</sup> See. The legal principles applicable to school expulsion decision-making, section 2.4.

<sup>123</sup> See. The right to education, section 2.2.

<sup>124</sup> See. The right to be heard in education, section 2.3.

<sup>125</sup> Education (Welfare) Act, 2000, s.10(1).

statutory expulsion decision-making and the debate surrounding the perceived advantages and shortcomings of informal expulsions and local arrangements. Parents and students facing expulsion generally participate in the BOM expulsion hearing either in person or through a written submission. The experiences and interpretations of participants regarding the student's right to be heard at expulsion hearings are examined.<sup>126</sup> The principal attends the hearing in their capacity as secretary to the BOM. In this phase, the principal presents the sequence of events leading to the referral, and the parent/student can present their case, though their representations are not regarded as an appeal at this stage. In the interest of fair procedure, the principal must not attend that portion of the hearing devoted to the consideration of the recommendation to expel.<sup>127</sup> A decision of the BOM to expel initiates the legal process. It converts a student who has engaged in a serious breach of the school's code of behaviour into an expelled student, 'with all the practical status and legal consequences that follow'.<sup>128</sup> The study examines chairpersons' experiences of expulsion hearings and their perceptions of the legal framework governing expulsion decision-making. Boards do not perform an administrative function when employing the expulsion sanctions; they act in a quasi-judicial capacity.<sup>129</sup> A key feature of a quasi-judicial decision-making body is its ability to conduct its proceedings with minimum formality; this chapter reviews the board's performance in meeting this requirement. In this regard, the chairpersons' perceptions of the experiences of parents and students attending hearings are discussed. The views of chairpersons on the question of legal representation at expulsion hearings are also presented. The perspectives and experiences of chairpersons, DOS, and EWOs on non-statutory modes of expulsion are examined. In addition, the chapter examines the viewpoints of decision-makers, including s. 29 committee members, on the challenges parents face when seeking a new school for their child after expulsion.

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<sup>126</sup> Note. For discussion of findings relating to the voice of the student, see section 7.7.2.

<sup>127</sup> Note. Schools are required by law to follow fair procedures when proposing to expel a student. The process undertaken must be impartial, ensuring that decisions are grounded on an unbiased evaluation of available evidence. No party involved in the case may partake in the Board's deliberations; this includes the principal, who, upon assessment of available evidence, makes the recommendation to expel to the BOM. See. National Educational Welfare Board, '*Developing a Code of Behaviour: Guidelines for Schools*'. (2008). Dublin: National Educational Welfare Board, paras. 10.3 and 12.4.

<sup>128</sup> Daniel Monk, '(Re) constructing the Head Teacher: Legal Narratives and the Politics of School Exclusions' (2005) 32. *Journal of Law and Society* 399, p. 405.

<sup>129</sup> See the nature of school expulsion decision-making, section 2.6.2.

It must be acknowledged from the outset that board members give of their time and expertise freely and without remuneration. Their involvement is rooted in a desire to make a positive contribution to the development of their school and society generally. Pseudonyms are used throughout the thesis write-up to adhere to the ethical standards approved by the ethics committees.<sup>130</sup>

## **5.2. BOARD OF MANAGEMENT, COMPOSITION, RECRUITMENT AND TRAINING**

Interviewees emphasised the importance of ensuring that board members are appointed properly, possess adequate knowledge and integrity, and understand the impact of expulsion. They emphasised that appointing members solely on the basis of personal relationships can lead to weak boards that may lack the capacity to address sensitive issues such as expulsion.

An Education and Training Board school/college is managed by a committee of the ETB, which is known as the Board of Management,<sup>131</sup> and consists of up to twelve members.<sup>132</sup> Voluntary Secondary School (VSS) and Community and Comprehensive School (C&C) boards comprise eight. Appointments to BOM are by way of nomination, election, or invitation. The chairpersons interviewed had extensive involvement in the field of education. All ETB BOM chairpersons were members of their ETB board; the majority (5) were local authority representatives. All but one was a former member of the then ETB s. 29 appeal committee, as were all of the C&C BOM chairpersons interviewed. Fifty per cent of VSS chairpersons were retired principals; one was a former Deputy Principal. Males were overrepresented, accounting for 80% of BOM chairpersons interviewed. This is in keeping with research conducted in England and Wales, which demonstrated that chairs of school governor exclusion panels are typically drawn from the middle classes; two out of every three were male, while the social groups most at risk of expulsion are underrepresented.<sup>133</sup>

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<sup>130</sup> Note. For discussion on the ethical standards in socio-legal research, see section 4.6.

<sup>131</sup> ETB school BOMs are established under the Education and Training Boards Act, 2013, s. 44(1)(a) in accordance with the provisions of Part IV of the Education Act, 1998.

<sup>132</sup> Note. It is noteworthy that a quorum for an ETB school/college BOM meeting is a minimum of four members. See [https://www.etbi.ie/wp-content/uploads/2020/11/etbi\\_bom\\_handbook\\_english.pdf?x75197](https://www.etbi.ie/wp-content/uploads/2020/11/etbi_bom_handbook_english.pdf?x75197), para 7.1.

<sup>133</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, pp. 101-102.

Interviewees acknowledged that boards need representatives from diverse backgrounds, particularly from the field of education. The risk of over-reliance on retired teachers as members was acknowledged, as this group may constitute a majority of members, some having retired for many years and no longer having an insight into the evolving school environment:

My experience is that it can be too top-heavy as far as education is concerned. Yes, teachers are interested - they end up coming back into the system. You could be surrounded by a group of teachers who have a complete vision when it comes to the approach. Now, it is not a wrong vision; it is just not the broad vision that you would like to see.

Eamon (Chairperson of BOM)

In light of the declining numbers in religious orders and the challenge of recruiting suitable candidates, trustees occasionally referred to the school principal for names of potential candidates. The inclusion of non-educationalists was encouraged to advance a broader perspective. BOM typically has two parent representatives who are normally recruited to the position in cooperation with the parents' council. While the Act of 1998 promotes the establishment of a parents' council, it is not mandated.<sup>134</sup> One experienced EWO questioned the representativeness of boards:

Some of the management committees (BOMs) are made up of people who are picked out at some levels ... there is a lack of diversity at a lot of those BOMs... it is the who's who and the who, you know.

John (EWO)

Interviewees did not receive specific training on the school expulsion process. The issue received some attention as part of general BOM training, although not all members attended this training. The limited training provided, combined with access to documentation and personal interest, led most chairpersons to believe they possessed sufficient knowledge to exercise their duties in an informed manner.

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<sup>134</sup> Education Act, 1998, s. 26(1) provides that parents may establish and maintain a parents' association for the school.

### 5.3. THE BOARD OF MANAGEMENT EXPULSION HEARING

When the school principal determines that expulsion is warranted after investigating an alleged serious breach of the school's code of behaviour, the principal, acting in their capacity as secretary to the board, convenes a BOM hearing during which they recommend that the board consider expulsion.<sup>135</sup> The principal should inform the parents of the recommendation and invite the parents to attend the hearing. The BOM typically receives the student's historical record within the school, copies of all communications with the parents, and an objective report on the incident that led to the recommendation. Practices differ, with some boards receiving documentation a week in advance to facilitate informed decision-making, while other boards have limited access to records only during the meeting. Timely access to the documentation is valued as it is believed to promote transparency and a fair process. BOM chairpersons acknowledge that attending the expulsion hearing can often be awkward, challenging, and traumatic for families. They maintain that parents' input can sway the board's decision, potentially persuading them against the recommendation to expel. There was broad agreement that the student should be given every opportunity for meaningful involvement in this crucial decision that may affect their future. Opponents argue that the students are well-represented by their parents and should not be subjected to the stress of direct engagement. It is common for the student to decline the opportunity to engage directly with the board, even when in attendance:

I think yes, they should be there, and they have an entitlement to hear what is being said about them and actually try and put their view across ... and the other part of me thinks it is too traumatic. You see them over there and he or she is lost and are looking down, they are mortified and are afraid to look at their mother because of what is being said. It's way too negative, and are you going to destroy their confidence?

Ashling (Chairperson of BOM)

The chairpersons emphasised the importance of being guided by the principle of natural justice when considering a recommendation to expel. This involves examining the situation dispassionately, prioritising the fair treatment of the student while recognising that the board's primary obligation is to the broader student population.

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<sup>135</sup> National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'*. (2008). Dublin: National Educational Welfare Board, para 12.4.

Teacher representatives generally partake in the BOM hearing. However, some chairpersons hold that if a teacher representative were directly involved in the offending incident(s) or had a significant prior conflict with the student or prior responsibility for managing the student's behaviour, they would be required to exclude themselves from the decision-making process.

The guidance offered by Lord Schiemann in the English case, *T (By Her Mother and Litigation Friend A) R on the Application of) and Head Teacher of Elliot School and Others*, [2002] EWCA Civ 1349, though limited to persuasive value in the Irish context, is nonetheless noteworthy.<sup>136</sup> The learned judge acknowledged that it is quite probable that one or more of the individuals hearing an appeal will have had some prior knowledge of the excluded pupil and or the principal. He advised that the most sensible course of action for any decision-maker who has any involvement with either party is to withdraw, unless they are assured that there can be no reasonable doubt about their ability to act impartially. Even in situations where they find no such reasonable doubt, the judge advised that it would still be prudent to consult the other decision-makers for their agreement, and even if they do agree, it is often advisable to disclose such links.

On the other hand, some chairpersons highlighted that a teacher representative with prior experience with the student could offer a unique, supportive perspective to the board, the absence of which would represent a lost opportunity. While they may have access to important background information through formal and informal sources, concerns were raised that teacher's representatives might be swayed by peer accountability, particularly if the board's decision is unlikely to be supported by the teaching staff. This accountability may unduly affect their decision-making:

Of course, they would have had discussions with them [fellow teachers], and there would have been a view abroad for each one of them of if they are good, if they are bad, if they find that they are highly intelligent, if they are applying themselves at all or if they find that they were of the ilk that they would be a bully and aggressive and didn't care about the consequences.

May (Chairperson of BOM)

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<sup>136</sup> *T (By Her Mother and Litigation Friend A) R on the Application of) and Head Teacher of Elliot School and Others*, [2002] EWCA Civ 1349, para. 16.

Generally, there was outright opposition to the prospect of lobbying by interested parties seeking to affect the outcome of the board's deliberation. It was noted that the rejection of the practice was essential to protect the independence of the board. The chairpersons stated that board members are drawn from the local community, which may result in a potential conflict of interest and the risk of biased decision-making. They emphasised that reliance is placed on the individual's integrity in this regard. It was noted that locally elected representatives are more at risk because of their dual mandate; occasionally, a local politician will lobby the chairperson for leniency. While most chairpersons maintain that such endeavours have no impact on the outcome of proceedings, there was credible indirect evidence from a small number of participants that some lobbying does occur. The rejection of the practice was not universal:

It might be no harm if parents would always probably make contact with their (local political) representative or someone on the board they know if they want to point out that there might be a little bit of victimisation going on here ... I was never lobbied too hard on it anyway.

Martin (Chairperson of BOM)

Additionally, chairpersons are aware of the risk of biased decision-making concerning parent representatives who may be influenced by views expressed by their children. One chairperson noted that expulsion hearings are often perceived as unpleasant, leading some members to recuse themselves from the process voluntarily. This withdrawal may occur when a potential conflict of interest exists or for unfounded reasons when a member seeks to avoid involvement in difficult, contentious decision-making.

At the hearing, the principal presents the expulsion recommendation in the presence of the parents. Parents will be afforded the opportunity to put their case to the board. Both parties may directly interrogate each other's evidence. While this practice is standard at most BOM hearings, it is not universally applied.

One chairperson outlined the board's parent communication strategy during expulsion hearings, which can be summarised as one of non-engagement:

Our practice was that we listened, we didn't engage in any discussion with the parents, we didn't make any comments on what they were saying. We listened carefully, we generally got their written submission, typed, and handed to us, and then we, well, I as the chairman, would say thank you very much, and the board will now consider the situation privately, and we will be in contact. We certainly didn't engage.

Eileen (Chairperson of BOM)

While chairpersons generally accepted that boards rely on the principal's professional judgment to 'a fairly high extent,' some agree the decision warrants careful consideration by the board:

I would say nobody is ever 1000% sure that expulsion is the right way to go ... a good board will definitely look at the situation, come up with different solutions, and, you know, discuss them back and forth and then the principal is called in, and there is further discussion with the principal and the child isn't permanently expelled.

Joseph (Chairperson of BOM)

#### **5.3.1. THE ATMOSPHERE AT THE BOARD OF MANAGEMENT EXPULSION HEARING**

Chairpersons seek to establish a professional, friendly atmosphere at the BOM expulsion hearing, yet are cognisant of the necessity to conduct the meeting in a formal manner. However, the atmosphere at the board hearing was typically described as very tense and stressful. Parents can attend the BOM meeting or decline the invitation. Being present at a meeting when serious charges relating to your child's poor behaviour are being presented to a large board can prove overwhelming, particularly if the parent is unsupported. Interviewees concluded that most parents were embarrassed, very apprehensive, and worried about their child, often hearing for the first time the extent of their child's poor behaviour. One chairperson expressed empathy for the parents based on the assessment that parents will often struggle to find a mainstream school willing to enrol their child.<sup>137</sup> The Chairpersons referred to the board's obligation to confirm that all appropriate available interventions aimed at supporting the student had been put in place prior to considering a recommendation to

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<sup>137</sup> Note. For discussion on the challenge faced by informally expelled students seeking a new school, see section 7.7.4.

expel. They emphasised the importance of the principal and parents leaving the meeting simultaneously to respect the independence of the board's deliberations.

The prospect of attending an expulsion hearing, unsupported, poses a significant challenge for parents.<sup>138</sup> A variety of approaches have been observed, as summarised by Ashling:

I have had an incident where you have parents that will say nothing, and the child was there and said nothing. You get parents sometimes who come in all aggressive, ... you have others really plead for their child to be kept, pleading for help, they need your help to help their student.

Ashling (Chairperson of BOM)

Interviewees observed that parents may sometimes project a desire to be perceived as cooperative and respectful towards the school while pleading for leniency. The chairpersons noted the inherent risk of parents' overly robust defence in the hope of convincing the board of the merits of their case, which may undermine their case in the board's eyes. On the other hand, parents sometimes become emotional and decline the opportunity to contest the expulsion because they lack the skills and confidence to do so effectively:

They are just a bit scared of the whole system, and they just probably don't feel they have the wherewithal to do it ... a lot of parents wouldn't be able to do it without getting help or advice, and maybe they think they are on their own here and don't have that kind of support.

Martin (Chairperson of BOM)

While parents have the right to have their voices heard throughout the expulsion process,<sup>139</sup> the above analysis suggests that many parents require support and guidance on how to participate effectively in the BOM expulsion hearing.<sup>140</sup> The following section outlines the support offered to parents by the EWS during BOM expulsion hearings.

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<sup>138</sup> Note. For further discussion on parents' experience of the BOM hearing, see section 7.3.1.

<sup>139</sup> Note. For discussion on the voice of parents in school expulsion law, see section 2.3.2.3.2 and UNCRC and the voice of parents, 2.3.2.2.

<sup>140</sup> Note. For further discussion on parents' perceptions of the status afforded to their voice throughout the expulsion process, see section 7.8.

### 5.3.2. EDUCATIONAL WELFARE SERVICE INVOLVEMENT IN EXPULSION HEARING

BOM chairpersons acknowledge the key role EWOs can play by supporting parents at expulsion hearings. Their attendance is not typical. One chairperson expressed their annoyance at the level of service:

I have seen EWOs not turn up ... they say they are coming and then have to cancel. I find that annoying because I think that is where parents need that extra support. I think it could take a lot of tension out of the situation if there is somebody there with them – it is horrible for them, and I really empathise with them.

Ashling (Chairperson of BOM)

Acknowledging that this is not a customary practice, some EWOs claim they have occasionally accompanied parents to expulsion hearings; others conceded they never attended an expulsion meeting. Mary, as an occasional attendee, outlines her view on the apparent pointlessness of EWOs attending expulsion hearings:

The parent can say what they want, and it is not going to make one iota of a difference. We don't go to the BOM meetings ... when they actually make a decision, and I know they say the principal and the parents leave, but I would say that probably the decision has been made already ... I just know at some meetings, the principal has already made the decision.

Mary (EWO)

The chairpersons and DOS have strongly criticised the limited involvement of EWOs in expulsion cases. However, it must be acknowledged that the timing of notification to the EWS of the board's intention to expel, which occurs after the board hearing where the intention to expel has been decided, hinders the possibility of the EWO attending the BOM hearing. EWOs indicated that schools sometimes fail to inform EWS of expulsions, thereby breaching their statutory obligations.<sup>141</sup> In a context where EWOs are legally obligated to cooperate with schools, they sometimes encounter opposition at the school level, ranging from general to considerable opposition to their involvement in expulsion cases. They emphasised the necessity of maintaining a working relationship with the principal as a constraint on their

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<sup>141</sup> The Education (Welfare) Act 2000, s. 24(1).

involvement in opposing expulsions, given their legal obligation to cooperate with schools. When asked if the s. 24 meetings occur, BOM chairpersons confirm that they do ‘most times’. However, there was an indication that s. 24 meetings are more likely to occur in cases where parents are predisposed to invoke their right to appeal.

### 5.3.3. LEGAL REPRESENTATION AT EXPULSION HEARINGS

On the vexed question of legal representation at hearings, most interviewees confirmed they had not received requests to permit representatives to accompany parents to the hearing. The chairpersons noted that, although normally discouraged, there is an increasing tendency for parents to request permission to have their legal representation present. Case law confirms that parents do not have a right to have legal representation at any meeting or hearing of the BOM.<sup>142</sup> Significant variations in practice emerged, ranging from permitting full participation to limited attendance and consultation with their client, to a blanket refusal to permit representatives to attend. Legal representatives are allowed full participation in proceedings, for example, when a member of the BOM is a legal expert or when it is anticipated that the case may be appealed. Noel confirmed that on foot of advice received from law firms over the years, his board permits legal input:

Let them speak, let them have their say, don’t let them dominate the meeting, and move on with your decision, having given everyone a voice.

Noel (Chairperson of BOM)

Should a complex matter arise, the BOM will typically rely on expert legal advice from the sector’s national management body or a private law firm. The considered approach adopted by boards may be regarded as prudent and in line with case law and national guidelines.<sup>143</sup>

In the contemporary culture of developing human rights, given the limited EWS support and in light of the availability of legal advice to the BOM, it is questionable if the case law on the matter would stand the test of time, particularly in the case of a

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<sup>142</sup> Note. For discussion on the right to legal representation at the expulsion hearing, see section 2.9.3.

<sup>143</sup> Note. The NEWB Guidelines state that ‘thoughtful application of professional judgment and an understanding of fair procedure requirements’ will generally guide decision-making concerning expulsion. The Guidelines advise that in particularly complex situations, school authorities may need to seek legal advice to support their decision-making, para 10.14.

vulnerable child and parent. The view was expressed that the input of legal advisors is not always beneficial to either party and that an honest presentation by parents was preferable. Comments range from ‘the advice we got was absolutely useless’ (BOM chairperson) to criticism of parents' legal advisors' input at hearings:

Barristers have come and have taken a very aggressive approach ... it has not helped. I think parents who have come in, told their story, being truthful and honest and fair and realistic and respectful, are more effective than barristers taking a very legalistic and aggressive approach.

Jim (DOS)

#### 5.3.4. SCHOOL EXPULSION V EXTERNAL INVESTIGATION

The predicament faced by schools when encountering allegations of breaches of the school disciplinary code, which could constitute a criminal offence, is an example of a dilemma faced by a school board without guidance or support from the state. Here, Kilkelly's comments are noteworthy. She contends that boards are largely unsupported by the state in fulfilling their functions.<sup>144</sup> Most chairpersons did not encounter school-based incidents of a criminal nature that warranted investigation by an external agency.<sup>145</sup> Nevertheless, in the absence of guidance, confusion prevails, leading to inconsistent practices among schools. Questions of procedure arise regarding the necessity to ensure that the board does not take steps that might hamper a potential external criminal investigation.

One DOS confirmed that if an incident that led to a decision to expel constituted an alleged criminal offence, an Garda Síochána was informed by the school. The Gardai do not always pursue the matter. The position adopted by one board was that the school expulsion process and a criminal investigation are two separate and distinct processes; therefore, the expulsion continued unaffected by the Gardai investigation. An alternative approach, adopted on legal advice, led to the suspension of the expulsion process while the criminal investigation took precedence:

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<sup>144</sup> Ursula Kilkelly, *Children's Rights in Ireland: Law, Policy, and Practice*. (Tottel Publishing Ltd.) 2008, para. 12.030.

<sup>145</sup> Note. Cases relating to the possession/sale of drugs may be referred to an Garda Síochána. Issues relating to child protection matters within or outside of the school premises will be referred to the Tusla Child Protection & Welfare Service.

A criminal investigation really takes over; a criminal investigation had to take over in the first instance, ... we had to step back legally.

Brian (ETB DOS)

#### 5.4. THE POWER OF THE SCHOOL PRINCIPAL

The statutory framework for expulsion was established in Ireland for the first time by the 1998 Act, and since then, the law has been amended on several occasions. What has remained consistent is the significant role of the school principal in relation to expulsion. A decision of the principal to regard a breach of the school's code of behaviour as a matter that warrants a recommendation to expel represents a significant moment in how the matter is to be managed. The principal's decision may be influenced by a number of factors, including the seriousness of the breach, the knowledge by the principal of the student involved, the way the matter came to their attention, their relationship with the teacher concerned (if any), the social capital and the ability of the parents to challenge a decision to expel. The school principal, acting in their capacity as the school principal and secretary to the BOM, clearly has considerable power. This section aims to explain why, in the contemporary culture of developing parents' and students' rights, school principals have such extensive powers.

The principal's legal duties are set out in primary legislation; in addition, they must have regard to the guidance produced by the DOE and the EWS. Principals should be aware of and make use of the NEWB guidance to aid their understanding of the statutory framework.<sup>146</sup> This is important, both to ensure principals do not act unlawfully and to ensure they understand the full extent of their discretion. However, in practice, such guidance has proven to be of limited use. Most significant in this respect, although commonly ignored, is the fact that the guidelines do not apply to informal expulsions.<sup>147</sup> Referring to the English context where the power to expel rests with the school principal, Monk notes that the power of the principal in relation to formal expulsion is so extensive that if it were 'translated into the context of the criminal justice system, the principal teacher would, in effect, occupy the role of legislator, senior police officer, prosecutor, judge, jury, and character witness'. He

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<sup>146</sup> National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'*. (2008). Dublin: National Educational Welfare Board.

<sup>147</sup> Note. For discussion on informal expulsion and local arrangements, see section 5.6 below.

asserts that in a criminal trial, if one person held all of those roles, ‘such a trial would almost certainly be considered an abuse of the right to a fair trial under Art 6 of the ECHR.’<sup>148</sup>

Even if the formal process is followed, the school principal can have considerable influence over board members. Most chairpersons recognise that boards are corporate entities that exist separately and apart from the people elected as trustees and that the board's decisions, therefore, are corporate decisions. Others believe they have individual ownership of their decision and have personal difficulty opposing the principal. Most interviewees acknowledged that the principal's influence can be excessive and that some members are easily influenced.

Chairpersons generally recognise that boards rely heavily on the professional competence of the principal. One chairperson asserted that the board's role is confined to oversight, and while board members do not wish to expel, they must be mindful of the school's standing within the locality when deciding to expel:

We have to look at the broader picture and the bigger picture in the context of the school's standing.

Tom (Chairperson of BOM)

The judiciary has, similarly, repeatedly demonstrated a marked reluctance to challenge the status quo, as demonstrated by Kearns J., who, in the Student A and Student B case, held that in matters relating to school discipline, ‘the school usually knows best.’<sup>149</sup> Monk contends that the potential of statutory law and the courts to act as an effective check on the powers of the principal has, in practice, proved extremely limited in the UK.<sup>150</sup>

The principal makes the initial decision to bring a disciplinary matter to the board for consideration. The task of the board is by no means a rubber-stamping exercise; however, evidence suggests boards are generally reluctant to disregard the principal's recommendation. This finding aligns with Harris et al., who question the independence

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<sup>148</sup> Daniel Monk, ‘(Re) constructing the Head Teacher: Legal Narratives and the Politics of School Exclusions’ (2005) 32. *Journal of Law and Society* 399, pp. 400-401.

<sup>149</sup> Student A. and Student B. v. Dublin Secondary School, [1999] IEHC 47, p. 11.

<sup>150</sup> Daniel Monk, ‘(Re) constructing the Head Teacher: Legal Narratives and the Politics of School Exclusions’ (2005) 32. *Journal of Law and Society* 399, pp. 402 - 404.

of school governors in England and Wales<sup>151</sup> and their ability to dispose of cases in a manner that is fair.<sup>152</sup> The importance of having a strong, well-informed board capable of assessing a recommendation to expel was emphasised. It was acknowledged that boards typically do not meet this threshold. It was submitted that the limited capacity of boards is one of the major weaknesses of the expulsion process:

The capacity and the confidence of a board to ... interrogate what the principal brings forward in terms of the report on the incident and all the things that he or she is doing in the school and the school's ethos ...it would take a lot of confidence; the board members would have to have a really deep understanding of how the school functions ... I think it is very difficult for a board in that scenario to go against what the principal wants because the principal knows exactly how to present this, he or she will know exactly how to get the board on side, he or she knows who is on that board, knows how to work with that board and to get the outcome he or she would decide. As I say, I have rarely seen a board go against the principal or to reject the principal's recommendation for an expulsion. Maybe the answer is still the same, but the board has a role, and its function is not just to accept.

Jim (ETB DOS)

The principal's report on the matters leading to the recommendation for expulsion is accepted by board members as authentic in the absence of complete knowledge by some members on how schools function on a day-to-day basis:

The principal's report was accepted as being a professional, honest, and straightforward document without too much scrutiny because, in fairness, a lot of people wouldn't actually know how the place runs on a day-to-day basis.

Eileen (Chairperson of BOM)

This level of trust in the principal's professionalism mirrors the findings of Munn, who reports that a key feature of the way school governors function in Scotland and England is the elevated level of trust they display in the principal's professional expertise and judgment.<sup>153</sup> She observed that principals typically presented reports on

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<sup>151</sup> Note. In England and Wales, school governors have responsibilities similar to those of BOM members in relation to the management of a school generally.

<sup>152</sup> Neville Harris, Karen Eden & Ann Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000, p. 97.

<sup>153</sup> Pamela Munn, 'Parental influence on school policy: some evidence from research' (1998) 13. *Journal of Education Policy* 379, p. 386.

aspects of school life to the governors; these reports were discussed to varying degrees; however, the principal was never seriously challenged. She concludes that governors view their primary role as supporting the school and its teachers, accepting and ratifying policies proposed by the principal.

While most BOM chairpersons interviewed refute the suggestion that the BOM rubber-stamps the principal's decision, the view is not universally held. One chairperson conceded, 'you are rubber-stamping the principal's decision.' It was submitted that 'it would have to be a strong board to disagree with the principal'. It was noted that in large urban schools, a board may benefit from the advice of a member who may be in a position to offer professional legal advice. Otherwise, there is a reliance on 'the whole notion that the principal knows best.' The EWOs emphasised that principals often claim the decision to expel was not their decision, a position not readily accepted by many:

I wouldn't buy into that ... myself now. I think the principal is the decision-maker ...in my own opinion, I think the principal is the deciding factor and probably advises the boards a lot of the time as to what needs to happen.

Susan (EWO)

One chairperson submitted that the board must have a recommendation to expel from the principal, without which it cannot proceed with expulsion and without which a s. 29 appeal will be upheld. This contention is not supported by reference to the legislative framework, and it points to a conflated understanding of the law, one that places the principal in a position of higher authority than the board.

The board may not accept the recommendation of the principal and may come to the view that expulsion is not warranted because:

- a) The board did not believe that there was sufficient evidence to support a decision to expel.
- b) The board did not believe the case for expulsion was strong enough.
- c) The board concluded the school did not follow the expulsion procedure properly.
- d) The documentation supporting the recommendation to expel was not distributed to the affected parties on time to allow for proper consideration of the matter.
- e) The school did not put adequate support in place to support the student before commencing the expulsion process.

## **5.5. BOARD OF MANAGEMENT CHAIRPERSONS' INTERPRETATION OF THE LEGAL CONTEXT OF EXPULSION**

The BOM has exclusive power to expel as provided for in law. A key question that impacts how expulsion is administered relates to whether the process is perceived as part of the school disciplinary system or a quasi-legal process. Opinions differ, as most chairpersons view expulsion as an integral part of the school's internal discipline framework, while others acknowledge its quasi-legal nature. However, there is a consensus that the process is increasingly perceived as legal, although there is resistance to engaging with its legal aspects, prompted by concerns that an undue focus on the legal dimension could discourage potential board members. 'If you put too much emphasis on the legal side, one fine day, you are going to find that nobody will go on boards' (Noel, Chairperson of BOM).

The consensus view is that it is unreasonable to expect lay board members to understand the legal principles underpinning school expulsion. The requirement to act in good faith and within the law was deemed essential to ensure 'we are indemnified.' One chairperson likened the tasks of a board member to 'that of a juror that would be making a decision in the long run' and posed the question, 'What legal training did they have?' It must be remembered that while jurors are not required to have legal training, they receive instructions from a judge, who resolves questions of law, while jurors solely adjudicate questions of fact.

## **5.6. INFORMAL EXPULSION AND LOCAL ARRANGEMENTS**

The formal expulsion of a student requires input from three distinct parties.

- a. The school principal who brings a recommendation to expel to the BOM
- b. The Board is the deciding body
- c. The EWS is the body charged with ensuring the student's education continues post-expulsion.

In addition to the formal process, students sometimes leave school under threat of formal expulsion. A variety of mechanisms are employed to achieve the latter. There is no explicit provision in law for such action. In the absence of a determination by the courts that finds non-statutory expulsion to be illegal, the term 'illegal expulsion' is not employed throughout this thesis. Informal expulsion involves the school principal

acting alone. The third category, ‘local arrangement,’ is subdivided into two subcategories. Local arrangement 3(a) involves the BOM and school principal, and finally, local arrangement 3(b) sees the principal as the primary decision-maker supported by the EWO. The informal and local arrangement type of expulsion denies the student the right to appeal, as their departure from the school may be deemed voluntary, although under significant coercion.

| School Expulsion Mechanisms – Formal, Informal, and Local Arrangements |                  |                 |                 |                              |
|------------------------------------------------------------------------|------------------|-----------------|-----------------|------------------------------|
| Type of Expulsion                                                      | Deciding Body    | BOM Involvement | EWO Involvement | Availability of s. 29 Appeal |
| 1. Formal Expulsion                                                    | BOM              | Yes             | Yes             | Yes                          |
| 2. Informal Expulsion                                                  | School Principal | No              | No              | No                           |
| 3. Local Arrangement (a)                                               | School Principal | Yes             | No              | No                           |
| 3. Local Arrangement (b)                                               | School Principal | No              | Yes             | No                           |

Figure 14.

2. Informal Expulsion
 

This term is used to describe the circumstances where the school principal (or someone acting on their behalf) encourages or advises a student (or their parents) to leave the school permanently on a voluntary basis under threat of formal expulsion.
3. Local Arrangement
 

(a) This term is used to describe the circumstances where the BOM decides to stop short of formal expulsion and may, for example, suspend consideration of the matter to allow the parents to find a new school for their child. The BOM is motivated in its decision-making to support the principal.

(b) Alternatively, a local arrangement may be negotiated by the EWO, in which case the principal agrees not to proceed with a recommendation to the BOM to expel the student on the condition that the student leaves the school permanently.

Informal expulsions usually begin with a conversation, a conversation which some EWOs believe some schools are too quick to initiate:

The school might say ‘oh yeah, the Youthreach Centre is down the road – have you considered that?’ or ‘you are probably getting sick of being cooped in here’ or ‘and maybe this would suit them better.’

Susan (EWO)

Informal expulsion may be perceived as advantageous from both the school’s and the parents’ perspectives. It offers the school a quick and uncomplicated process that circumvents the formal expulsion process and eliminates the possibility of a s. 29 appeal. From the parents’ standpoint, there is potentially less reputational damage, reduced stress, and a better chance of securing a place at a new school. However, the findings of this study do not support the contention. None of the four informally expelled students interviewed found a mainstream school willing to enrol them. Three parents of informally expelled students did find a new school; one did so following a successful s. 29 appeal of a refusal to enrol. A second was accepted on the basis of a significantly reduced timetable, and the third was accepted on the condition that they remain out of school for the remainder of that school year.<sup>154</sup> In each case, the parents formed the view that there was informal communication between the expelling school and the new school, which did not bode well for the parents’ efforts to enrol. Non-statutory-based means of expulsion rely on a power imbalance and the use of cohesion as its primary mechanism. Deprived of their statutory rights, vulnerable, unsupported students are most likely to be the victims.

Nevertheless, the assertion that informal expulsion and local arrangements contravene the provisions of the Act of 1998 did not elicit significant commentary from interviewees, nor did references to the provisions of the Act of 2000 or the suggestion that such actions deprive the student of the protections afforded by the Acts of 1998 and 2000.

The findings of this study reflect those of research conducted in England, where it was found that even when school personnel have a good appreciation of the legal

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<sup>154</sup> Note. For an overview of participants’ engagement in mainstream education following expulsion, see Figure 19, section 7.7.3.

requirements regarding expulsion, they may deviate from those requirements if they believe that adhering to the law does not yield the desired outcome.<sup>155</sup>

Informal expulsion carries the inherent risk that some parents, through their interactions with the school, may feel they lack a genuine choice and consequently withdraw their child, believing that refusal will inevitably result in a formal expulsion. This belief may well be rooted in reality. Theoretically, the parent voluntarily removes their child from school. Consequently, there is no legal basis for challenging the expulsion; the nature of parental action renders the safeguarding of parental rights unnecessary, as, hypothetically, the decision was voluntary and not imposed on the parents. However, voluntariness must be free of coercion.<sup>156</sup> It is influenced by decision-making capacity, which may be compromised by the presence of addiction, mental health issues, or learning difficulties.<sup>157</sup> Consequently, some parents may be forced to withdraw their child or lack the capacity to make a voluntary decision.

When parents are contemplating withdrawing their child, they should have the right to receive comprehensive information to facilitate informed decision-making. Specifically, they need to understand that by doing so, they forfeit the safeguards available to them should their child be formally expelled, including the right to EWS involvement, the right to challenge the expulsion, and, significantly, the right to home-school tuition. It may not be apparent to the parent that the outcome of the principal's recommendation to expel is not a foregone conclusion as they will have the opportunity to present their case to the BOM and s. 29 committee should they so choose. Important questions remain unresolved regarding home-school power dynamics and the extent of voluntariness of these withdrawals, which may undermine the perceived benefits of the measure.<sup>158</sup>

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<sup>155</sup> Lucinda Ferguson & Naomi Webber, 'School Exclusion and the Law: A Literature Review and Scoping Survey of Practice.' (2015). Available at <http://www.education.ox.ac.uk/wordpress/wp-content/uploads/2015/02/Exclusion and the Law>.

<sup>156</sup> Conor O'Mahony, Rebecca Brennan & Kenneth Burns, 'Informed consent and parental rights in voluntary care agreements' (2020) 32. *Child and Family Law Quarterly* 373, p. 380.

<sup>157</sup> Conor O'Mahony, Rebecca Brennan & Kenneth Burns, 'Informed consent and parental rights in voluntary care agreements' (2020) 32. *Child and Family Law Quarterly* 373, p. 379.

<sup>158</sup> Note. For a discussion on the experience of parents of informally expelled students, see section 7.4.

### 5.6.1. INFORMAL EXPULSION - PARTICIPANTS' PERSPECTIVES

Informal expulsion has previously been referenced in the Irish context. Opinions among BOM chairpersons regarding informal expulsions varied; some acknowledged its advantages, while others rejected it, viewing it as an unjust denial of education without due process. Although BOM chairpersons typically do not engage in the informal expulsion process, there was general agreement that it persists as a feature of school expulsions in Ireland. Some chairpersons emphasised the benefits of removing a disruptive student from school, framing it as a positive and cooperative approach aimed at protecting the student's school record, thus easing their move to another school. This approach was regarded as a 'kinder' alternative to formal expulsion, where parents were encouraged to act in the child's best interest. It was regarded as a way to avoid the embarrassment and complications of formal expulsion. Accepting the legitimacy of the practice, one chairperson confidently embraced the practice:

I mean, if that has to be the way it is, I don't see an awful lot wrong with it, but kind of doing it over and above the normal call of duty, kind of off-side, you know.

Martin (Chairperson of BOM)

However, it was acknowledged that this put the principal in a vulnerable position if the parent chose to contest the agreement and challenge the principal's advice and guidance. The chairpersons stated that the decision to expel informally is highly circumstantial and dependent on, among other factors, what alternative provision may be available for the student. The inbuilt convenience associated with the practice was highlighted - 'saved a lot of problems.' One chairperson expressed a preference: 'I mean, I would prefer if it could be done informally, which sometimes both parties are willing to embrace.' Another acknowledged they were aware of the practice in their school and noted the inbuilt convenience:

I have been involved where a child is up for expulsion in a school that I was chair and, in the end, what happened was the parents said they were taking them out (to avoid the expulsion). As it was a form of informal expulsion, but we had got somewhere else for the child to go. I certainly wouldn't have fancied a s. 29, but it was more that parents consider there is a stigma attached to being expelled.

Joseph (Chairperson of BOM)

Acknowledging that parents of an expelled student may face difficulties in finding a school willing to enrol an expelled student, one chairperson claimed (in support of informal expulsion) that advising the parents and the student of impending expulsion fitted within the school's duty of care. It can be argued that in this case, the 'duty of care' spoken of may be more accurately described as coercion:

I would say there is merit in advising people as they have a duty of care to advise the pupil and the parents of what is coming at them, what is the next stage of the process. As part of that, a lot of people are intelligent enough to make the decision themselves to move without any – that is part of the informal thing – that you are saying to them, 'this is the procedure – if you go for expulsion, it is very difficult to get into another school because you have been expelled.' That is all part of the process. I think it is there already, but it can't be 'sit and get out' because they are entitled to justice, they are entitled to a fair hearing.

May (Chairperson of BOM)

The acceptance of informal expulsion is not universal. Informal expulsion was described as 'a disgrace, an absolute disgrace'. Emphasis was placed on the student's right to due process with particular reference to the s.29 appeal mechanism. A very experienced chairperson flatly rejected the alleged advantages of informal expulsion:

Totally just a no-no. I can't find any excuse for it ...you can't go from arguing that you take a student into the school, and you do everything in your powers to ensure that that student goes from coming in as a 1st Year ... to the point at which they leave, and they get as full an education as possible ... then argue that at some stage for whatever number of reasons and I might convince myself that very well motivated reasons, I am going to say goodbye to you and leave you there in mid-air hoping that you might get a place somewhere, there is just no place for it. Whatever the difficulties are, deal with them, deal with them upfront, transparent, give everybody an opportunity to be heard – and yes, if ... it is in the interests of the whole community that this young person moves to some other school or some other form of education process after a painstaking process of giving everybody every opportunity, so be it but not on the basis that look this is the easy way out for everybody. You take him out of the school now, and none of us will say anything, and then we will all be able to get along with our lives, no.

Noel (Chairperson of BOM)

In support of informal expulsion, one chairperson submitted that some minority groups are ‘not worried about what kind of education they receive.’ The chairperson argued that in such cases, parents of informally expelled students are willing to enrol their child on further education programmes such as Youthreach to avail of the financial benefit associated with attendance. The sentiment expressed here is not representative of the interviewed cohort.

Some schools consider that they are the victim of informal expulsion and accuse the expelling school of ‘lobbing their problem onto other people’ when the expelled student applies to enrol in a new school.<sup>159</sup> Typically, the receiving school will be aware of the expulsion through informal sources and may refuse the application:

We weren’t anxious to take them in. It went to Section 29 ... we were told we would have to take them in. In the end, they didn’t turn up; it would be a very awkward situation because our case was, well, we have to protect teachers and pupils, and you are bringing in an obvious danger.

Eileen (Chairperson of BOM)

The ETB school chairpersons interviewed took issue with non-ETB schools informally expelling students, given that the students often apply to enrol in ETB schools. Such applications are generally not welcome and can be refused on the basis of a strong enrolment policy.<sup>160</sup> However, the term ‘strong enrolment policy’ was not defined:

I have come across it when I have been on boards where students who have had that and are trying to get into a school - mid-season, mid-year - because of what another school is doing ... the suggested expulsion but, no, I have absolutely no time for it [informal expulsion] at all.

Ashling (Chairperson of BOM)

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<sup>159</sup> Note. It was alleged that ETB schools are particular victims of informal expulsions, given that students with extremely poor disciplinary records enrolled in secondary schools are sometimes informally expelled and subsequently enrol in ETB schools.

<sup>160</sup> Note. The Act of 2018 s. 29D(4)(g)(ii) stipulates that when determining an expulsion appeal, an appeals committee shall have regard to relevant school policies, the extent to which each of them is implemented and complies with legislative provision and Ministerial guidelines. In *Lucan Educate Together National School v. DES*, [2011] IEHC 86, O’Keeffe J. resolved that a committee did not have the authority to strike down or disregard a provision in the enrolment policy of a school or substitute whatever view on the validity of the policy it considered to be appropriate, para. 45.

### 5.6.2. ETB DIRECTORS OF SCHOOLS AND INFORMAL EXPULSION

In the absence of legislative authority for such action, DOS communicated an uneasy acceptance that this informal expulsion occurs: ‘I believe and what I instinctively feel is happening ... I do genuinely think that it has to be happening. Relying on previous conversations with principals ... it definitely has happened.’ Informal expulsion was described by one participant as a consensual arrangement and by another as ‘students being sidled out of schools nicely.’ DOS generally do not have hard data to support this view. However, a very experienced DOS asserts that principals are willing to cooperate with students to secure an informal expulsion. Relying on first-hand experience, one DOS outlined the approach typically adopted by a principal, suggesting that the principal would advise the student that if they chose to leave voluntarily, they would provide them with a school reference and ‘make sure’ they were accepted into Youthreach. Otherwise, the principal would inform the student that they would bring the matter to the board with a recommendation for expulsion. They would highlight that the expulsion would be on their record and that they would find it exceedingly difficult to gain admission anywhere.<sup>161</sup>

It was suggested that the principal's approach might be based on the ability of the parent to challenge the system:

... you can get away with encouraging certain parents to say, right, take your child out, bring him to the local Youthreach, and there will be no more about it, whereas if a parent comes in that is very assertive and has loads of cultural capital and all that and is well able to challenge the school system, they might approach that in a very different way.

Jim (ETB DOS)

This approach illustrates the exercise of invisible forms of power and powerlessness, along with the related concept of symbolic violence.<sup>162</sup>

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<sup>161</sup> Note. The scenario outlined is in keeping with the experience of informally expelled students interviewed, see sections 7.7.1 and 7.7.3.

<sup>162</sup> Note. For discussion on cultural dominance and symbolic violence, see section 3.2.6.

### 5.6.3. THE EDUCATIONAL WELFARE SERVICE AND INFORMAL EXPULSION.

Some EWOs concede there is merit associated with informal expulsion and are willing to collaborate with the school to secure such an arrangement. Others reluctantly advise parents to accede to the demands of the school, knowing that an expelled student will find it hard to find a new school. There is universal opposition amongst EWOs interviewed to the informal expulsion of students of compulsory school-going age.<sup>163</sup> EWOs contend their work is guided by a desire to achieve the best outcome for the child. In this regard, scant attention is paid to the legal framework. It must be borne in mind that EWOs may not encounter this activity while performing their regular duties. There are mixed views on its prevalence, ranging from one participant having encountered one or two cases to the more commonly held view that this is a big issue, ‘yes – that is a big one’:

We have come across that quite a bit, and I suppose even last year. I have had a parent come back saying he was experiencing the same thing with a second child, and with his experience of his second child, he looked back on the experience of his first child and felt he was hoodwinked and was very annoyed and upset about it and felt very aggrieved by it.

John (EWO)

EWOs confirmed that most expulsions, whether formal or informal, tend to be acrimonious. Acknowledging that schools are supportive environments, the importance of relationships with fellow students and staff was highlighted. When a student is expelled, those supports are withdrawn:

A lot of the supports happen within the school ... children who are excluded are just cut off ... the child is basically ... put out into the sea on a boat alone. They find themselves outside the school door with nowhere to go.

John (EWO)

Most EWOs reject the ‘caring, well-meaning’ type of expulsion. Attention was drawn to the situation where the principal would ‘make life difficult for students and the student’ ends up getting expelled, ‘the student being ‘manipulated or coerced, but on

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<sup>163</sup> Note. The minimum school leaving age is 16 years, or until students have completed 3 years of second-level education, whichever is later. Parents must ensure that their children from the age of 6 to the age of 16 attend a recognised school, [Education (Welfare) Act, 2000, s.17(1)] or otherwise receive a certain minimum education [s. 17(1)(2)].

the legal side.’ It was argued that once the student reaches 5<sup>th</sup> or 6<sup>th</sup> year, the approach of the EWO should be to rely on ‘common sense’ to arrange an alternative to formal expulsion at a local level, ‘not before the child is sixteen ... that is the only time we go near it’:

The 5<sup>th</sup> and 6<sup>th</sup> year ones are common-sense – local level – it is where you need to try. There are more options. The Junior Cert is in the back pocket; can we iron this out locally? Where are the parents at?

Caroline (EWO)

In an attempt to guard against the possibility of the parent withdrawing from the ‘agreement’ to remove their child and the student returning to school uninvited, there is a need to secure the consent of parents. One EWO explained the process:

Now, how that usually is done is the parent would write a letter to the school ... I would always explain it to the principal if you go with this, and they change their mind on Tuesday.

Caroline (EWO)

A cavalier approach to informal expulsion is evidenced in some quarters by the narrative presented from the perspective of the schools, where the term ‘we’ is used in the context of an initial position adopted by the EWO and school without the involvement of the parent:

I would like to think my principals are practical about it. Now they know I go after it because I ring them up – like I have advised them to back off. I would say, look, I am an EWO, I work with ye, I would \*\*\*\*\* walk away from this expulsion if I were you for x, y, and z reasons. I said, there is no problem; this is the way we are going to go [in support of informal expulsion], and one might say, you are right, I hear you, yeah or another, I am sick of him now, he has done enough, and he is gone [formal expulsion] you know, and you are like right that is grand.

Caroline (EWO)

Working in cooperation with school authorities to secure informal expulsions and endorsement of same leaves an EWO open to the charge that they are less than independent, compromised by addressing the needs of the school over the rights and needs of the parent and child.

### 5.7. CHAIRPERSON'S PERCEPTION ON THE RIGHT OF STUDENTS TO BE HEARD

The right of students to be given meaningful opportunities to participate in formal and informal decision-making that takes place within the school environment is provided for in UNCRC Article 12(1). The BOM expulsion hearing meets this obligation by providing an opportunity for the students to be heard at this important decision-making forum. Chairpersons support students' right to attend the BOM hearing. Article 12 confers a right to express a view, not an obligation. Students generally attend; however, typically, they have little meaningful interaction with the board. It was acknowledged that not all students are capable of engaging constructively with the board.

Students are usually represented at BOM hearings by their parents. Occasionally, a student in attendance will engage constructively and deliver a very impressive address. The chairpersons noted that students often attend the meeting to express remorse, apologise for their actions, and offer assurances of improvement in their behaviour. Alternatively, they may challenge the accusations against them. It has been argued that a disconnect exists between the commitments made under Article 12 and everyday practice in relation to educational decision-making.<sup>164</sup> The assertion by one chairperson that students' attendance at the hearing represents an opportunity for them to be held accountable for their actions undermines the key premise of Article 12. There is little evidence that the BOM genuinely seeks to incorporate the student's voice when considering the principal's recommendation.<sup>165</sup> Chairpersons repeatedly cited efforts to mitigate the stressful nature of the hearing. Nevertheless, many interviewees acknowledged that students find BOM hearings quite stressful and daunting. Some interviewees argued that the student should not be subjected to such a stressful encounter. Lundy cites flawed reasoning engaged in by adults aimed at excluding the voice of children as strengthening the case for the discourse on pupils' voices to be firmly located within the framework of children's rights; such involvement, she argues, is a legal imperative, which is the right of the child, not a gift of adults. The

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<sup>164</sup> Laura Lundy, 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33. *British Educational Research Journal* 927, p. 931.

<sup>165</sup> Note. As highlighted by Lundy, involving students in decision making should not be depicted as "an option which is in the gift of adults but a legal imperative which is the right of the child." While participants appeared to embrace the voice of the student, the disconnect she refers to between the commitments made under Article 12 and everyday practice is evident when the "rhetoric needs to be put into practice".

findings presented here support Lundy's contention that support for consultation with the student often falls short of the provisions outlined in the Article. It was acknowledged that the presence of the student emphasises that the board's decision relates to a child.

### 5.8. GETTING INTO A NEW SCHOOL

It is widely acknowledged by decision-makers interviewed that parents of expelled students encounter significant challenges securing a place for their child in a new school due to reputational damage. Some chairpersons, citing concerns over health and safety risks posed by expelled students, focus on their duty of care to existing students when considering applications from these individuals. However, interviewees have criticised schools with rigid admission policies that prevent expelled students from enrolling. The Act of 2018 stipulates that non-oversubscribed schools must admit all students who apply.<sup>166</sup> While the Equal Status Act 2000 and the Act of 2018 allow for the refusal of enrolment in specific circumstances, crafting an admission policy that excludes students based on a previous expulsion, while adhering to the provisions of these Acts, may present challenges.

In the competitive landscape of post-primary education in Ireland, students aim to select subjects that align with their skill sets. Schools may, at times, knowingly create soft barriers by offering to enrol in the knowledge that the subject options or levels offered would eliminate the prospect of the offer being accepted. Alternatively, they may refuse enrolment on the basis that the school is unable to match the student's subject choice. While this may appear laudable, it could be viewed as sharp practice rooted in a desire to exclude.<sup>167</sup>

A cute principal can deflect trouble by finding a way to refuse enrolment, and sure, if everybody is a smart Alec, no (expelled) child would get a place in school anywhere ... they had attempted to enrol him in another school when they went in and told their story, the principal told them that he didn't have any space and they left.

Eamon (BOM Chairperson)

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<sup>166</sup> The Education (Admission to Schools) Act 2018, s. 62(7)(c).

<sup>167</sup> David M. Doyle, Marie Muldoon & Clíodhna Murphy, 'Education in Ireland: accessible without discrimination for all?' (2020) 24. *The International Journal of Human Rights* 1701, p. 1714.

While it is reasonable to infer that admission criteria not expressly prohibited by law are available to schools to include in their admissions policy, the question arises whether it is legal for a school to decline admission to a student based on the fact that they had been expelled from another school. Parents interviewed reported that schools had imposed conditions that limit the feasibility of accepting a place, even when one was offered.<sup>168</sup> One s. 29 committee member interviewed, acting as facilitator, sought to rely on the Christian ethos of particular schools and the concept of redemption to persuade the school to enrol an expelled student:

Many schools used to have in their policies that they would never take a child that was thrown out of another school. If you are a catholic school and you believe in redemption, why then does a child have to be gone from the education system forever because of what he did in your school?

Thomas (DOE s. 29 Committee Chairperson)

There was acceptance that, in some cases, the consequence of expulsion is a permanent exit from post-primary education, even when the student is of compulsory school-going age. This is especially the case for parents of students with SEN:

A recommendation by you as principal to the BOM and the decision of the board to permanently exclude this child puts him outside the pale forever. It may be his last day in school, even if he is only 14 or 15 years of age.

Thomas (DOE s. 29 Committee Chairperson)

I have met parents, and they have cried in front of me. Kid at home holding them back, and their kid being held back because they couldn't ... some of them applying for 25 different centres and classes, that is the saddest part of my facilitation work ... meeting parents of kids with special educational needs:

Michael (DOE s. 29 Committee Chairperson)

Once a person is expelled from a school where there are two or three schools in the area, no school is going to take him, you know, and they really are in trouble.

Mark (ETB s. 29 Committee Chairperson)

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<sup>168</sup> Note. For discussion on the challenge of finding a new school post-expulsion, see section 7.8.

Very few schools are willing, certainly, I wouldn't say they are not open - they are reluctant to be forced to take a child who has been expelled from another school. They are going to say no.

Mary (EWO)

As an alternative to mainstream education, a Youthreach training centre may be available locally once the student is over 15 years old. However, geographical limitations may rule this option out. The prospect of a student expelled from an ETB school securing a new place in a non-ETB school is low. The link between ETB-managed post-primary schools and ETB-run Youthreach centres offers an accessible alternative pathway. However, not all expelled students manage to continue training in Youthreach centres :

If he was expelled from school and moved onto Youthreach then, so he is still in our system, but others have just fallen. I don't know where they end up.

Jane (ETB DOS)

It appears that little has changed in this regard since the introduction of the Act of 1998 over twenty years ago. During a Dáil Debate prior to the enactment of that Act, Pat Carey TD [Teachta Dála - Member of the Irish Parliament] stated:<sup>169</sup>

I have great sympathy for the exasperated parent who tries, without success, to find a placement for their young adult in another school. The provision in the Bill is convoluted but will be welcomed by parents, nonetheless. The process needs to be transparent and coherent.

## 5.9. CONCLUSION

The chapter addressed the research question of whether school BOMs are adequately equipped to engage in the school expulsion process as mandated by law, while also assessing the effectiveness of support available to parents seeking to find a new school for their expelled child. Drawing on the firsthand experiences of key decision-makers, this study adopted a broad perspective which aimed to analyse and understand school expulsions in Ireland.

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<sup>169</sup> Pat Carey TD. Education (No. 2) Bill, 1997: Dáil Éireann Debate. (5 February 1998). Vol. 486 No. 5.

The composition of BOMs, which primarily consists of insiders, raises concerns about the board's ability to act impartially, particularly given the tendency for some members to serve consecutive terms across multiple boards. A more diverse and inclusive membership could prompt more balanced decision-making. The absence of detailed training focused on the expulsion process, along with the non-compulsory nature of attendance at available training, hampers the board's capacity to act objectively.

There is reluctance among chairpersons to acknowledge the legal context of their expulsion decision-making; most argue that their decisions are limited to implementing the school's code of behaviour. The statutory framework bestows considerable power on the BOM; however, this power is often constrained by the principal's dominant influence on members. Over-reliance on the principal's professional competency undermines the board's independence, leading some boards to adopt a non-intervention strategy. Chairpersons often appear overly concerned with displaying loyalty to their school, sometimes at the expense of exercising their statutory duties impartially. This research has highlighted a pressing need for improved training and clear, comprehensive guidelines to assist boards in fulfilling their statutory responsibilities.

Expulsion hearings are often stressful, daunting encounters for parents. Interviewees criticised the absence of EWS support for parents attending expulsion hearings. However, the late timing of the EWS notification of intention to expel removes the possibility for the EWO to attend the BOM hearing. The expectation that the EWO will secure alternative mainstream education for an expelled student is unrealistic, given that most schools are unwilling to entertain the prospect.

The debate surrounding informal expulsion reveals the widespread acceptance of the practice and highlights the failure of the law to regulate school expulsion properly. There is no evidence of systematic or intentional disregard for the law. Nevertheless, the ambivalent attitudes towards the corruption of process, which permits a small though important cohort of children (mainly vulnerable children) to be ejected from school without due process, are deplorable. The somewhat vague EWO obligation to make reasonable efforts to ensure that an expelled student continues in education can sometimes lead to cooperation with the school when the student is encouraged to leave voluntarily to evade formal expulsion. This approach may appear laudable in light of

the challenges of securing a new school. Still, it constitutes an informal expulsion and undermines the students' statutory rights, including their entitlement to mount a s. 29 appeal.

The effective refusal of schools to enrol expelled students is a significant driver of informal expulsion. The expectation is that informal expulsions will persist until there is a formal acknowledgement of the extent of the problem and the introduction of legislation amendments that place all aspects of school expulsion within the rightful sphere of law.

The NEWB guidelines have been in circulation for some 14 years. While welcome in their own right, it is submitted that the content relating to expulsion should be revised to reflect the legislative amendments to the appeal mechanism and developments in case law. Department guidelines are limited and lack sufficient detail to guide schools in addressing complex matters.

The chapter concludes that conflated understandings of the law, coupled with a well-meaning disregard for its provisions, impede effective BOM expulsion decision-making. The absence of board independence, stemming from the belief that the professional opinion as expressed by the school principal is the most desirable course of action, leads to the conclusion that some school boards are not adequately equipped to engage in expulsion decision-making as currently provided for by law.

## **CHAPTER 6. A CRITICAL ANALYSIS OF THE OPERATION OF SECTION 29 OF THE ACT OF 1998 EXPULSION APPEALS AND THE NEED FOR REFORM**

### **6.1. INTRODUCTION**

Section 29(1) of the Education Act 1998 (as amended) provides a right to appeal an expulsion decision to a committee established by the Minister for Education.<sup>1</sup> In the context of the right to education, the right to be heard, and the right to fair procedure, this chapter analyses the experiences and perceptions of s. 29 committee members, ETB Directors of Schools and Education Welfare Officers concerning the operation of the expulsion process and the appeal mechanism. The right to appeal is significant and merits particular attention as it offers appellants the possibility of overturning a decision to expel, thus avoiding the serious negative consequences of expulsion, as discussed in the previous chapter. Although not easily reconciled, participants' perspectives on the factors at play before and during oral hearings are examined.

This chapter enhances our understanding of the operation of s. 29 oral hearings: the involvement of the EWS and the power of the school principal therein. Particular attention is afforded to the right to legal representation at hearings, the independence of the appeal mechanism, and the recruitment and training of appeal committee members.

The appeal process is a quasi-legal process; the opinions of committee members regarding the legal context within which appeals are conducted are examined. A number of shortcomings in the legislative provisions and statutory guidance have been identified and analysed. The observations of interviewees regarding informal methods employed to remove students while circumventing the formal expulsion process are discussed below. The Act of 2018 abolished the ETB's s. 29 appeal mechanism and the facilitation stage of the Department of Education appeal process; participants' evaluations of these developments are reviewed.

Central to the discussion presented is a review of participants' assessment of the obstacles faced by parents who wish to challenge their child's expulsion. Additionally, their views on the impact of expulsion and the challenges faced by parents in finding a new school for their child are examined. The expulsion law does not permit an

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<sup>1</sup> Note. For discussion on the operation of s. 29 of the Education Act 1998, see section 2.7.2.

expelled child under 18 years of age to attend the oral hearing; participants' perspectives on this provision are discussed.

Expulsion from school sits uncomfortably with government policy, which seeks to promote social inclusion and equality of opportunity. As education experts, s. 29 committee members may be well-versed in educational policy of inclusion; however, they must step outside the field of education and apply the law objectively. The challenges faced in doing so are discussed.

The chapter presents post-pandemic quantitative data on trends and outcomes in s. 29 expulsion appeals across school types to inform discussion on the analysis of the appeal mechanism.<sup>2</sup>

## **6.2. POST-PANDEMIC TRENDS IN SCHOOL EXPULSIONS AND SECTION 29 APPEALS ACROSS EDUCATIONAL SECTORS**

Notwithstanding the significant disruption to school attendance during the pandemic years and the subsequent drop in expulsion rates, the expulsion rates are now increasing annually, as seen in Figure 6. In light of McCormack et al., who found that ETB-managed schools cater disproportionately for students from lower socio-economic backgrounds,<sup>3</sup> the significantly higher expulsion rate observed in these schools compared to the VSS and C&C sectors lends support to Bourdieu's contention that students from lower socio-economic classes are more vulnerable to exclusionary disciplinary practices. The perceived higher status VSS sector has the lowest rate at 0.043%. ETB-managed schools have the highest expulsion rate of 0.07%.

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<sup>2</sup> Dáil Éireann Debate, 02 July 2024. Parliamentary Question to the Minister for Education. Question Number: 222 Question Reference(s): 28030/24. Written answer.

<sup>3</sup> Orla McCormack, Joanne O'Flaherty & Mags Liddy. 'Perception of Education and Training Board (ETB) schools in the Republic of Ireland: an issue of ideology and inclusion.' (2020) 39.4. *Irish Educational Studies* 535, pp. 538-539.

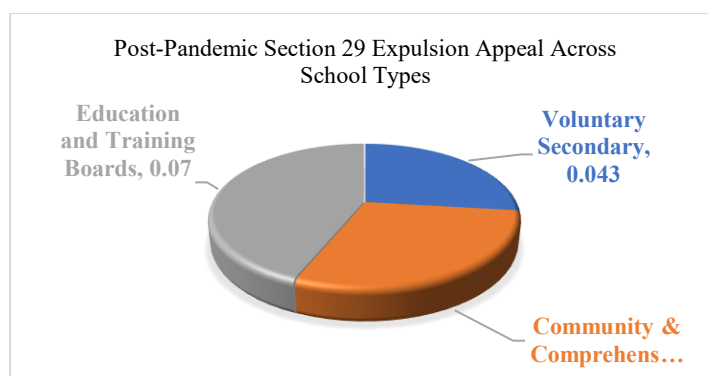


Figure 15.

The majority of expulsions which occurred during the school year 2022-23 were appealed under Section 29 of the Act of 1998.

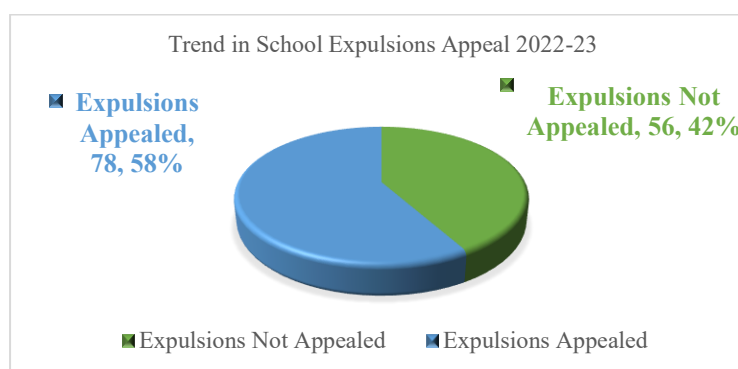


Figure 16.

The high incidence of appeals that the committee refuses to determine, coupled with the substantial number of withdrawals prior to the commencement of a full oral hearing, is noteworthy. This trend supports the call for more accessible and comprehensible information to be provided to both schools and parents at the outset of the s. 29 appeals process.

Outcomes Section 29 Expulsions Appeal Post-Pandemic

|             | Refuse to Determine | Allowed | Disallowed | Withdrawn | Totals |
|-------------|---------------------|---------|------------|-----------|--------|
| <b>2021</b> | 3                   | 8       | 17         | 34        | 62     |
| <b>2022</b> | 2                   | 8       | 23         | 29        | 62     |
| <b>2023</b> | 8                   | 11      | 51         | 8         | 78     |

Figure 17(a).

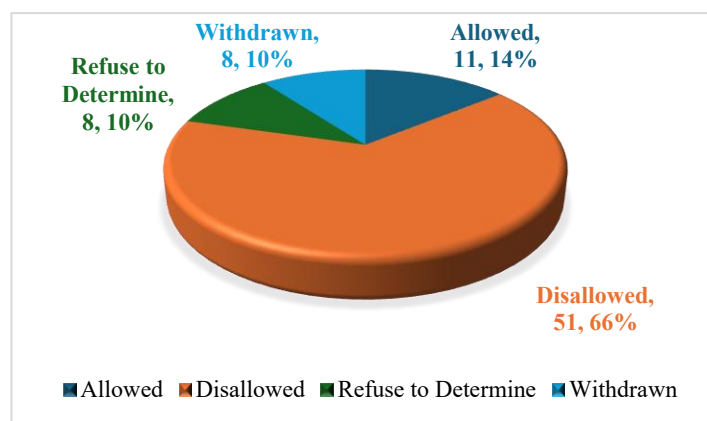


Figure 17(b).

### 6.3. SECTION 29 PANEL/COMMITTEE, RECRUITMENT, COMPOSITION AND TRAINING

Section 29 committees must be impartial and independent and must be perceived as such by both appellants and respondents. However, the committee members interviewed did not emphasise the necessity of being informed about the legal context of their work. This points to a perception that the appeal mechanism is embedded within the education system rather than an independent external quasi-legal process.

#### 6.3.1. DEPARTMENT OF EDUCATION S. 29 PANEL/COMMITTEE COMPOSITION AND RECRUITMENT

Committee members are drawn from a panel appointed by the Minister.<sup>4</sup> The composition of a particular committee is influenced by practical considerations such as the requirement to avoid the appearance of bias.<sup>5</sup> Therefore, a panel member with an association (past or present) with either party to the appeal will not be invited to sit on the committee hearing that appeal. However, previous association with a party to an appeal will not of itself prevent a committee member from acting in a manner that is impartial and independent. The Minister may replace a member of an appeals committee prior to an oral hearing where it is considered necessary.<sup>6</sup> Department s. 29 committees usually consist of retired school principals and may include a DOE inspector. Committee chairpersons expressed solidarity with fellow committee

<sup>4</sup> The Education (Admission to Schools) Act 2018 s. 7(2)(29A)(1).

<sup>5</sup> Note. For discussion on the absence of bias as a requirement of natural justice, see section 2.4.1.

<sup>6</sup> The Education (Admission to Schools) Act 2018 s. 7(29A)(5)(a).

members. They emphasised that they are individuals of great integrity who are willing to give of their extensive knowledge and experience in the field of education to work in the challenging environment of expulsion appeals.

These sentiments echo Bourdieu, who holds that ‘profits which accrue from membership in a group are the basis of the solidarity which makes them possible’.<sup>7</sup> Interviewees expressed general satisfaction with the composition of committees. However, some mixed views were expressed. The majority of panel members are retirees. On a positive note, one interviewee held that the professional experience of former principals and inspectors enhanced the s. 29 process:

The core qualification for me is practical experience of the system, and that is where there are, I think, quite a few former principals, deputy principals and inspectors on the hearing committees, and they would have a depth of understanding and an appreciation of procedures and the needs of a school. I think that gives a lot of substance and richness to the processes.

Gerry (DOE s. 29 Committee).

The alternative view suggests retirees quickly lose touch with how schools operate, while others contend that ‘if you have soldiered for forty years, the footprint stays with you forever’. Thomas (DOE s. 29 Committee). Yet, Thomas was critical of DOE inspectors sitting on committees based on the contention that inspectors may be several years out of the school and may have lost touch with the reality of school life; ‘they are looking to see what is wrong... that is the cigire’s [inspectors] mind.’ Prior to the commencement of the Act of 2018, each committee included a department inspector.<sup>8</sup> The voice of an inspector was then seen as a means of addressing possible insider bias and of bringing knowledge of the department’s policies to the appeal hearing.<sup>9</sup> While inspectors are not barred from membership, no new initiatives have emerged to address possible insider bias.

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<sup>7</sup> Pierre Bourdieu, The forms of capital. In John G. Richardson (Ed.), *Handbook of theory and research for the sociology of education* (pp. 241-258). (Greenwood Press) 1986.

<sup>8</sup> Note. For discussion on the development of the section 29 appeal mechanism, see section 2.7.1.

<sup>9</sup> Mary Gilbride, *The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education.* (2013), p. 123. (Doctoral thesis, Maynooth University).

Regarding the appointment of s. 29 committee members (and the then s. 29 facilitators), an internal department memo, drafted almost five years post commencement,<sup>10</sup> outlined the department's view on suitable candidates to populate appeal committees and facilitator panels, and the strategy for recruitment.<sup>11</sup> The department's memo, penned on September 1st, 2005, states:

People with an intensive knowledge of the workings of primary and post-primary schools (with a specific requirement for about 5 or 6 people with experience in the VEC sector). In practice, most previous nominees have been retired Principals or VEC officials, but it is important that the nominees have a balanced approach to the issues involved and will not be seen as insiders. Section 29 committees are not supposed to be 'representative' of any sectional or organisational interest. Therefore, an independence of mind and an ability to appreciate all sides of the issues under consideration are important attributes for potential nominees.

The memo advised caution when inviting people to join the panel, emphasising that a desire to be involved in the appeal process is not in itself sufficient reason for a nomination. A publicly advertised recruitment campaign was considered but rejected as being too elaborate and burdensome. Instead, senior department officials and inspectors select suitable individuals to be invited to join the panel.<sup>12</sup> The requirements outlined in the above memo are not set in law.

The committee members interviewed acted as facilitators before that stage of the process was abolished. They opposed its removal, arguing that they sometimes resolved the matter before proceeding to a full hearing:

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<sup>10</sup> The Education Act 1998, (Commencement) (No. 3) Order 2000 ( S.I. No. 495 of 2000).

<sup>11</sup> Mary Gilbride, *'The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education.'* (2013), p. 119. (Doctoral thesis, Maynooth University).

<sup>12</sup> Mary Gilbride, *'The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education.'* (2013), pp. 119-120. (Doctoral thesis, Maynooth University).

Both I and my colleagues who I spoke to about this lament the termination of the facilitation process. I would go and meet an aggrieved parent ... meet with the school, and listen sensitively ... I would allow them to tell their story and, if at this point, I felt that the school was technically wrong ... I would go to the principal and say 'look, my hunch is that you are going to lose this for the following reasons'. You may wish to go ahead and lose it to make the point, but you may wish to withdraw at this stage.

Gerry (DOE s. 29 Committee)

Interviewees stated that as facilitators, they regularly advised parents on how to approach oral hearings. They provided a well-written facilitation report that included relevant background information, which may now be inaccessible at the oral hearing. It is clear from this research that reintroducing the facilitation stage warrants consideration.

#### **6.3.2. SECTION 29 COMMITTEES MEMBERS, AND EDUCATIONAL WELFARE OFFICERS TRAINING**

Committee members receive formal training at least once a year, with a focus on developments in the courts and relevant legislation. They referred to the limited nature of training and the absence of training focused on meeting the needs of chairpersons.<sup>13</sup> The training is supplemented with a 'learn on the job' approach:

We did get training, but you learn on the job more than anything else. We learn from one another, really.

Thomas (DOE s. 29 Committee)

One former ETB s. 29 committee member referred to 'on the job training', and stated:

You kind of internalise all these mechanisms, and it is a kind of a savoir-faire if you like.

Victoria (ETB s. 29 Committee)

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<sup>13</sup> Note. Education and Training Boards Ireland provides ongoing training to DOSs. In keeping with the 'train the trainer program', DOS then train members of the BOM. This includes training on the school expulsion/appeal process. Former ETB s. 29 committee members accessed this training through their membership of the school BOM or by invitation. Interviewees did not receive designated training as a discrete group in relation to their duties as committee members. Attendance at BOM training is not mandatory.

There was a call for a more structured developmental training model and for the DOE to evaluate the effectiveness of individual committee members. The limited training available on the legal aspect of their task undermines the committee members' ability to exercise their duties with a spirit of judicial detachment. One member suggested that 'the standard of committees varies enormously' due to the experience and expertise of the chairperson. Nevertheless, most interviewees maintained that they had a good understanding of the applicable legal framework. This assertion is questionable, given the ambiguous understanding of the role and divergence of practice that emanates from weaknesses in the legislative provision and the absence of comprehensive guidelines. Similarly, Gilbride found that the shortcomings of training have led to a lack of consistency of practice.<sup>14</sup> The absence of reference to training in s. 29 of the Act of 1998 and s. 7 of the Act of 2018 is noteworthy.

In England, statutory guidance stipulates that IRP members and clerks must receive training within two years before undertaking a review. The guidelines specify the nature of the training.<sup>15</sup>

Educational Welfare Officers also highlighted the limited training they received on expulsion and appeals. Matters relating to expulsion were referenced as part of the general induction training. However, EWOs did not receive formal training regarding their role in the school expulsion process. There is a reliance on consultation with senior managers, colleagues, and DOE officials when guidance is required:

No, we don't receive training per se. I don't think there is any formal training.

John (EWO)

I don't remember going to any formal training as such, no ... information, but really just through reading and the bits I could get off other staff.

Susan (EWO)

You actually have to get out and do it; it is a kind of 'doing' kind of a job.

Liam (EWO)

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<sup>14</sup> Mary Gilbride, *The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education.* (2013), p. 125. (Doctoral thesis, Maynooth University).

<sup>15</sup> The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012/1033. SCHEDULE 1. 5(1)

#### 6.4. THE IMPLEMENTATION OF THE LEGAL FRAMEWORK BY NON-LAWYERS

The legal context of their work does not faze the committee members interviewed. They contend that their position on committees is that of experienced educational consultants and assert that they are adequately equipped to exercise their duties. One chairperson, unconcerned about the legal context generally, concluded that the task of the committee is to ensure the school discipline policy is implemented properly:

We have the educational background, and it is up to us to get the legal part of that right. What I would always look at - the Discipline Policy of the school enabled them to make the decision they made in this case. You can't just impugn a policy ... I wouldn't worry about the legal thing.

Thomas (DOE s. 29 Committee)

The views on the importance of the legal aspect may be understood in the context of the commonly held view that the appeal hearing is not a legal forum. This misinterpretation is closely linked to the belief expressed that expertise in the field of education is preferable to legal expertise. The conflict between school expulsion and the principle of education as a fundamental human right did not preoccupy the interviewees. 'I am hesitating here because I haven't ever thought of that before' (Lilly, DOE s. 29 Committee).

The expulsion appeal mechanism requires committee members to adopt an intensely juridical consciousness, even though the members are not required to have formal legal training. The effective implementation of the legal framework by non-lawyers with limited support and guidance is questionable.

##### 6.4.1. THE OPERATION OF THE ORAL HEARING

It is long established that the operation of tribunals should be based on the principles of fairness, openness and impartiality.<sup>16</sup> Fairness is achieved through a clear and transparent procedure that allows participants to present their case comprehensively and provides them with a complete understanding of the requirements of the process

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<sup>16</sup> Oliver Franks, The Franks Report on Administrative Tribunals and Enquiries. Committee on Administrative Tribunals and Enquiries. (1957), paras. 23-25. London: Her Majesty's Stationery Office.

necessary for effective engagement. Impartiality is established through independence from the actual or apparent influence of the administration.

The Act of 2018 provides that the Minister may determine procedures for s. 29 appeals.<sup>17</sup> The procedures may include ‘such other consequential or ancillary matters as the Minister considers appropriate’.<sup>18</sup> The procedures provide that the committee shall determine appeals in the light of (among other matters) all the facts presented to it, the educational interests of the student to which the appeal relates, and the educational interests of all other students in the school.

Committee members review available documentation prior to the hearing and hold a short meeting to frame their approach. Both parties to the appeal present their arguments, which are followed by questions. The committee reserves most questions for the school, as it is the school that has decided to expel. The DOE guidelines and relevant legal frameworks guide the committee's deliberations. In keeping with the guidelines, the obligation on schools to make all reasonable efforts to provide supportive scaffolding aimed at avoiding expulsion was emphasised:

Some children do not get the supports in school that they need and then that leads them to be getting kicked out, you know ... Did they put scaffolding in place? If they weren't able to do it themselves, did they involve outside agencies to help them, because if they didn't put the supports in, I would put the child back in.

Thomas (DOE s. 29 Committee)

Most committee members acknowledged the importance of applying the principle of natural justice; however, there was evidence of a conflated understanding of the application of the concept:

Natural justice is accepted in a court of law ... It hasn't come up, it has come up a few times with one particular individual and myself where I would argue for natural justice, and this person would stick very much to the letter of the law, you know ... I believe in it because ... the courts accept natural justice.

Seamus (DOE s. 29 Committee)

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<sup>17</sup> The Education (Admission to Schools) Act 2018 s. 29B(1).

<sup>18</sup> The Education (Admission to Schools) Act 2018 s. 29B(1)(l).

The committee may seek external advice or invite persons with relevant expertise to appear and make statements at the hearing. None of the interviewees had availed of this provision.

Section 29 applicants and respondents have a right to a fair and just procedure bolstered by the principle of natural justice.<sup>19</sup> An indispensable procedural rule for upholding the principle of natural justice dictates that the decision-maker must not be biased. Accepting that bias may be conscious or unconscious, there is a risk that the insider status of committee members and mode of recruitment may foster biased decision-making in the form of loyalty to the institutions of education.<sup>20</sup> Some committee members display bias in the form of loyalty to the institutions as they are positively disposed to ‘take the side of the school ... even in cases where we are absolutely categorical that the school hasn’t a leg to stand on’. (Michelle, DOE s. 29 Committee). The above, coupled with the lack of parents’ knowledge, undermines the prospect of parents being successful in overturning the decision to expel. It was argued that even the most educated of parents know little or nothing about the governance and functionality of schools. Parents who sometimes believe they are disadvantaged, and face prejudice may have reason on their side:

First of all, they are correct in thinking that the cards are stacked against them, but not for the reason they think ... The cards are stacked against them for the reason ... that the board has written the rules of this contest [the school discipline policy] and the board is effectively administering those rules at the board meeting; so that is where the real prejudice or bias is.

Michelle (DOE s. 29 Committee)

At a post-hearing meeting, members consider participants’ contributions. Committees usually reach their decision by consensus. In keeping with the principle of fair procedure, the committee must give reasons for its decision.<sup>21</sup> The Act of 2018 places an obligation on the committee to notify the minister, the applicant, the respondent, and the EWS or the NCSE in writing where they made submissions at the oral hearing of its preliminary decision and the reasons for its preliminary determination.<sup>22</sup>

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<sup>19</sup> Note. For discussion on the right to a fair hearing, see para. 2.4.2.

<sup>20</sup> Note. For discussion on bias in the form of loyalty to the institution, see para. 2.4.1.

<sup>21</sup> Note. For discussion on the duty to give a reason for the decision, see para. 2.4.3.

<sup>22</sup> The Education (Admission to Schools) Act 2018 s. 29D(7).

#### 6.4.2. THE ATMOSPHERE AT THE SECTION 29 EXPULSION APPEAL HEARING

Committee chairpersons strive to establish an atmosphere conducive to hearing the appeal with minimum formality, yet appellants and respondents display signs of stress and anxiety.<sup>23</sup> Committee members, DOSs, and EWOs believe oral hearings are very formal and stressful, particularly for school principals and unsupported parents:

It would have been quite stressful, extremely stressful, on the principal in particular. Equally, it would be fair to say it was also extremely stressful on the parent ... I don't think I ever saw a principal so distressed in my life as that morning.

Mark (ETB s. 29 Committee)

I would definitely say they are a very, very stressful experience for parents.

John (EWO)

#### 6.4.3. SECTION 29 APPEALS AND THE POWER OF THE SCHOOL PRINCIPAL

The school principal and a member of the BOM typically attend the s. 29 hearing on behalf of the school. It is widely accepted by DOE committee members, DOS and EWOs that most principals have considerable influence over the BOM. Boards are reluctant to take a position other than that recommended by the principal; to do so 'is seen as a vote of no confidence in the principal' (Michael DOE s. 29 Committee). Most committee members hold that, in most cases, expulsion follows a judgment call by the principal.<sup>24</sup> However, in some cases, the principal occupies their rightful role of secretary to the board.

It depends on the composition of the Board and whether it is a yes-sir-no-sir Board, whether it is a gang of insiders. Some principals can be running the show ... other principals clearly understand their role as secretary to the BOM.

Lilly (DOE s. 29 Committee)

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<sup>23</sup> Note. For discussion on parents' experience at s. 29 oral hearings, see sections 7.3.4.

<sup>24</sup> See section 5.4 The power of the school principal.

One DOS referred to the formidable position of the principal in the former ETB appeal process. They argued that some principals discourage parents from taking appeals. In such cases, the principal would typically inform the parents of the availability of the appeal process, but would tell the parents that ‘they wouldn’t have a chance of winning the appeal’.

One EWO noted that in small, close-knit rural communities, the expelled student and parents are part of a complex, interwoven network of relationships; ‘they are neighbours with the principal or relations’. It was asserted that in ‘close communities,’ expulsion may not come to the attention of the EWO. In such cases, social pressures inhibit a parent from challenging the school’s decision through an s. 29 appeal. Indeed, one interviewee described how a parent withdrew a s. 29 appeal application on foot of a visit to the child’s father by the principal:

The father completed all the paperwork, we got it all submitted, and within the week, it was pulled. I believe myself that the principal had gone to him ... and convinced him that wasn’t the thing to do.

Susan (EWO)

ETB s. 29 Committee members hold that school principals are generally well qualified and experienced and approach s. 29 oral hearings professionally. There was a notable absence of consensus concerning the power balance between parent and principal at ETB oral hearings. DOE committee members argued that principals do not exercise undue influence at oral hearings, ‘we forensically interrogated them’. The view of some members that the odds are stacked against parents informs the position that the school must be held accountable for its decision-making.

#### **6.4.4. EDUCATIONAL WELFARE SERVICE INVOLVEMENT IN S. 29 EXPULSION ORAL HEARING**

Interviewees contend that the EWS is an essential partner in the expulsion and appeal process. Importance was placed on the necessity to support parents during oral hearings, parents who are intimidated by the formality of the occasion, and parents who do not possess the social capital necessary to mount a challenge. Those parents need support ‘to ensure that the parents’ case is well put’ and that they ‘get the best possible chance of being given a fair hearing’:

... some parents simply do not have the language or knowledge, skill, and ability to negotiate that very difficult environment ... because it is not an even playing field ... It is an extraordinarily emotionally challenging process for a parent, they are so emotionally invested in the child and in the process, sometimes, they feel hugely aggrieved, they need support. In particular, parents of students from disadvantaged backgrounds, parents for whom English was not their first language, and parents of students from the travelling community who would find it very difficult to engage in that process need EWS support.

John (ETB DOS)

Directors of Schools reported that although invited, they could never be sure the EWO would attend an oral hearing or what level of support the service could offer. Yet it was argued that the primary objective of the EWS is to provide information and support to parents, to ensure that they are aware of their rights and understand the process ‘as much as they can’:

My number one objective ... is to make sure that the family understand the process of expulsion and understand that they can appeal the expulsion if they wish to do so, and what the options are now at this stage.

Susan (EWO)

In the past, EWOs attended s. 29 appeal hearings ‘almost as a matter of form’; their presence was considered very helpful for the family. Some interviewees contend that there is an element of geographical disparity in terms of EWO parental support, while others describe the support offered as haphazard, with parents sometimes unaware of their statutory right to have EWO involvement. When asked if EWOs typically attend appeal hearings, a clear pattern of responses emerged, as articulated in the commentary of various interviewed groups below:

I would always make a point of tracking down an EWO – sometimes it is very easy, sometimes it is challenging and difficult – sometimes you wonder do they exist at all – but at facilitation I would always.

Referring to her role as a former facilitator, Lilly (DOE s. 29 Committee)

No, they did not. I wrote to them; they got a copy of every letter of every appeal or anything like that, but they never attended ... very little contact [with the EWS].

Jane (ETB DOS)

No. In some cases, it would appear to me that the parents wouldn't have been aware of ... their right or whether the Welfare Officer was available to them or not.

Mark (ETB s. 29 Committee)

It is increasingly rare now to have an EWO get involved in a Section 29 hearing, and that further disadvantages the family.

Michelle (DOE s. 29 Committee)

One EWO expressed the view that parents are substantially better positioned to challenge an expulsion if there is EWO involvement. 'I would say ... they definitely have a better chance at the process 70% to 80% if we are involved, definitely yeah'. EWOs contend that they are a neutral party in the expulsion process. It was claimed that the EWS has substantial involvement in expulsion cases, the focus of which is supporting parents through the process and ensuring the expelled student continues to receive an education:

I suppose supporting the parents through giving them the information on the appeal processes and what they can and can't do and trying to explain it in simple ... trying to minimise the whole thing and trying to make it that it is an approach that they can take ... Our role would be prioritising the child - I suppose that would be the main thing – ensuring that they continue to receive an education at whatever level, looking at what are the alternatives available.

John (EWO)

It was submitted that decision-making regarding attendance at an oral hearing is not driven by EWS policy; instead, it depends on the individual EWO. Notwithstanding their entitlement to be present at hearings, 'some choose to do so; others choose not to'. Despite reported difficulties in contacting the EWO and a suggestion that they are overworked, it was submitted that they display a willingness to help when contacted:

Sometimes you might go on forever trying to track that person down ... their heart is really in the right place, and they are doing all they can to help.

Lilly (DOE s. 29 Committee)

Evidence suggests that the EWS service suffered from severe capacity issues at the time the interviews were conducted, and a lack of adequate training.<sup>25</sup> Directors of Schools and committee members described the shortcoming in support for parents as ‘absolutely outrageous ... just terrible ... they are not there for that most crucial time, absolutely crucial’. (Brian ETB DOS). Comments included, ‘what are you (EWO) doing that is more important than that?’ - ‘Where do they (parents) actually get their support?’ - ‘what is more important - tell me?’ - ‘the EWO doesn’t see it as his role and won’t attend, which is unfortunate. ’

Of course, the EWO is there to support, but that is not working ... the biggest problem, and I would say this in capital letters, is that we had very little support, in fact, negligible support from the EWO. I really beg them to be better at their job.

Victoria (ETB s. 29 Committee)

One DOS reported being sometimes forced to seek input from other agencies (whose remit does not include matters relating to expulsion) to assist parents when the EWO was unavailable or taking on a role perceived as that of the EWO:

I found myself popping over to read stuff for this woman who couldn’t read and sitting and telling her it will be ok and supporting her, you know, and she was there on her own. I mean, that is it. And to have an EWO, they should be at the s. 29 hearing.

Brian (ETB DOS)

The prevailing consensus suggests the service fails to adequately fulfil its remit. EWOs generally do not support parents at oral hearings. The now-defunct facilitation process acted as a catalyst for EWO involvement. When the facilitator secured the cooperation of the EWO, parental support at the hearing was more likely. It had been argued that securing the EWO's involvement should not fall to the then facilitator:

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<sup>25</sup> Note. For discussion of findings on section 29 committee members and educational welfare officers' training, see section 6.2.3.

(The appeal process) shouldn't have to rely on a facilitator in the middle of a Section 29 appeal to be encouraging that person (EWO) to go and support the parents at the hearing. Even if they are just there in person but some EWOs can be very, very helpful at the hearing ... It is written in law that they can be there.

Lilly (DOE s. 29 Committee)

EWO involvement had the potential to alter the final decision. However, chairpersons sometimes recorded that 'the EWO had not engaged in the process' when drafting the decision report. The benefit of clarification provided by the EWO at the oral hearing was highlighted, as was the lost opportunity by non-attendance:

It can be very beneficial, but they very rarely attend, and sometimes there are questions that you would like to be able to ask the EWO, particularly in cases where you are talking about disadvantaged families, and you would think they would have a very valuable contribution to make and won't show.

Gerry (DOE s. 29 Committee)

It was suggested that the EWS would review each case and decide if it is feasible for the student to 'stay in school if there are extra supports or more work put in' (Susan EWO). However, the EWS is not in a position to provide school-based support. The legislative provision does not provide for this assessment. One EWO submitted that a sizeable proportion of the parents and children the service deals with 'are extremely vulnerable, and that may well be the root cause of the child getting expelled'. It was further asserted that some students were 'bordering on learning needs, and maybe the parents have limited capacity'. These observations strengthen the call for greater EWO involvement in school expulsions. As a generally neutral party, the EWS usually does not encourage or discourage parents from taking an s. 29 appeal. None of the EWO interviewees had lodged an appeal, nor had they arranged for such action. Section 26 of the Education (Welfare) Act 2000, as amended by s. 10(b) of the Act 2018, provides that Tuala may appoint an independent person to appeal a decision to expel. As of March 2025, Tusla had not appointed such a person.<sup>26</sup> Some EWOs reported that they might adopt a posture to communicate a sentiment, such as 'do you really not want to appeal?' where they believe the parent had not been treated well by the

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<sup>26</sup> Dáil Éireann Debate, 02 July 2024. Parliamentary Question to the Minister for Education. Question Number: 222 Question Reference(s): 28030/24. Written answer.

school. Should the parent have ‘literacy difficulties or language difficulties,’ EWOs contend they actively assist them to appeal:

I think it would have to be that we were aware that procedures hadn’t been followed. The family had been very badly treated by the school and that the parent wasn’t capable of doing it themselves – that would be the circumstances where that (EWO involvement) might happen.

Jason (EWO)

It must be acknowledged that all categories of interviewees welcome the positive involvement of EWOs in expulsion cases. As one committee chairperson stated:

Where you get a good EWO, they are absolutely brilliant!

Thomas (DOE s. 29 Committee)

Accepting that EWOs are probably very busy, the engagement of EWOs in expulsion cases, as reported above by EWOs, s. 29 committee chairpersons and DOSs interviewed, parents and students,<sup>27</sup> sits uncomfortably with the role as outlined by Tusla by correspondence on foot of a Parliamentary Question, where it was stated:<sup>28</sup>

Key to the role of an EWO is offering advice and assistance to parents in relation to expulsion ... Where a parent/guardian wishes to take a Section 29 appeal under the Education Act 1998, EWOs offer advice and assistance. Where deemed necessary by the agency, EWOs will attend Section 29 appeal hearings.

The gap between the stated role of EWOs and day-to-day practice underscores the need for improved training and clarification of the EWO role. Lilly summarised the current position:

... there aren’t enough joined up thinking either. They are all working in silos (sic).

Lilly (DOE s. 29 Committee)

The EWS is a statutory service whose primary role is to ensure that every child either attends school regularly or otherwise receives a certain minimum education. It must be acknowledged that each EWO is assigned a large geographical area encompassing

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<sup>27</sup> Note. For further discussion on EWS involvement in expulsion cases, see section 7.5.

<sup>28</sup> Dáil Éireann 02 July 2024. Parliamentary Question to the Minister for Education. Questions Number: 603 Question Reference(s): 11141/25

many schools, and their primary role involves addressing chronic absenteeism among children of compulsory school-going age. This responsibility obliges EWOs to maintain a good working relationship with school principals, which can cause difficulties for the school-EWO relationship when the school expects the service to support its position in expulsion cases:

... sometimes we work in these schools, and the schools want us to have their back.

Mary (EWO)

The timing of the notice of intent to expel undermines the EWO's early involvement. The speed with which expulsions can occur, particularly when the EWO does not have prior knowledge of the family and their circumstances, also works against service involvement. Acknowledging that EWOs are probably very busy, committee chairpersons and DOS interviewed were keen to emphasise the potential benefits of EWO's presence at hearings. In support of the contention that the EWS service was overstrained, it is noteworthy that the Minister recently announced a significant increase in the budget allocation, which enabled a substantial increase in EWS personnel. The total staffing, including the additional posts from 2024, is detailed below.<sup>29</sup>

Education Welfare Services Staff Allocation 2024

| Regional Staffing                 | Whole Time Equivalent | Whole Time Equivalent New 2024 Posts | Total |
|-----------------------------------|-----------------------|--------------------------------------|-------|
| Regional Managers                 | 5                     | 1                                    | 6     |
| Senior Education Welfare Officers | 21.46                 | 5                                    | 26.46 |
| Education Welfare Officers        | 120                   | 34                                   | 154   |
| Business Support Staff            | 11                    | 7                                    | 18    |

Figure 18.

<sup>29</sup> Dáil Éireann 02 July 2024. Parliamentary Question to the Minister for Education. Questions Number: 603 Question Reference(s): 11141/25

## 6.5. SHORTCOMINGS IN LEGISLATIVE PROVISION AND STATUTORY GUIDANCE

### 6.5.1. THE ADMISSIBILITY OF NEW EVIDENCE

It is essential at the outset to distinguish between a new ‘reason’ for the expulsion and new ‘evidence’ pertaining to the same original reason. The Act of 1998, as amended, provides that s. 29 committees are free to consider ‘such other matters as the committee considers relevant’.<sup>30</sup> This appears to relieve the committee of limits on the matters it may consider. On the other hand, DOE guidelines provide that all documentation must be submitted prior to the oral hearing; ‘no additional documentation shall be submitted at the hearing’.<sup>31</sup> This suggests the committees are limited to the materials available during the initial BOM decision-making process. Section 29(4)(b) of the Act of 1998 states that hearings are to be conducted with minimal formality, indicating a more flexible approach to the operation of oral hearings, potentially allowing for the inclusion of new evidence. Furthermore, it is generally accepted that decision-making bodies (such as s. 29 committees) are not bound by the same procedural rules of evidence as courts (subject to statutory limitations). Such bodies retain a degree of autonomy in managing their proceedings, as long as they adhere to principles of fairness.

There is a lack of consensus among committee chairpersons regarding the admissibility of new evidence presented at oral hearings. Most interviewees hold that the committee should take possession of new evidence in the form of documentation/material presented at an oral hearing, assess the potential impact of the new evidence on the outcome, and, if considered worthy of inclusion, allow the opposing party access to the material. Having secured the opposing party's consent, allow the new evidence to be included as part of the submission. Proceedings may be adjourned if necessary to enable the parties to review the material or seek advice. Some interviewees permit the opposing party (usually the school) to veto its inclusion.

Conversely, a more cautious perspective emerged when it was argued that the committee was not permitted to accept new evidence:

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<sup>30</sup> The Education (Admission to Schools) Act 2018 s. 29D(4)(k).

<sup>31</sup> Department of Education and Science. Procedures for hearing and determining appeals under Sections 29(1)(a) and 29(1)(b) of the Education Act, 1998 (applicable to appeals made from 12th November 2020 onwards), para. 11.3(d).

... it is not allowed; it is out of order; that constitutes a legal issue.

Gerry (DOE s. 29 Committee)

It was acknowledged that if the evidence was ‘truly serious’, the committee might consider accepting it based on external advice:

Now there are times when they [the parents] can provide another report; a Speech Therapist Report or a Psychologist Report, and they bring it in on the day because they didn’t have it. They [the school] may object, and there is nothing we can do about that.

Seamus (DOE s. 29 Committee)

It was also stated that the DOE is reluctant to disallow documentation submitted at the hearing:

The department’s advice to us as committees ... with regard to evidence documentation. Even if people produce documentation on the day of the hearing, it should normally be allowed.

Michelle (DOE s. 29 Committee)

However, some committees do not always welcome last-minute interventions:

The other thing I have grave difficulty with, serious difficulty, is with TUSLA. This child could be labouring for years and not looked after properly and as soon as the s. 29 comes up, they come out of the woodwork and there are Psychological Reports produced and there is this, that and the other produced and I always say to them, ‘where were you for the last nine odd years’? It is no use getting excited now; you are too late.

Thomas (DOE s. 29 Committee)

Similarly, there was a lack of consistent practice among the ETB committees regarding the admissibility of new evidence:

If you have new material at hand, we can’t accept it now at this point because the parties haven’t been informed about it; so, if it were tried, we would short-circuit that.

Richard (ETB s. 29 Committee)

Committee chairpersons referenced the admissibility of Closed-Circuit Television (CCTV) evidence. If CCTV evidence is submitted to the DOE by either party as part of their pre-hearing submission, reviewed and accepted by the DOE, the appeal committee are willing to consider this evidence; ‘everything is sort of vetted before it comes to us’ (Seamus DOE s. 29 Committee). However, DOE policy on the matter is underdeveloped. In one case where the DOE did accept CCTV evidence, the evidence submitted by the school did not prove conclusive in the eyes of the committee, and the appeal was allowed. Such DOE pre-hearing vetting of evidence undermines the independence of the committee. It raises questions about who can access potentially sensitive information and the expertise necessary to assess its worth.

The divergence of practice regarding the admissibility of new evidence at hearings poses a risk of procedural unfairness, potentially disadvantaging one party. The obligation to abide by fair procedure applies to both parties. While DOE guidelines remain silent on the matter, as previously noted, the Act of 1998 provides that the committee may consider any matter it regards as relevant. Limitations on submitting new evidence should be clearly stated in law to ensure consistency of practice. In the absence of such clarity and the divergence in practice that has emerged here, a presumption in favour of acceptance may represent the most equitable approach, considering the DOE's reluctance to advise against allowing new documentation and the potential impact of relevant new evidence on the case's outcome. The divergence of practice on this important matter highlights the necessity for comprehensive, statutory-based guidelines and further training to assist committees in dealing with the matter in a lawful manner.

#### **6.5.2. LEGAL REPRESENTATION AT S. 29 APPEALS, STATUTORY SILENCE, PROCEDURAL PRACTICE AND COMMON LAW PRINCIPLES**

The department advises that, due to the informal nature of the appeal hearing, legal representation attending on behalf of the parties is not required; that the oral hearing is not a legal setting, although it is acknowledged that the result of the hearing has legal implications.<sup>32</sup> This research has revealed a striking disparity between the

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<sup>32</sup> Department of Education, *Procedures for hearing and determining appeals under Sections 29(1)(a) and 29(1)(b) of the Education Act, 1998 (applicable to appeals made from 12th November 2020 onwards)*. (Published: April 2022), para 7.

department's stated position and practice at hearings. The increasing tendency for appellants and respondents to have their solicitor and or barrister present is acknowledged, though not welcomed, by committee chairpersons. Their position is supported by Irish case law, which has determined that in the context of meetings or hearings relating to long-term suspension or expulsion, parental legal representation is not desirable and that legal involvement should be kept to a minimum.<sup>33</sup> This position may be open to challenge in light of recent judicial developments.<sup>34</sup> Interviewees hold that the legal context of the committee's work is not to the fore during oral hearings; some have expressed frustration at representatives who take an opposing view and emphasise the legal aspects of the appeal:

We have had situations, and colleagues have shared my frustration, where solicitors will take two hours to present a case, and it is quasi-legal. You intervene and you say, 'look, this isn't a court of law' ... so let's focus on the key issues.

Michelle (DOE s. 29 Committee)

I have had a very difficult hearing where everyone in the room except the hearing committee was lawyers. The school had their lawyer, and then all the others were lawyers ... They are not familiar with the territory; they bring all of the attributes of legal people into the hearing, and it does not serve them or their clients well.

Gerry (DOE s. 29 Committee)

Committee chairpersons assert the department's attitude toward legal representation at hearings is 'very woolly'. If either party insists, the department will allow representatives to attend. Some committees permit representatives to speak; others restrict their involvement to advising their clients. Such divergence of practice is unacceptable as it may bestow advantage on some parents in the context of their challenge while disadvantaging others. The hostility towards legal representatives attending hearings is informed by first-hand experience of an adversarial approach, characterised by an emphasis on technicalities considered by committee members to be peripheral to the main discussion. Examples of technicalities cited include verifying that the BOM and committee were properly constituted. Such utterances demonstrate some committee members' failure to recognise the legal context within which they

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<sup>33</sup> See *Student A. and Student B. v. Dublin Secondary School*, [1999] IEHC 47, 53.

<sup>34</sup> See, *O'Brien v. Personal Injuries Assessment Board*, [2008] IESC 71.

operate. It was submitted that, should a committee decide to uphold the appeal, the school will likely get legal advice to assess the feasibility of a courtroom challenge. However, if the appeal is not upheld, the appeal almost invariably will not be challenged because most families cannot fund expensive legal representation. Yet, there is an acceptance by some that legal guidance and advice are highly desirable:

On a legal footing, anyone that thinks they should defend themselves as a client unless you are a legally qualified person you are going to walk into trouble.

Mark (ETB s. 29 Committee)

Professional legal input before oral hearings is acceptable to committee chairpersons, particularly in complex cases. The realisation of the power imbalance at hearings and the limited resources available to most families calls into question the concept of fairness when parents are not able to fund legal representation on the same basis as schools:

I believe that, if there is to be legal involvement, it should be open to either party to have somebody there with them but not to have them participate in the actual hearing because it imbalances the thing and it tips the balance again crazily against families the great majority of whom do not have shekels to pay barristers and solicitors to spend half a day sitting in an office somewhere in the country on a s. 29.

Michelle (DOE s. 29 Committee)

Educational Welfare Officers hold mixed views on the merits of engaging legal representatives at oral hearings; they argue that if parents seek legal representation, the school will do likewise. ETB interviewees confirm that the ETB will typically get legal advice in complex, difficult cases, although the advisors are unlikely to attend the hearing.

Some committee chairpersons held that the adversarial nature of professional legal involvement acted as a constraint when seeking to conduct the hearing with minimum formality. On the other hand, one EWO remarked that the presence of a legal representative did not take from the ‘informality ... kindness ... and respect for all parties at the hearing’. ETB s. 29 committee members gave the impression they were ill-prepared to engage with legal representatives:

The time that the solicitor walked through the door and said he was a Solicitor, at that stage we let him into the room and let him state his case, we looked for a recess and I took advice on whether he could be there or not; so, we were told to go ahead and see what happened, you know. The outcome of that one ... he actually scuttled the case on the school; the student was put back in the school.

Mark (ETB s. 29 Committee)

Although the Act of 1998 provides that oral hearings should be conducted with minimal formality, interviewees consistently described the hearings as formal and typically adversarial. The silence of the Act on legal representation results in divergent practice: some committees permit representation, others do not. Department guidelines allow each party to be accompanied by two additional persons (potentially with legal expertise), but these individuals are prohibited from making statements unless granted permission by the committee.<sup>35</sup> This effectively restricts meaningful legal representation or the assistance of another individual.

Reflecting the sentiment expressed by the Supreme Court, and mindful that complex issues may arise before committees, the question of legal representation in expulsion cases cannot be avoided.<sup>36</sup> Given the authority entrusted to s. 29 appeal committees and the consequences of their decisions, it is reasonable to argue that if either party considers that it would be in their interest to have a legal representative, they should be so entitled. In addition, a refusal by an appeal committee to engage with solicitors or permit their participation may constitute an unwarranted interference with the solicitor/client relationship in circumstances where the Oireachtas (Parliament) has not excluded the exercise of that right.

It is acknowledged that proceedings before a committee are not equivalent to those in a court of law, and that common law does not generally confer a right to legal representation in administrative and quasi-judicial proceedings.<sup>37</sup> However, Denham J. held that legal representation is a right of special importance in common law

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<sup>35</sup> Department of Education and Science. Procedures for hearing and determining appeals under Sections 29(1)(a) and 29(1)(b) of the Education Act, 1998 (applicable to appeals made from 12th November 2020 onwards), para. 5.2.

<sup>36</sup> O'Brien v. Personal Injuries Assessment Board, [2008] IESC 71, para. 53.

<sup>37</sup> Jacques Johan Buchner, *'The constitutional right to legal representation during disciplinary hearings and proceedings before the CCMA.'* (2003), p. 3. (Doctoral dissertation, University of Port Elizabeth).

jurisdictions; this right is referable in situations where there may be serious consequences for an individual.<sup>38</sup> It can be argued that if the Oireachtas intended lawyers to be excluded from s. 29 oral hearings, it would have enshrined the condition in legislation. The silence of the Act reflects a policy of the Oireachtas on the matter.

The question has been raised as to whether recognising a general entitlement to legal representation would impinge upon the principle that tribunals are masters of their procedure.<sup>39</sup> However, Denham J. held that the right to legal representation and legal advice is so fundamental that a court should be very slow to say that its exclusion is permissible.<sup>40</sup> Restrictions on this right need to be explicitly addressed in legislation; otherwise, they could be inferred if compellingly clear from the wording of the statute.<sup>41</sup> No such restrictions are clear from the text of the Act of 1998.

Schools are comparatively well-positioned at oral hearings, given that they are generally affiliated with national representative bodies that periodically provide training, issue guidance documents, and deliver legal seminars.<sup>42</sup> Parents, on the other hand, may face significant disadvantage if denied access to legal representation, particularly where they have literacy difficulties, time constraints, or are challenged to navigate formal processes.

Advocates of legal representation argue that the discretion granted to tribunals under common law is unsatisfactory. Instead, representation should be statutorily authorised in all proceedings, whether complex or straightforward.<sup>43</sup> Despite general opposition among interviewees to the involvement of legal experts in hearings and acknowledging that access to such representation will be somewhat unequal based on the availability of financial resources, the contention finds support here. Any other approach, especially since, in most cases, parents acting as lay persons would not have

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<sup>38</sup> O'Brien v. Personal Injuries Assessment Board, [2008] IESC 71, para. 45.

<sup>39</sup> Jacques Johan Buchner, *'The constitutional right to legal representation during disciplinary hearings and proceedings before the CCMA.'* (2003), p. 59. (Doctoral dissertation, University of Port Elizabeth).

<sup>40</sup> O'Brien v. Personal Injuries Assessment Board, [2008] IESC 71, para. 44.

<sup>41</sup> O'Brien v. Personal Injuries Assessment Board, [2008] IESC 71, para. 45.

<sup>42</sup> Note. For example, see <https://www.jmb.ie/Training-events/Presentations#921218-education-law-day>

<sup>43</sup> Jacques Johan Buchner, *'The constitutional right to legal representation during disciplinary hearings and proceedings before the CCMA.'* (2003), p. 58. (Doctoral dissertation, University of Port Elizabeth).

the skills or expertise available to schools, would be open to question on grounds of fairness, even if they are validly grounded in the Act, which they are not.

If there are to be restrictions on legal representation in expulsion cases, they should be clearly articulated in legislation. Until such clarity emerges, a presumption in favour of allowing representation when requested may be the most justifiable approach, considering common law principles and the consequences of committee decisions.

### **6.5.3. APPEAL HEARINGS AND PARALLEL CRIMINAL INVESTIGATIONS**

Committee chairpersons report encountering breaches of the school discipline code, which, if proven, would constitute a criminal offence, typically the possession/sale of illegal drugs. In the absence of DOE guidance, evidence of divergence of practice has emerged regarding committees proceeding with hearings while a parallel investigation is ongoing. DOE appeal hearings are processed in the usual way. They are not ‘inhibited’ by the parallel criminal investigation. Some ETBs recognised the risk of straying into error and paused appeals to allow an Garda Síochána to complete their investigation. In England, statutory guidelines advise that parallel criminal proceedings should not directly determine whether an Independent Review Panel (IRP) should be adjourned. The panel should assess whether an adjournment is warranted by considering the availability of witnesses and documents, the expected length of the delay if the hearing is adjourned, the potential impact on the student, parents, school, or victims, and whether an adjournment might result in an injustice. In this jurisdiction, committee members are without guidance on this matter, spawning a diversity of practice. The English guidelines may prove helpful in developing guidelines to address this gap.<sup>44</sup>

### **6.6. THE LEGAL CONTEXT OF APPEAL HEARINGS**

Chairpersons are not overly concerned about the legal context of the appeal hearing. There was an aversion by most to discussing the legal framework associated with expulsion and applicable legal principles. There are mixed views on whether the appeal process is part of the school disciplinary procedure or an independent quasi-

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<sup>44</sup> See Department for Education. (2023). Suspension and Permanent Exclusion from maintained schools, academies, and pupil referral units in England, including pupil movement Guidance for maintained schools, academies, and pupil referral units in England May 2023.

judicial process. The majority view supports the contention that the initial decision of the BOM is made as part of the school disciplinary process. At the same time, the s. 29 appeal is regarded as quasi-judicial.

When it comes to us then, it is a quasi-legal operation and has become more and more so not least because often the school is armed with... if they don't have a solicitor present – and we have had hearings where you have solicitors on both sides – you have barristers and so on – more often than not the school comes armed with legal advice anyway.

Michelle (DOE s. 29 Committee)

The outcome of High Court proceedings informs the work of s. 29 committees; nevertheless, chairpersons do not consider it imperative to be guided by some recent judicial review judgements with which they profoundly disagree. It was submitted that the concept of natural justice guides the work of committee members as the overarching principle. While adopting a common-sense approach, committee chairpersons frequently referred to working in accordance with the legislative framework in pursuit of the 'best interest of the student' while acting in a manner that was fair to both parties (Lilly DOE s. 29 Committee).

Department procedures dictate that the committee shall have regard to the educational interests of the student concerned and the desirability of enabling them to participate in and benefit from education with their peers.<sup>45</sup> Significantly, DOE procedures for hearing an appeal do not refer to the best interest standard as per Article 3 of the United Nations Convention on the Rights of the Child. The Convention provides that in all actions concerning children by administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration. However, it is not necessarily the only or paramount interest to be considered. It is accepted that while the standard is simple to state, it can be exceptionally problematic in application due to the multitude of factors determining the perception of what is in the child's best interest.<sup>46</sup> Nevertheless, expulsion from school is generally not in the best interest of the student.

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<sup>45</sup> Department of Education and Science. Procedures for hearing and determining appeals under Sections 29(1)(a) and 29(1)(b) of the Education Act, 1998 (applicable to appeals made from 12th November 2020 onwards), para. 6.7(d).

<sup>46</sup> Daniel Monk, 'Children's rights in education - making sense of contradictions' (2002) 14. *Child and Family Law Quarterly* 45, p. 48.

The best interests of the child principle is not incorporated into Irish education law, thereby exposing a gap between the Convention on paper and the Convention in practice; this undermines the Convention's legal authority and its application in the Irish legal system.<sup>47</sup> Interviewees expressed caution in referring to the student's best interest in the committee's decision report, as this may be perceived as evidence that the committee was 'siding with one'. Committee chairpersons are reluctant to accept that the committee's work extends beyond an administrative function and can be described as quasi-judicial, notwithstanding that each case turns on its particular facts and circumstances.

#### 6.6.1. THE INDEPENDENCE OF THE APPEAL PROCESS - COMMITTEE MEMBERS' PERSPECTIVE

The Minister appoints the appeal committee members.<sup>48</sup> They must be independent and impartial in the performance of their functions.<sup>49</sup> DOE committee members endorse this view and are conscious of their obligation to protect that independence. 'We had a completely independent role, yes, 100% independent'. There was unanimous recognition among members of their insider status and little desire to include non-educationalists on committees. They are generally unwilling to sit on committees examining expulsion from a school with which they had a previous association:

I would have to say, if you asked us ... whose side are you on - we are not on any side, we can't be, we are independent, but we see a child here. We see a child's life, ... a child's opportunity for education or not; so, we go to a lot of effort to go through all the pros and cons.

Seamus (DOE s. 29 Committee)

Department officials appear to confirm the committee's independence when members are reminded that the decision is a decision of the committee. However, they may comment on the content of the determination:

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<sup>47</sup> Ursula Kilkelly, 'The UN Convention on the Rights of the Child: protecting children's rights across generations'. (2023). Paper presented. Frontiers of Children's Rights Summer School. Leiden University, the Netherlands.

<sup>48</sup> The Education (Admission to Schools) Act 2018 s. 7(29A)(1).

<sup>49</sup> The Education (Admission to Schools) Act 2018 s. 7(29A)(2)(d).

The department can take exception to some of the things you say and will come back and say, should you be writing that?

Lilly (DOE s. 29 Committee)

While the DOE may refer back to the committee for clarifications and possible amendments to the committee's report, members are generally not open to DOE interference:

I would say to the department ... I am going to have to discuss this with my colleagues ... In some cases, they have said no, no, we are not changing, and, in others, they might say a tweak here or a tweak there, nothing major, no.

Michelle (DOE s. 29 Committee)

Experienced chairpersons occasionally alert the DOE when they perceive the case may be referred for Judicial Review. In such cases, committee chairpersons informally ask DOE officials to review the case forensically on the administrative side to minimise the risk of a judicial review and ensure the committee's decision stands. Others seek guidance and advice. The input by senior DOE officials is welcome and highly regarded:

The official may revert, 'well did you think of this' or 'how do you think that goes down?' ... that raises questions ... it is still our report, but the (DOE official) dealing with it can raise... and kind of maybe looking for clarification; 'well, does the policy cover that?' Does the Act cover that ... are you stepping outside your terms of reference?' Some checks and balances.

Michael (DOE s. 29 Committee)

ETB committee members acknowledged that the ETB mechanism lacked independence. 'It is not independent; it is the system controlling the system ... is as independent as it can be' (Richard ETB s. 29 Committee). 'It would appear independent, but I can't see how it was completely independent' (Mark ETB s. 29 Committee). They were sometimes challenged to maintain an independent perspective while displaying loyalty to acquaintances, given that they were members of a close-knit community and often had long-standing professional ties:

... you would feel a certain amount of loyalty to the school management and the school BOM remembering they made that decision; so, there is a connection there if you like ... but on the other hand, you didn't want to let something trivial go through the works and ending up being appealed to the Minister and both the ETB and your committee and you and everybody that would be associated with you look like a fool because it is thrown out on a technicality.

Mark (ETB s. 29 Committee)

Confirmation of ongoing communication between department officials and committee chairpersons, limited or otherwise, undermines the independence of the appeal mechanism. While every effort is made to address possible conflicts of interest before the oral hearing commences to protect the committee's independence, committee members are retired educationalists who have worked in schools as teachers, principals, or inspectors for many years before retirement. Committee chairpersons acknowledged that occasionally, members may be personally acquainted with school representatives at oral hearings, given that chairpersons are drawn from the education community. Should a committee member be acquainted with the school representative, reliance is placed on the professionalism of the individual to park their relationship in the interest of conducting the hearing in a manner that is fair to both parties. It was submitted that in such cases, the voice of the committee member in question is 'but one of three', this, coupled with a reliance on the professional integrity of the member and adherence to DOE guidelines, was deemed to ensure the hearing is conducted in a manner that is independent and fair:

There are other schools that I have done appeals for, and I would know the principal, I would know the school ... but basically ... we would be following the procedures ... I would only be one voice at the hearing anyway.

Michael (DOE s. 29 Committee)

The latter overlooks the influence of the chairperson of a committee,<sup>50</sup> and the provision that in the case of an equal division of votes, the chairperson has a second or casting vote.<sup>51</sup>

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<sup>50</sup> Note. All committee members interviewed were interviewed in their capacity as committee chairpersons.

<sup>51</sup> The Education (Admission to Schools) Act 2018 s. 7(29A)(4).

Department officials acting on behalf of the Minister are in control of panel membership. Members may at any time be removed from the panel for stated reasons.<sup>52</sup> The department's desire that committee members avoid being seen as 'insiders' points to an acknowledgement of the undesirability of that status, which may motivate applicants to cast doubt on committees' independence. It is difficult to reconcile the desire that members should not be seen as 'insiders' with the selection process discussed above. Furthermore, perceiving how 'non-insiders' might fulfil the memo's requirements is challenging. Gilbride highlighted that school management bodies are happy to have retired principals on appeal committees because of their understanding of schools.<sup>53</sup> She speculates their stance may be inspired by the fact that 'appointees to appeal committees are cultural insiders who therefore possess the same cultural and social capital and are part of the same cultural paradigm as school personnel.' She noted the NEWB call for persons from backgrounds other than teaching to be considered for membership on appeal committees to guard against over-representing educational insiders and possible bias. Based on the findings of this research, the insider status of members, their relationships with schools and the department, this thesis calls into question the independence of committees.

The longstanding call for committees to represent the various parties in education,<sup>54</sup> coupled with an appeal for a more inclusive membership and a child-centred approach, finds support here:

I would definitely say that there should be more diversity ... if you are coming from a teaching background, you are looking at this from teaching ... I think you need people who are looking at a child ... most of the children and young people who are being put forward for expulsion have huge difficulties previous to this. I didn't get a sense that people had an insight into the child and the child's world.

John (EWO)

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<sup>52</sup> The Education (Admission to Schools) Act 2018 s. 7(29A)(2)(c).

<sup>53</sup> Mary Gilbride, 'The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education.' (2013), pp. 120-121. (Doctoral thesis, Maynooth University).

<sup>54</sup> Dympna Glendenning, School Discipline: Balancing Individual Student Rights and the Common Good. In Dympna Glendenning & William Binchy (Eds.), *Litigation Against Schools: Implications for School Management* (pp. 180-201). (Dublin: First Law Ltd.) 2006, p. 189.

## 6.7. SECTION 29 COMMITTEE MEMBERS' PERSPECTIVES ON INFORMAL EXPULSION AND LOCAL ARRANGEMENTS

Committee chairpersons would not normally encounter informal expulsions in their role. However, as experienced educationalists, they acknowledge its prevalence in Irish schools. It was mentioned that such expulsion disproportionately affects disadvantaged, vulnerable families who lack the resources to challenge the school. Overall, committee members generally frown upon informal arrangements that result in the student leaving the school:

No! I don't approve at all, and never did approve of the informal 'here is the door and go – otherwise, we will expel you' ... this business of saving ourselves the trouble – unspoken of course, of having to actually expel, we will push you out and encourage you to go, I have no respect for that.

Michelle (DOE s. 29 Committee)

There is a level of acceptance of informal arrangements reached by agreement with the family, which do not result in formal expulsion, arrangements such as 'exchange of prisoners':<sup>55</sup>

I think rather than talk about an informal expulsion, I think it should be seen to be a negotiation on behalf of the student leaving one place to go to another as opposed to one side saying look you know head off and look for somewhere else.

Lilly (DOE s. 29 Committee)

Indeed, here was a suggestion (speaking as an ex-principal) that communication between schools was desirable before a student changed schools. 'I would like to think that the schools could speak, and I certainly wouldn't want to think that somebody felt that they could fob off a serial killer or a rapist on me' (Lilly DOE s. 29 Committee). Such comments pay scant attention to data protection obligations.

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<sup>55</sup> Note. A managed move, sometimes referred to as an exchange of prisoners, is a voluntary agreement between schools, parents, and the student whereby the student will change schools with the knowledge and cooperation of the new school as an alternative to expulsion. The reciprocal arrangement ensures the new school will, in time, benefit from a similar arrangement.

## 6.8. RECOGNITION OF THE IMPACT OF EXPULSION

As experienced educationalists, DOE committee members believe that unmet SEN results in behavioural difficulties, which can lead to expulsion from school, a system failing, relabelled as a failure of the child. While some schools do an excellent job, DOE committee members contend that equality of access to support in schools is not evident. It was alleged that schools do not give all parents a 'fair crack of the whip'; they certainly don't (Thomas DOE s. 29 Committee Chairperson). There were calls for additional school-based support for children at risk of expulsion. DOE committee members are keenly aware of the impact expulsion can have on students, especially children of parents who lack the resources to mitigate the adverse effects. It was argued that schools often fail to recognise the consequences of their decision to expel:

Schools, in particular, don't really appreciate what a major life-changing event expulsion from school could be particularly among lower middle-class, working-class, uneducated families. A family with resources can pack them off to a boarding school or get them into another school - maybe a fee-charging school - and are able to get around the issues to some extent. There would be damage, there would be detriment to their sons or daughters, but, at the same time, they had resources to enable them to support their children. The great majority of children who are expelled really, in my experience and my sense, is that the damage done to their life chances is immeasurably greater than the schools appreciate when they actually come to expel them.

Michelle (DOE s. 29 Committee)

It was reasoned that examining the student's offending behaviour in isolation is inadequate; instead, the behaviour must be viewed in the broader context of the student's life. However, such considerations lie outside the remit of the committee:

Home is chaotic, and even being suspended into awful situations where there is probably no food in the house, somebody is taking drugs, and there is no thought about that, and I think we have to look beyond the initial behaviour and find out ... There isn't enough emphasis on what is going on here for this child. Some schools are very good at that. Some schools - especially, I find, if they are high-achieving academic schools - don't have time for that.

John (EWO)

#### 6.9. PERCEPTIONS OF THE RIGHT OF STUDENTS TO BE HEARD AT S. 29 APPEAL HEARINGS

There is no provision for a student under 18 years of age to attend the s. 29 hearing. The role of parents as advocates and the importance of their involvement in their child's future relationship were highlighted. There was a consensus among members that it can be beneficial to have direct input from the student at the oral hearing, 'just to have his or her point of view'. However, if the school followed correct procedures, it was deemed adequate that the student was represented by their parent. Some EWOs contend that expelled students often cannot engage in the process meaningfully without significant counselling and preparation:

I don't think so ... a lot of the time, the student either won't go in, or when they do go in, they will be sulking, and the head is down, and they are not saying anything. If they do say something, it is usual brazen. They never really come out with a logic sort of argument and only sort of mouth off.

Caroline (EWO)

Directors of Schools feel that the students' voices are best represented at the hearing by their parents. It was not uncommon for students to attend part of the ETB hearing with the committee's permission, irrespective of age. However, considering the stressful nature of the hearing, one DOS maintained, 'it definitely isn't a place for a child':

No. The young fellow ... I suppose because the mother said show how sorry you are. His head was down; he never looked at the three members, all dressed up in blue suits, and then he sat outside, petrified, for the rest of the hour and a half.

Jane (ETB DOS)

An eighteen-year-old student is seen as more able to address an appeal hearing. 'For want of a better word, he was saucier; he was a bit more ... yeah, right, look, get over it like it wasn't as bad as you think it was' (EWO).

An alternative view stressed the importance of students attending hearings. Their attendance was seen as an opportunity to demonstrate accountability and to take personal responsibility. Issues related to age and vulnerability can be addressed by permitting students to attend part of the hearing and by providing appropriate support for the student.

#### 6.10. CONCLUSION.

Section 29 of the Act of 1998 grants parents the right to challenge a decision to expel and to have a fair hearing before a committee of lay members. The committee examines the validity of the process that the school and the BOM have gone through. Many perceived the appeal process to lie within the education system. This perception stems in part from the fact that the Minister administers the appeal system, appoints members to the s. 29 committee, and implements its decision. The considerable degree of departmental involvement, coupled with the insider status of committee members, raises questions about the committee's independence and can potentially undermine public confidence in the process.

It is accepted here that committee members, as educational experts, have considerable knowledge of how schools function. However, this thesis contends that many committee members fail to appreciate the quasi-judicial nature of their decision-making and appear to be under the impression that educational law consists of rough guidelines which, at the discretion of the committee, could be considered in an *ad hoc* manner. That is not the case; the application of the law is mandatory. However, in the absence of proper training and guidance, nonconformity between law and practice is not grounds for criticism of non-lawyers' actions.

This research has identified significant weaknesses in the support available to s. 29 committees. There is insufficient training of members, an absence of comprehensive guidance and gaps in legislative provisions. The development of comprehensive guidelines and a new model of developmental training (perhaps compulsory training) is recommended. The absence of guidance and legislative silence on the admissibility of new evidence at hearings, legal representation at hearings, conducting appeal hearings during parallel criminal investigations, and the use of CCTV evidence, together with a woolly attitude by the DOE towards these matters, has spawned a range of diverse practices by committees.

In the absence of legislative clarity regarding the right to legal representation at oral hearings, a presumption in favour of allowing such representation where requested may be the most justifiable approach in light of common law principles. However, in the interest of fairness and to counter the current anomaly whereby legal advice is

generally available to schools via a variety of sources, ultimately paid for by the state, free legal advice should be available to parents engaged in the appeal process.

Mixed views were expressed regarding the advisability of students attending the oral hearing. However, this thesis argues that students should be given the option to interact directly with committee members at their expulsion appeal hearing, even if that involvement is limited to part of the hearing. The absence of such a provision represents a lost opportunity to comply with Article 12 of the UNCRC, which acknowledges the students' right to express their views in all matters affecting them and that their opinions must be given due weight in accordance with their age and maturity.

Concerns have emerged over the objectivity of decision-making based on the insider status of committee members and the mode of appointment. To strengthen the committees' independence, this research recommends the inclusion of non-educationalists on committees, possibly as chairpersons, to assist committees to robustly and objectively scrutinise the evidence presented. In addition, concerns have emerged regarding the stressful nature of hearings; proceedings are sometimes conducted in a language and jargon unfamiliar to some parents. They do not always understand and can not challenge statements made therein; this points to the need for training to provide a family approach at hearings.

Hampered by a lack of training and resulting role ambiguity, the involvement of the EWS in supporting parents, although highly recommended, occurs on an ad hoc basis. Effectively, there is no universally accessible system of free support or advocacy for parents and students navigating the appeal process. This represents a significant gap in provision, which guides this thesis to recommend universal advocacy for parents at oral hearings to enable their efficient participation. The introduction of the Act of 2018 achieved significant advances in legislative provisions, such as abolishing the ETB stage of the appeal process, and upgrading the deliberations of the s. 29 committee from that of a recommendation to the Secretary General of the DOE to that of a decision. However, the removal of the facilitation stage of the mechanism has met universal criticism. The facilitator was well placed to broker a local solution within the legal framework, or at least offer advice to parents on how to approach the appeal.

The necessity to develop comprehensive statutory-based regulations and guidelines to assist the committee's work is evident. As alluded to earlier, assistance can be obtained by reference to the English provision.

There was widespread recognition among interviewees of the negative impact of expulsion on the student and their family, and an assertion that some of the expelling schools do not fully appreciate this. As noted, well-resourced parents can often mitigate the negative impact. Students living in deprived communities are at greater risk of expulsion.

Interviewees have demonstrated a keen awareness of the plight of disadvantaged students and families, as well as the prevalence of inequality in schools generally. Overemphasis on educational policy addressing the aforementioned, coupled with limited s. 29 training risks impoverished reasoning and decision-making by committee members when viewed from a legal perspective. In a climate where expulsion is perceived as justifiable for maintaining a safe learning environment, it is imperative that the appeal mechanism provided by the Oireachtas is implemented with impunity. The inherent dilemma faced by s. 29 members as they seek to apply school expulsion law while having regard to educational policy is evident.

### 7.1. INTRODUCTION

The primary focus of this thesis concerns the application of school expulsion law in practice. The experiences of parents who have engaged with the law on expulsion lie at the core of this thesis; their involvement with the school BOM and s. 29 oral hearings is analysed in the context of the diverse social capital available to interviewees. The factors that motivate parents to challenge expulsion and the obstacles that impede the possibility of a challenge are reviewed. In addition, the chapter examines the experiences of parents whose children have faced informal expulsion.

Parents possess natural, legal, and constitutional rights to have their children educated.<sup>1</sup> Furthermore, parents have a legal obligation to ensure that their children receive a minimum standard of education, as discussed below. The duties of parents, schools, and the Educational Welfare Service (EWS) are examined in this context. The chapter analyses the challenges parents face when seeking a new school after their child has been expelled. The level of support available to parents and the engagement of the EWS pre- and post-expulsion are reviewed. Until recently, parents have been able to use a mediation facility as part of the appeal process. The views of parents on the value of the now-discontinued stage of the process are reviewed.

This study examines parents' perceptions of their involvement in the expulsion and appeal processes, with particular attention to their right to be heard and their views on who decides to expel. It also explores parents' opinions on the willingness of schools to engage with the views of expelled students, in the context of Article 12 of the UNCRC, which emphasises children's right to be heard in matters affecting them.

The study analyses the first-hand experiences of students who have been expelled informally, including the impact of expulsion on their ability to secure a place in a new school, their educational progression, and their future employment prospects. It also examines the broader consequences, including the impact on social and family

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<sup>1</sup> Note. For discussion on the right to education, see section 2.2.

relationships. Additionally, the study considers the perspectives of informally expelled students regarding the openness of schools to their views during the expulsion process.

## **7.2. SCHOOL ATTENDANCE RECORDING: THE OBLIGATIONS OF THE EDUCATIONAL WELFARE SERVICE, PARENTS, AND SCHOOLS**

The state guarantees to respect parents' inalienable right and duty to provide, according to their means, for their children's education.<sup>2</sup> The Education (Welfare) Act 2000 (the Act of 2000) provides that, in normal circumstances, the parent of a child must ensure the child attends a recognised school on each school day.<sup>3</sup> Parents must notify the school principal of their child's absence and the reason for such absence.<sup>4</sup> Should the EWS form the view that a parent is failing to ensure their child attends school, and after making all reasonable efforts to address the issue, the EWS will serve the parent with a School Attendance Notice (SAN).<sup>5</sup> The notice is the first step in enforcing the law. It compels parents to ensure their child attends school while it is in force.<sup>6</sup> Failure to comply with the requirements of a SAN is an offence; on summary conviction, the parent is liable to a monetary fine, imprisonment for a term not exceeding one month, or both. However, the majority of proceedings initiated by the EWS on foot of failure to comply with the terms of an SAN are struck out by the Courts.<sup>7</sup>

The principal of a recognised school must maintain a register of the attendance and non-attendance of each student.<sup>8</sup> If a child is registered in a new school, the principal of the new school must notify the child's previous school that the child has transferred.<sup>9</sup> Thereafter, the old school must remove the child's name from that school's register.<sup>10</sup> The principal of the old school may only share information

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<sup>2</sup> Constitution of Ireland 1937, Art. 42.1.

<sup>3</sup> The Education (Welfare) Act, 2000, s. 17(1).

<sup>4</sup> The Education (Welfare) Act, 2000, s. 18.

<sup>5</sup> The Education Welfare Act 2000, s 25(1).

<sup>6</sup> Note. The average number of SANs issued in the two years pre- and post-COVID-19 (2019 and 2022) was 408. (Source. PQ Written Answer on 02/07/2024. Question Reference 28030/24).

<sup>7</sup> Note. The average number of court convictions resulting from failure to comply with the SAN requirement in the two years preceding and following COVID-19 (2019 and 2022) was 38, while the court struck out an average of 59 cases during the same period. (Source. PQ Written Answer on 02/07/2024. Question Reference 28030/24).

<sup>8</sup> The Education (Welfare) Act, 2000, s. 21(4).

<sup>9</sup> The Education (Welfare) Act, 2000, s. 20(3).

<sup>10</sup> Note. Except where the child receives part of their education in each of the two schools.

regarding attendance and other matters relating to the child's educational progress after registration in the new school is complete.<sup>11</sup> The school principal must submit an Annual Attendance Report to the EWS at the end of each academic year. Additionally, the principal must submit a Student Absence Report twice a year for students of compulsory school-going age who have been absent from school for a total of twenty days or more during a school year.<sup>12</sup> The reliance of the EWS on the cooperation of the school principal in addressing poor student attendance is striking. It sits uncomfortably with the position to be adopted by the service in expulsion cases, where the service may support the parent in challenging the school's decision to expel. All of the informally expelled students interviewed were of compulsory school-going age when expelled; this fact did not prompt EWS involvement and calls into question the effectiveness of the above provisions.

The EWS is obliged by law<sup>13</sup> to maintain a register of all children receiving education in a place other than a recognised school.<sup>14</sup> A recent review of out-of-school education provision by the DOE revealed the failure of the EWS to fulfil its legal obligations.<sup>15</sup> The failure arose as a result of the non-alignment of data systems across the DOE and the EWS to record school enrolment and attendance, referrals to the EWS due to attendance issues and the number of applications for registration under the Act of 2000 (where a parent elects to educate, or have educated, their child in a place other than a recognised school).<sup>16</sup> Consequently, it is impossible to determine the number of children of compulsory school-going age who are not receiving any education or attending out-of-school settings.<sup>17</sup> This is a shocking revelation given that the relevant section of the Act was commenced twenty-four years ago.<sup>18</sup> In May 2022, the Minister

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<sup>11</sup> The Education (Welfare) Act, 2000, s. 20(5)(b).

<sup>12</sup> The Education (Welfare) Act, 2000, s. 20(4)(b).

<sup>13</sup> The Education (Welfare) Act, 2000, s. 14(1).

<sup>14</sup> Note. The register refers to all children of compulsory school-going age who are not attending a recognised school, including children being home-schooled and attending private fee-paying (non-recognised) schools.

<sup>15</sup> Social Inclusion Unit, Department of Education, *'Review of Out-of-School Education Provision, Version 2.'* (2021), para. 3.1.

<sup>16</sup> The Education (Welfare) Act, 2000, s. 14(2).

<sup>17</sup> Note. The review focused on children of compulsory school-going age who have become disengaged or are in danger of becoming disengaged from mainstream education. The review found little evidence of organised out-of-school education provision for children of compulsory school-going age in Ulster and Connacht.

<sup>18</sup> The Education Act 1998, (Commencement) (No. 2) Order 1999 (S.I. No. 470 of 1999), art. 2.

announced plans to establish an implementation group to oversee the recommendations set forth in the Review of Out-of-School Education Provision. The review found that there is no clear tracking system for students who become disengaged or are at risk of becoming disengaged from mainstream education. The report recommended improvements to the level of attendance data collection and the tracking of students who are expelled.<sup>19</sup>

In the interest of clarity, it should be noted that the discussion below relates to three distinct groups of participants: (i) parents of students formally expelled, section 7.3; (ii) parents of students informally expelled, section 7.4; and (iii) informally expelled students, section 7.7.1.

The following section discusses the experiences of three parents: Mark, Maura, and Sinead. Their children were formally expelled in accordance with statutory provisions, and each of the parents lodged a s. 29 appeal.

### **7.3. THE EXPULSION PROCESS (1) – THE EXPERIENCE OF PARENTS OF FORMALLY EXPELLED STUDENTS**

Mark and Maura contend that historical issues that had previously damaged their relationship with the school principal resurfaced and were significant in the context of the expulsions. There were unusual occurrences associated with the expulsion of Sinead's son, which she believes were linked to the student's father's occupation and a previous incident when her son attended school with his hair dyed.<sup>20</sup>

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<sup>19</sup> Review of Out-of-School Education Provision, Version 2, p. 12.  
<https://www.gov.ie/pdf/?file=https://assets.gov.ie/223896/e734e78d-17cf-4eb0-9136-180e5d63a3d8.pdf#page=null>

<sup>20</sup> Note. Details of the 'unusual occurrences associated with the expulsion of Sinead's son' are not reported upon to protect the identity of the participants.

### Overview of the Formal Expulsions - Process and Outcomes

| Parents | BOM Involvement   | s. 29 Appeal Outcome                                                              | Action by School                       | The outcome of the Expulsion |
|---------|-------------------|-----------------------------------------------------------------------------------|----------------------------------------|------------------------------|
| ↓       | ↓                 | ↓                                                                                 | ↓                                      | ↓                            |
| Sinead  | Expulsion Hearing | s. 29 Expulsion Appeal Upheld                                                     | Meeting with the Principal             | Student Returned to School   |
| Maura   | Expulsion Hearing | s. 29 Expulsion Appeal Upheld                                                     | School imposed unacceptable conditions | Enrolled in a new School     |
| Mark    | Expulsion Hearing | s. 29 Expulsion Appeal Refused<br>Refusals to enrol at new schools not challenged |                                        | Did not find a new school    |

Figure 19.

#### 7.3.1. PARENTS' EXPERIENCE AT THE BOARD OF MANAGEMENT HEARING

Board of Management chairpersons accept that the atmosphere at the board hearing is typically very tense.<sup>21</sup> Parents were united in their criticism of how the hearings were conducted. Surprised by the large number of board members present, interviewees' views ranged from the assertion that the hearing was 'a farce from start to finish' to accusations that the board was unfriendly, extremely distant, quite aggressive and patronising in the extreme. Sinead, a self-described insider with BOM membership experience, was 'taken aback at the negative, cold, caustic and almost aggressive nature of the board:'

It was a gruesome meeting; it really was, and it was very much you are in a court of law here, and we are going to interrogate you as the mother of this (student). Horrendous.

Sinead (parent of a formally expelled student)

Some participants reported being unable to continue engagement with the board when overcome by emotion. The parents interviewed acknowledged that their son's offending behaviour was objectionable. Their expressed preference was for their child to be allowed to make a full and honest apology to the BOM, the principal, the relevant

<sup>21</sup> Note. For a discussion of BOM chairpersons' perspective on expulsion hearings, see section 5.3.1.

teaching staff, students, and, in one case, the entire school community. Varying degrees of annoyance and anger were expressed at the refusal of the BOM to entertain the prospect:

He should be allowed to apologise even further to that teacher and to the school, if necessary, at an assembly and then, if the school saw fit to make him do certain tasks after school, whatever, but to actually, in the middle of 5th Year, ruin his whole future with this expulsion ... it was so obvious, nobody was listening to me.

Sinead (parent of a formally expelled student)

Procedural improprieties were observed by parents, such as the principal remaining in the room with the board when the parents had departed. This offends the principle of natural justice, which stipulates that the decision-maker must not be biased. Those who may be adversely affected by the board's decision should have an equal opportunity to present their side. Awarding greater audience to one party hints at the presence of bias; the fairness of the decision-making process is called into question.

### **7.3.2. PARENTS' MOTIVATION TO APPEAL AN EXPULSION**

The decisions to appeal were driven by the commonly held view that the school's actions were unreasonable and unjust. Mindful of the potential negative consequences of expulsion, the parents interviewed sought to overturn the decision and see their children complete the Leaving Certificate (LC) examination without losing class time. Feelings that the principal had overreacted by recommending expulsion and that the BOM had not listened to them or their child motivated parents to challenge the decision. In addition, some parents felt that the school had failed to intervene when other students were bullying their children and had not adequately supported their child's SEN. Parents who felt they were being judged and held responsible for their child's poor behaviour said the latter also motivated them to appeal. The motivating factors outlined here mirror those revealed in research conducted in England.<sup>22</sup>

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<sup>22</sup> Nick Hodge & Claire Wolstenholme, 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297, p. 1301.

However, the appeal process can only remedy decisions to expel that breach procedural fairness,<sup>23</sup> failure by the BOM to comply with the requirements of the Act of 2000,<sup>24</sup> or decisions stemming from an unreasonable interpretation of the school code of behaviour. The parents stated motivations do not align with the rationale for the appeal process. These findings suggest that some parents lack an understanding of the purpose and outcomes of the appeal process, underscoring the need for clear and concise information and guidance for parents.

### 7.3.3. BARRIERS TO APPEALS

Section 29 committee chairpersons, EWOs, and DOSs confirm that unsupported lower-class parents are unlikely to challenge expulsion. They may not have the necessary information and support. They may not understand the school's Code of Behaviour, which can be written in a language that ordinary people do not always comprehend. Consequently, these parents may lack the confidence to appeal.<sup>25</sup> Some schools may not inform parents of their right to appeal:

It isn't always the case, by the way, that schools inform them of their right to appeal. They may be unaware of their right to challenge. In a lot of cases, they are intimidated, they don't know, there is ignorance ... it isn't widely known.

(Thomas, DOE s. 29 Committee Chairperson).

The principal sometimes directs parents to the effect that 'you won't win anyway.' The dependence of disadvantaged parents on the support of the EWS was noted by s.

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<sup>23</sup> Note. Schools are required by law to follow fair procedures when proposing to expel a student. See, National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'* (2008). Dublin: National Educational Welfare Board, para 10.3 and 10.4.

<sup>24</sup> Note. Section 2.5.3. sets out the duty of the school under s. 23 of the Act of 2000.

<sup>25</sup> Note. The challenge of interpreting school Codes of Behaviour is not confined to parents; schools themselves sometimes struggle with clarity and jurisdictional limits. A member of a s. 29 committee noted that schools occasionally misinterpret their own policies and discover upon inspection that the code does not say what was previously assumed. The chairperson contends that some schools labour under the misapprehension that because a breach of the code of behaviour can not be proved to have occurred during school time or with school equipment, they are helpless to intervene. The chairperson took the view that behaviour that causes harm to another student or teacher or brings the school into disrepute can be considered by a school when deciding to expel. Michelle (DOE s. 29 Committee).

29 committee members, particularly ‘in cases where parents are not literate.’ Some parents feel inadequate:

After a bruising experience with the BOM and labouring under the misconception that ‘the DOE will support the school,’ they conclude, ‘sure look, what is the point’ ... They see the committee as the Department ... they need the encouragement and support of the EWO to make it clear that they can and should appeal and that they will receive support from the EWO in going through the process. ... Obviously, education comes into it, you know, the family circumstances. Families have a lot of kids in DEIS schools, not knowing anything about their entitlements – don’t feel adequate. Some have language difficulties, don’t have English as a first language. So, I would say a disproportionate number of the cases that are not appealed would be in the less well-off families the less well-off schools. You can be sure that, if somebody is expelled from a fee-charging school or a prestigious school, that will be appealed.

Michelle (DOE s. 29 Committee Chairperson)

Committee chairpersons and EWOs hold that some parents’ decisions not to challenge may be guided by a belief that the school had done everything possible to avoid expulsion and that the expulsion was justified. Others mount an impressive defence of their child, primarily well-resourced parents endowed with social capital equal to or above that of those they encounter at the various stages of their challenge.<sup>26</sup> They contend that social disadvantage, limited educational attainment and intellectual ability, coupled with negative personal experience of school life, act as a significant influencing factor restraining some parents from challenging expulsion. Not all parents wish to have their child continue their education in the expelling school. They may feel the school has failed to meet the needs of their child:

My child has been expelled; why would I want to send him back there if they don’t want him?

Susan (EWO)

Interviewees who appealed had not considered a practical outcome to the appeal other than a formal acknowledgement of the unfairness of the expulsion. Only one student returned to their original school. Some parents interviewed came to accept that

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<sup>26</sup> Note. For discussion on forms of capital as defined by Bourdieu, see section 3.2.3.

attending the expelling school would not be in their child's best interest. They held that the school had little interest in meeting the needs of their child:

My son has ADHD ... they weren't happy with my son in the school; they 'didn't want him in the school at all,' these are the words that the Principal used.

Sarah (parent of an informally expelled student)

A poor home-school relationship was a significant impediment to resolving the issues that led to the expulsion. Maura believed the principal had an unfavourable impression of her. When her son attempted to return to school after a successful appeal, the school sought to impose conditions on his return. Considering these conditions unacceptable and in light of the Department's lack of support, which stated, 'there is nothing more we can do,' you have had your appeal - it is out of our hands now.' Maura concluded that the school had no interest in meeting the needs of her child. Reluctantly, she moved him to a new school.

There is a need to provide parents with a realistic remedy should a school fail to act in accordance with the determination of the appeal committee or impose conditions on doing so. An implied suggestion that parents refer the school's non-compliance to the courts is not a realistic option for families of limited means. This is a significant shortcoming in legislative provision.

Mark claimed he was poorly regarded by the school:

They didn't like me. I went to the same school 20 years previously and got expelled in 2<sup>nd</sup> Year because back then, they just got rid of you.

Sinead's first encounter with the principal involved a meeting when the parent sought to have the child join the school in the second year.

I knew what he was like. I had dealt with him. I knew from the word go that this was a difficult man. He was very cold ... in the end, he said, 'ok, I will let him into the school if he repeats 1st Year'. He said, 'Well, this is your only way out ... it is up to you.' So, he ended up then doing 1st year again.

#### 7.3.4. PARENTS' EXPERIENCES OF SECTION 29 ORAL HEARINGS

The Act of 1998 stipulates that committees shall act in accordance with procedures determined by the Minister designed to ensure that oral hearings are conducted with the minimum of formality consistent with giving all parties a fair hearing.<sup>27</sup> Yet, it is widely accepted that hearings are very formal and stressful settings.<sup>28</sup>

The parents of the formally expelled students, Maura, Sinead, and Mark, do not form a homogeneous group. There were significant differences in the circumstances of their child's expulsion, parents' level of education, and social capital.<sup>29</sup> Sinead, self-defined as an insider, successfully challenged the expulsion. She had access to significant financial and social capital and had a good understanding of the customs and practices in schools. Mark was expelled himself and did not complete post-primary school; he faced significant life challenges. Nevertheless, all the parents of the formally expelled students attended a DOE s. 29 hearing. Attending the hearing at the DOE offices in Dublin was described as very intimidating. Mark maintained that the DOE appeal was much more official than its ETB counterpart. However, the appeal was unsuccessful:

We appealed to them to their better nature to let him do his LC [Leaving Certificate Examination] ... we were looking for mercy – that is all.

Mark (parent of a formally expelled student)

Maura noted that when questioned by the committee, the principal deferred to the chairperson of the BOM, who, generally, did not provide fulsome answers. The appeal was upheld.<sup>30</sup> Sinead, although endowed with significant social and economic capital, described attending the hearing as 'absolutely daunting. 'I think I was shaking from head to toe at it. It was quite awful.' Accompanied by the EWO, a supporter and a note-taker. Sinead challenged the school's position with the benefit of high-level professional legal advice. She immediately concluded that all of the committee members were likely insiders:

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<sup>27</sup> The Education Act 1998, s. 29(4).

<sup>28</sup> Note. For discussion on the atmosphere at the s. 29 expulsion appeal hearing, see section 6.3.2.

<sup>29</sup> Louise Gazeley, 'The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?' (2012) 16. *International Journal of Inclusive Education* 297, p. 301.

<sup>30</sup> The Education Act 1998, s. 29D(11)(a) stipulates that if the appeal is upheld, the committee shall direct the BOM to readmit the student and remove the expulsion from the student's record.

When I looked at the three of them there, I said right, they are all probably insiders ... I could see that the minute I looked at the panel ... I was looking at the other two (non-chairperson), I was saying to myself, are you, past principals?

Sinead (parent of a formally expelled student)

Sinead was complimentary of the way the hearing was conducted. She considered the chairperson a genuinely lovely man who made her 'feel relaxed, which is something I [she] couldn't say for the BOM' ... 'you also knew he was very strict and, down the line as the whole thing proceeded.' The second and third committee members also asked questions, 'but they were very respectful when they asked questions.' They were critical of the actions of her son, but unlike the BOM, they did so in a manner that did not make Sinead feel uncomfortable. However, there was some hostility between the parent and principal:

It got quite bad between myself and the principal. I was pretty harsh on the principal and on his code of discipline, and on the way he treated me. I also brought up the [unusual occurrences linked to the expulsion].<sup>31</sup>

Sinead (parent of a formally expelled student)

Sinead insisted that her assertion that the principal had been untruthful be recorded. 'I just turned to the chairman and said - this man is lying. I am putting this on the record because I know what happened to me ... it stuck in my craw so much.' The chairperson declined to permit the school to submit photographic evidence, which was deemed not relevant to the case at hand.<sup>32</sup> Sinead contends the chairperson rebuffed an attempt by the principal to remain with the committee after the hearing had concluded. Permitting school-committee interaction post-hearing would significantly breach the requirement of fair procedure.

Each of the parent appellants raised the issue of the insider status of committee members. They perceived the appeal panel as insiders representing the powerful and the status quo. Mark's son attended an ETB-managed school. As Mark's appeal commenced prior to the abolition of the ETB tier of appeal, the appeal process included a BOM hearing in the first instance, followed by an ETB s. 29 appeal and,

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<sup>31</sup> Note. The unusual occurrences associated with the expulsion appeared to be linked to the student's father's occupation.

<sup>32</sup> Note. For a discussion on the admissibility of new evidence, see section 6.4.1.

thereafter, a s. 29 appeal to the DOE.<sup>33</sup> Mark believes the ETB s. 29 appeal committee did not give him a fair hearing. He expressed reservations regarding the suitability of ETB administrative offices as suitable venues for oral hearings. He noted the friendly nature of the relationship between ETB staff and the school delegation, who were on first-name terms. The nature of this relationship dulled optimism and raised concerns of bias before the hearing commenced. It was clear to Sinead (as an insider) that the appeal committee consisted exclusively of insiders:

Bourdieu's contention that people from middle-class backgrounds possess linguistic capital, which enables them to respond with relative ease to the demands of formal occasions, finds support here.<sup>34</sup> Niamh holds that access to middle-class cultural capital was a significant factor in managing the informal expulsion of her son and successfully appealing against the refusal to enrol at a new school:

We were lucky we had those cultural capital resources to be able to handle a very disagreeable situation. Most people don't have that.

Niamh (parent of an informally expelled student)

Sinead referenced her insider status and linguistic ability as factors that influenced her successful appeal. 'I think when you are an insider, like you know the ropes and language and everything, it's a help.' Bourdieu holds that low cultural capital, including linguistic capital, condemns working-class students to negative school sanctions. Here, it is noteworthy that Mark reported that he unsuccessfully relied on a limited vocabulary of imploring and seeking mercy to overturn the expulsion:

We begged for mercy, and we were given no mercy whatsoever. I kept saying can we please have some kind of mercy? we were looking for mercy – that is all.

Mark (parent of a formally expelled student)

Securing a place in a new school enables an expelled student to continue their education and helps to mitigate the consequences of expulsion. The Act of 2018 is designed to ensure that the process by which schools assess applications for admission is conducted fairly and transparently. Schools that are not oversubscribed must admit

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<sup>33</sup> The Education Act 1998, s. 29(9).

<sup>34</sup> Note. For further discussion on the concept of linguistic capital see section 3.5.1

all students who apply for admission. Oversubscribed schools must implement acceptable and avoid unacceptable selection criteria as provided for in law. However, the question remains regarding the acceptability of selection criteria designed to enable a school to refuse enrolment to an expelled student solely because they have been expelled. In the absence of such criteria, there is no legal basis for denying admission. Parents can mount a s. 29 challenge against a refusal to enrol, as did Niamh, who applied to have her son enrolled in a new school following the informal expulsion. Her application was rejected. Niamh believes this was due to informal communication between the expelling school and the new school. Following the successful appeal, her son was enrolled in the new school.

#### **7.3.5. THE FACILITATION STAGE OF THE APPEAL MECHANISM**

The abolition of the facilitation stage of the appeal mechanism has attracted widespread criticism. However, it is noteworthy that during the 2019 school year, only one of the eight appeals lodged was resolved by a facilitator.<sup>35</sup> The DOE sought to appoint a Facilitator in each of the non-ETB cases. Sinead embraced the opportunity, while Maura flatly rejected the offer:

I said you might as well talk to a brick wall than talk to (the principal) – he was my way or the highway, and that was it. I told them that I had tried talking to him and was getting nowhere, so there was no point in mediation.

Maura (parent of a formally expelled student)

Sinead reported positive engagement with the Facilitator, whom she described as a gentleman. He gave freely of his time and talked at length with the mother and the expelled student. However, the Facilitator had a meeting with the principal concerned, from which he concluded there was no prospect of a resolution prior to the full hearing. The Facilitator was supportive of Sinead's decision to appeal; she made known her intention to seek a judicial review if necessary. 'After that, I am going for a judicial review and, if I fail ... at least I tried.' Facilitators were experienced s. 29 panel members; thus, they were well-placed to advise parents on how to approach the appeal effectively. Drawing on Bourdieu's concept of the s. 29 oral hearing as a field,

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<sup>35</sup> Source. Parliamentary Question Written Answer on: 02/07/2024. Question Reference 28030/24).

characterised by the ‘rules of the game’, the involvement of a Facilitator provided an opportunity to familiarise the parents with those ‘rules of the game’. They counselled parents on how best to approach the oral hearing.

The following section discusses the experiences of parents of students who were informally expelled. In the absence of a formal expulsion process, their experiences did not encompass a BOM hearing or a s. 24 meeting, nor did they have the chance to lodge a s. 29 appeal.

#### 7.4. THE EXPULSION PROCESS (2) – THE EXPERIENCE OF PARENTS OF INFORMALLY EXPELLED STUDENTS

The discussion below relates to interviews with three parents of informally expelled students. Two parents, Meabh and Sarah, attended a BOM meeting. In Meabh’s case, the meeting was related to admission to a new school. In Sarah’s case, the BOM meeting related to a challenge to an informal expulsion.

Overview of the Informal Expulsions - Process and Outcomes

| Parent | BOM<br>Expulsion<br>Hearing | Other BOM<br>Involvement                                           | Challenge                                      | The outcome of<br>the Expulsion                    |
|--------|-----------------------------|--------------------------------------------------------------------|------------------------------------------------|----------------------------------------------------|
| Meabh  | No Expulsion<br>Hearing     | BOM Meeting<br>Re: enrolment                                       | No Expulsion<br>Appeal                         | Enrolled in a<br>new school.                       |
| Sarah  | No Expulsion<br>Hearing     | Belated appeal to the<br>BOM                                       | No Expulsion<br>Appeal                         | Return on a<br>reduced<br>timetable. <sup>36</sup> |
| Niamh  | No Expulsion<br>Hearing     | The principal stated the<br>BOM decided to<br>expel. <sup>37</sup> | Successful s. 29<br>Refusal to Enrol<br>Appeal | Enrolled in a<br>new school                        |

Figure 20.

<sup>36</sup> Note. There is no provision in law for such action. Sarah was not informed of her right to appeal the decision.

<sup>37</sup> Note. Niamh and her then-husband were not invited to a BOM meeting. She was not provided with the relevant documentation. The EWS was not informed of the expulsion.

In each of the cases of informal expulsions, the principal managed the expulsion, and the means of communication was verbal. As noted by Bourdieu, the language of communication is of importance, that words spoken in certain circumstances have a force and a conviction they would not have elsewhere.<sup>38</sup> Moving beyond the words of the transcripts, each family indirectly transmitted a certain cultural capital to their children, a system of implicit and deeply internalised values. Some families accepted the imposition of informal expulsion as a prudent and rational approach to circumvent an immediate difficulty; others accepted its imposition almost as an unavoidable natural occurrence.

Niamh and her then husband were invited to a meeting by the school principal and informed that the BOM had decided her son should be expelled on foot of irrefutable evidence that her son was involved in a serious breach of the school code of behaviour. It was further decided that she should be informed of the board's decision as a courtesy to allow her to remove her son voluntarily, thus saving her the embarrassment of having her son expelled from school:

It had been discussed at the board that he was to be expelled ... 'we don't want to have to embarrass you by expelling him – we would like to ask you to remove him' ... so they were being nice to me, saying we don't want you to go through all that hassle.

Niamh (parent of an informally expelled student)

Meabh (separated at the time and living a distance from her ex-husband) was invited to meet the school principal, who informed her that her son was involved in an incident and that he was of the view that 'they would have to expel him' and that her son should 'move back with me to a school in my area'. Meabh's son was living with his separated father at the time of the expulsion. Meabh, unaware of her rights, did not challenge the informal expulsion and acceded to the school's request. Her son moved school and moved into the original family home:

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<sup>38</sup> John B. Thompson, Editor's Introduction. In Pierre Bourdieu (Ed.), *Language and Symbolic Power* (pp. 1-31). (Cambridge: Polity Press) 1991, p. 1.

If you don't do this, it will be on (Son's) record that he is expelled, and you will not get him into another school ... really, I felt that my hands were tied; you know, I wanted him to continue to do his LC; so, I felt that I had no choice in it ... the old school assured me that they wouldn't breathe a word about why he was leaving.

Meabh (parent of an informally expelled student)

Sarah was quite unfamiliar with the language associated with school expulsion. The school principal pressured her to withdraw her son permanently. There was some involvement of the EWO and a local elected representative who supported Sarah, 'he gave me a lot of advice and tried to explain to me in a way that I could understand.' The elected representative arranged a meeting with the BOM, where the informal expulsion was challenged. The board agreed to allow her son to return to school under certain conditions. Sarah holds that the involvement of the EWO and the elected representative was instrumental in the successful outcome:

They wanted (Son) out; it was only for (EWO) that (Son) was taken back, and through (elected representative) that he was let back into the school.

Sarah (parent of an informally expelled student)

The expelling schools did not inform the parents of their right to challenge the expulsions. There was an absence of documentation relating to the expulsions. 'No, it was all done at the meeting. I got no letters or stuff like that. (Sarah). The experience of the three parents casts some light on the practice of local arrangements as discussed above.<sup>39</sup>

#### **7.5. THE INVOLVEMENT OF THE EDUCATIONAL WELFARE SERVICE**

The EWS actively supported the parents of the three students who were formally expelled and secured home-school tuition for the students during the expulsion process. School B refused to enrol one of the expelled students; however, the EWO secured School B's permission to permit that student to sit the LC examination there. In a second case, the EWO secured a place for one of the boys in a school to complete his LC year, where the expelling school put up obstacles to his return. The support

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<sup>39</sup> Note. For further discussion on local arrangements, see Chapter 5, para. 5.6.4.

provided by the EWO was very welcome. Mark stated that the EWO was ‘brilliant, absolutely brilliant – a lovely man – he went out of his way.’ Similarly, Sinead remarked how respectfully and kindly the EWO engaged with the family. The relevant EWO attended only one of the three s. 29 hearings.<sup>40</sup>

However, the EWS was not involved in the case of the unchallenged expulsions. Sarah had a history of contact and did receive some support from the EWO. There is a recognition that parents need support to navigate the expulsion process:

I think it should be mandatory that, if a parent has to face this, that there is a neutral person or a person on the outside that is there as a support and information giver, so that you are not dealing with people from the school.

Meabh (parent of an informally expelled student)

Parents of the formally expelled attended a s. 24 meeting as provided for by law. Amidst unfamiliar language and as inexperienced formal meeting attendees, some parents struggled to keep abreast of the process. The s. 24 process did not deliver a meaningful outcome from the parents’ perspective. The process is cumbersome and misleads parents into thinking redress is likely, as parents appear to misinterpret the purpose of the s. 24 meetings and consider them part of the appeal process. The parents, along with the EWO, the school principal and a member of the BOM, attended the meetings. The EWO and the parent concerned made lengthy contributions. There was little engagement by the principal and none by the BOM representatives.

#### **7.6. THE POWER TO EXPEL**

While the law dictates that the decision to expel is a decision of the board, parents of the formally and informally expelled were allied in the view that the principal had considerable influence over the BOM, and that they were the de facto decision maker:

I very much found the principal had a huge role in that decision. I felt that he had decided ... he was kicking the (number) of them out, and that was it.

Sinead (parent of a formally expelled student)

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<sup>40</sup> Note. Parents are permitted to bring two support persons to the s. 29 oral hearing. The EWO may attend as additional support.

I would imagine that a lot of BOM would side with the principal because, I mean, really, when you weigh it up, with teachers on BOM and all of the rest of it, it is nearly like self-regulation ... the BOM wasn't going to find against the principal:

Maura (parent of a formally expelled student)

In the case of the informal expulsions, the parents were unequivocal in their judgment that the principal made the decision to expel informally. They rejected the principal's assertion that they were doing the parents a favour by allowing them to remove their sons voluntarily without the 'hassle' of the formal expulsion. Some of these parents were particularly annoyed at the lack of documentation and transparency:

I would have been angry enough at the sleight of hand behaviour rather than anything else, so we never got minutes of a board decision ... there is no transparency there at all, and the decision-making process, the whole thing was so underhanded – it was so appalling.

Niamh (parent of an informally expelled student)

The assertion by parents that the principal is, in effect, the expulsion decision-maker sits comfortably with the views of most BOM chairpersons interviewed.<sup>41</sup> The Act of 1998 grants the BOM, or a person acting on behalf of the board, the power to expel, thereby allowing for the delegation of this power. The statutory-based NEWB Guidelines state that, as a matter of best practice, that authority should be reserved for the BOM and 'should not be delegated.'<sup>42</sup> None of the BOM chairpersons referred to the delegation of their authority. They displayed a reluctance to acknowledge the legal context of their decision-making; some boards effectively adopt a non-intervention strategy. This, coupled with the tendency of many boards to rely heavily on the principal's professional competency and a perceived need to support the school in all circumstances, often creates a power vacuum that is filled by the principal's considerable influence over individual board members. The above represents a substantial barrier that restricts some boards from exercising their authority independently in matters of expulsion, thereby allowing the school principal to act as the de facto expulsion decision-maker.

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<sup>41</sup> Note. For discussion on the power of the school principal, see section 5.4.

<sup>42</sup> National Educational Welfare Board, *'Developing a Code of Behaviour: Guidelines for Schools'*. (2008). Dublin: National Educational Welfare Board, para 12.1

### 7.7. INFORMAL EXPULSION IN PRACTICE

The research findings indicate that some parents who agreed to remove their child from school voluntarily did so in a highly stressed environment stemming from an unfavourable parent-school power dynamic. Voluntary decisions must be free from undue influence or coercion. The parents interviewed, Meabh, Sarah and Niamh, were pressured into withdrawing their children due to the coercive impact of statements from the school principal indicating that the alternative would be formal expulsion. The parents' predicament is exacerbated by the absence of support and clear information on all available options. There is an urgent need for independent advice and support to assist parents and students in making informed decisions, ensuring that any withdrawal from a school is genuinely voluntary.

In the normal course of events, there are many reasons why a parent may wish to withdraw their child from a particular school, such as when relocating to a new residence. Additionally, parents may make a pragmatic decision to withdraw their child rather than face formal expulsion, as is their prerogative. The data presented here suggests that informal expulsion is a significant feature of school expulsion in Ireland. The current ad hoc arrangement conflates voluntary withdrawal and informal expulsion. Amid concerns regarding the lack of safeguards for parents of informally expelled students, while acknowledging the stated advantages, it is argued that voluntary withdrawals should be placed on a statutory footing. This would require the development of legislation, policy, and practices to provide safeguards for parents when invited by a school to withdraw their child and include the provision that the invitation be extended by none other than the school BOM. The proposal would enable the monitoring of voluntary withdrawals on a national level and the development of appropriate accountability mechanisms. To ensure that parents' decisions are informed, free from coercion, and genuinely made freely, parents must have the right to receive independent legal advice prior to making their decision. The current practice of intimidation, commonly referred to as informal expulsion, is based on coercion and should be prohibited by law.

### 7.7.1. THE EXPERIENCE OF INFORMALLY EXPELLED STUDENTS

It must be stressed that the students interviewed were unfamiliar with the typical language associated with expulsion. References during interviews to the BOM, the EWO, and s. 29 appeals were generally diversions to the unknown. Some of the informally expelled students stated that their principals claimed they refrained from written correspondence regarding the expulsion to protect the students' school records. Two students came from traditional two-parent families, while the other two were cared for by single mothers. Notably, all student references to parents referred exclusively to mothers.

All informally expelled students were over 19 years of age at the time of the interviews. However, each was of compulsory school-going age at the time of their informal expulsion: Alan was 13.5 years old, Susan 14, Richi 15, and Thomas 15. The gender distribution of 1:3 within this group aligns with national patterns in England, where permanent exclusions demonstrate a pronounced gender disparity, with approximately three boys expelled for every one girl.<sup>43</sup>

The behaviour of the students concerned was poor and may have been grounds for initiating the formal expulsion process. However, the expulsions appear to have been processed without the known involvement of the BOM or EWS. There was no written correspondence from the schools in the lead-up to or after the expulsions. In each case, the principal informed the parent/student that the school wished them to leave. They were not informed of their right to challenge the decision. None of the informally expelled students returned to mainstream post-primary education.

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<sup>43</sup> See. <https://explore-education-statistics.service.gov.uk/find-statistics/suspensions-and-permanent-exclusions-in-england/2018-19?utm>

Summary of the Outcome of the Informally Expelled Students

| Former Student | Notification of Expulsion                             | BOM Involvement    | Post Primary School Enrolment          | The outcome of the Expulsion            |
|----------------|-------------------------------------------------------|--------------------|----------------------------------------|-----------------------------------------|
| Alan           | The Principal Informed Alan and his mother            | No BOM Involvement | Enrolment Application deemed Pointless | Enrolled in Youth Reach                 |
| Richi          | The Principal Informed Richi, who informed his mother | No BOM Involvement | Refusal to Enrol Not Challenged        | Enrolled in Youth Reach                 |
| Thomas         | The Principal Informed Thomas, who told his mother    | No BOM Involvement | Refusal to Enrol Not Challenged        | Enrolled on a Post Leaving Cert. Course |
| Susan          | The Principal Informed Susan's Mother by Phone        | No BOM Involvement | Refusal to Enrol Not Challenged        | Enrolled on a Post Leaving Cert. Course |

Figure 21.

The contention that teacher-student relationships play a crucial role in school expulsion decision-making finds support here. Expelled students articulated strong feelings of rejection by the school through alienation from staff. They referenced the benefits of leaving teachers with whom they had developed a poor relationship:

I should have got the help that I needed more than just shoving me off to the corner. You see, I went into a class, and the teacher didn't want me in it – I was in the hall, and I did essentially study myself.

Susan (informally expelled student)

The best part, probably not seeing my Irish teacher again. It was over my Irish teacher; she was still kind of annoying me, whatever. She was told to leave me alone, let me do my work and don't say anything to me, but she kept nagging at me, nagging at me, and I got so pissed off.

Richi (informally expelled student)

The following section discusses the voice of the student as reported by the four informally expelled students interviewed.

### 7.7.2. THE VOICE OF THE STUDENT

There was consensus among the students and parents interviewed that the voice of their child, as presented by the student, was not listened to by the school. A pre-expulsion meeting with the principal proved unproductive; the parents concluded that the school was not open to the student's viewpoint. EWOs contend they listen to the voice of the student and attribute significant weight to their views. It was suggested that expelled students are not capable of engaging in the process in a meaningful way without significant counselling and preparation.

One of the three formally expelled students attended the BOM hearing, which proved to be an emotionally humiliating experience for the student:

When he tried to explain himself, he got no opportunity; he was dismissed completely. It was just - you have done this, that is it, and you are going.

Sinead (parent of a formally expelled student)

Accepting that his behaviour was poor, Alan felt the expulsion could have been avoided had the school listened to what he had to say:

I was a little shite, at the same time, if they had actually listened to me, we could have sorted something out instead of just generally going straight away to kicking me out.

Alan (Informally expelled student)

Richi also claimed he was denied the opportunity to plead his case:

No, I wouldn't say I was listened to very much. I would say they kind of did, but not really, because any time I said anything, it would be more of a 'well, this is how it is going to go' instead of 'Oh, why is that?' ... It was more of them telling me what was going to happen instead of me explaining and trying to save myself.

Richi (Informally expelled student)

A fundamental rule for upholding the principle of natural justice dictates that anyone who may be adversely affected by a decision should not be condemned unheard; instead, they should have the best opportunity to present their side of the case. The principle played no role in the outlined decision-making process, thereby undermining the fairness of the decisions made. The provisions of Article 12 of the UNCRC were not embraced, nor was the commentary from its expert committee, which emphasises

the right of the child to be heard in matters of school discipline. In a clear violation of international law, the voices of informally expelled students were effectively silenced in the decision-making process. The assertion that there is opposition to the convention and the notion of children as rights holders finds support here.<sup>44</sup>

### 7.7.3. THE IMPACT OF EXPULSION

The findings reported here are consistent with prior research, which demonstrates that expulsion disproportionately affects historically disadvantaged groups.<sup>45</sup> Of the ten parents and students interviewed, all but three come from underprivileged backgrounds. None of the four informally expelled students interviewed returned to mainstream post-primary education, nor did one of the formally expelled students. Ill three parents of the informally expelled reported that their children returned to mainstream post-primary education, as did two of the formally expelled students. In summary, five students returned to mainstream post-primary education, and only one returned to their original school. For the other five, expulsion marked the end of mainstream education.

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<sup>44</sup> Note. For discussion on the UNCRC and the voice of the student, see section 2.3.2.1.

<sup>45</sup> Russell J. Skiba & Daniel J. Losen, 'From Reaction to Prevention: Turning the Page on School Discipline' (2016) 39. *American Educator* 1, p. 4.

## Overview of Engagement in Mainstream Education Following Expulsion

|                         | Type of Expulsion | The Capacity to Engage with the Expulsion Process. <sup>46</sup> | Return to mainstream Post-Primary Education. |
|-------------------------|-------------------|------------------------------------------------------------------|----------------------------------------------|
| Son of Meabh            | Informal          | Disadvantaged                                                    | Yes                                          |
| Son of Niamh            | Informal          | Advantaged                                                       | Yes                                          |
| Son of Sarah            | Informal          | Disadvantaged                                                    | Yes                                          |
| Son of Sinead           | Formal            | Advantaged                                                       | Yes                                          |
| Son of Maura            | Formal            | Advantaged                                                       | Yes                                          |
| Son of Mark             | Formal            | Disadvantaged                                                    | No                                           |
| Expelled Student Alan   | Informal          | Disadvantaged                                                    | No                                           |
| Expelled Student Richi  | Informal          | Disadvantaged                                                    | No                                           |
| Expelled Student Thomas | Informal          | Disadvantaged                                                    | No                                           |
| Expelled Student Susan  | Informal          | Disadvantaged                                                    | No                                           |

Figure 22.

It must be emphasised that the backgrounds of the parents and students interviewed ranged from those of the privileged to those of the very disadvantaged. The student from the most advantaged backgrounds returned to their school after a successful appeal. Endowed with social and economic capital, that parent had significant resources to invest in her child's education. In contrast, the student whose father had been expelled lacked the capacity to engage with the appeal process beyond a basic level and failed to secure a new school placement following an unsuccessful appeal. The above highlights the uneven playing pitch, which some parents involved in expulsion must navigate.

As discussed above, the impact of the expulsion on students and their families varied considerably, dependent largely on the parents' access to resources to mitigate the negative consequences. The impact of expulsion ranged from a negative, stressful, and intimidating experience for the student and family to a significant disruption in the student's educational progress to a major, life-changing event and exit from the

<sup>46</sup> Note. The term 'disadvantaged,' as used here, reflects the participants' descriptions of their unfavourable circumstances regarding access to social capital and their overall ability to engage with the expulsion process.

education system. Some parents concluded that the difficult journey shared with their child strengthened an already positive relationship. Others referred to the negative impact on their child's mental health: feelings of isolation when decoupled from their friends. Meabh and Niamh were single parents after the expulsions. They faced the challenge of rearing a family while working full-time, which eroded the time available to supervise their children's school progress. Maebh's son was particularly negatively impacted by 'the lost structure and the routine of the old school, which had a major impact.' He did not complete his LC examination. The expulsion resulted in Maebh's son moving from the care of her former husband to her and integrating with younger family members. She acknowledges the negative impact of the expulsion and the damage to her relationship with her child:

Absolutely 100%, yeah absolutely because really and truthfully it was an absolute disaster – the whole lot of it ... It had an absolutely huge impact on myself, on the family, on the family dynamics – oh absolutely, absolutely, yeah ... My circumstances were different – this was a transfer of a child from one parent to the other parent, so there was so much more involved in this decision than just if you are in a two-parent house. I was a single parent bringing up other children, I was trying to work, so I think that is an issue that they don't look and say well look it this lady is on her own ... I feel they didn't look at the overall picture at all. It suffered (their relationship) – there were arguments between us because, when he did go to the new school ... he started missing school – just had no interest, went for a few weeks. And that caused a lot of arguments with us because I was very, very concerned for his Leaving Certificate and this was his final year and about his future. I was very concerned.

Meabh (parent of an informally expelled student)

On the other hand, Niamh and Sinead maintained that they enjoyed a particularly close relationship with their son. They supported their child throughout the ordeal, which they believed laid the foundation for a good relationship. Niamh identified protective factors that mitigated the negative impact of expulsion. She cited the 'protective effect of middle-class cultural capital,' without which she believed he could have 'been an early school leaver.' The informally expelled students interviewed highlighted the lack of social contact with peers, feelings of marginalisation, social exclusion, and a shame factor as significant adverse outcomes of their expulsion. Leaving school resulted in an immediate loss of contact with school friends:

All my friends were still in school, so I couldn't really meet people at that age, almost 15, like parents, and some of my mates who would have had severe parents – they wouldn't have wanted them coming in to me if I was kicked out of school ... they didn't want their child to hang out with that person ... There is a shame factor because people might ask you 'have you completed your LC?' and you say 'oh, no, I have done it this way or that way.' Someone else might come up and say, 'What were your results?' I turn around and say 'well, I didn't do it,' you know, stuff like that ... It all happens quickly; you don't really realise until you are actually gone.

Thomas (informally expelled student)

Susan also reported feelings of social isolation: 'leaving my friends behind ... I lost contact with all of them once I left.' She referred to the broader negative impact of her expulsion: 'I hit a downward spiral for a lot of years.'

Informally expelled participants reported that expulsion had a negligible effect on their ability to secure paid employment. In common with the parents interviewed, they also referred to the tensions in their homes resulting from the expulsion. They contend that the relationship between mother and child suffered particularly in the early days of the expulsion. Indeed, in the case of Susan, her rebellious disposition resulting from her expulsion impacted her parents' relationship:

Tension ... Yeah, a lot of it, I think, because then I went really rebellious. My mum and dad were torn; they couldn't take it, they couldn't take the tension, and then their relationship was on the brink.

Susan (informally expelled student)

Thomas also described the negative impact of his expulsion on his relationship with members of his extended family:

The likes of aunties and uncles judged me for it. They said I should have stayed in school and all the rest, and were kind of thinking, why did he get kicked out, and then you know the grandparents, then you get that lecture too.

Thomas (informally expelled student)

The expulsions had a negative impact on the students' educational progress.<sup>47</sup> In common with others, Susan laments the loss of her LC as a means of gaining access to a college place of her choice. She concludes that she should have returned to do her LC or fought her expulsion. Susan has started a family and is determined that her daughter will get better educational opportunities:

Definitely, oh 100% - I had seen myself going off to college, moving away, get a good job, but I am still in the same town I was born in. I didn't have my Leaving Cert or anything, so I couldn't get into college to do what I wanted to do and stuff ... I often think I should have gone back, or I should have fought ... my daughter is in school now, and I push her so hard to be the best she can be. I don't want her to go down my path.

Susan (informally expelled student)

In line with previous research findings, the consequences of expulsion for the students interviewed included feelings of rejection and injustice, conflict with their parents, stigmatisation within neighbourhoods and extended family, and worries over future prospects.<sup>48</sup> Furthermore, in keeping with Gazeley, the expulsions have been shown to limit the educational opportunities of the disadvantaged.<sup>49</sup>

Finding a school willing to enrol an expelled student presents significant challenges. The following section discusses the experiences of participants, including parents of both formally and informally expelled students, as well as insights gathered from interviews with informally expelled students.

#### **7.7.4. GETTING INTO A NEW SCHOOL**

Only one of the six children of the parents interviewed returned to their original school. One parent, Mark, failed to secure a place in a new school for his son. The remaining four parents faced considerable difficulties in securing provision.

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<sup>47</sup> Note. Two students returned to their original school (one on a drastically reduced timetable). One student exited the education system. Three secured a place in a new school, and four enrolled on further education/ training programmes (questions remain regarding their enrolment eligibility).

<sup>48</sup> Pamela Munn & Gwynedd, Lloyd, 'Exclusion and Excluded Pupils' (2005) 31. *British Educational Research Journal* 205.

<sup>49</sup> Louise Gazeley, 'The role of school exclusion processes in the re-production of social and educational disadvantage' (2010) 58. *British Journal of Education Studies*, 293, p. 307.

### Summary of the Outcomes for the Children of the Interviewed Parents

|                    | Parent | Expulsion Appeal               | Action by School                       | Outcome of the Expulsion               |
|--------------------|--------|--------------------------------|----------------------------------------|----------------------------------------|
| Formal Expulsion   | Sinead | s. 29 Expulsion Appeal Upheld  | Meeting with the Principal             | Student Returned to School             |
| Formal Expulsion   | Maura  | s. 29 Expulsion Appeal Upheld  | School imposed unacceptable conditions | Enrolled in a new School               |
| Formal Expulsion   | Mark   | s. 29 Expulsion Appeal Refused | Refusals to enrol not challenged       | Did not find a new school              |
| Informal Expulsion | Meabh  | No s. 29 Expulsion Appeal      | BOM Meeting – postponed enrolment      | Enrolled in a new school               |
| Informal Expulsion | Niamh  | No s. 29 Expulsion Appeal      | s. 29 Refusal to Appeal Upheld         | Enrolled in a new school               |
| Informal Expulsion | Sarah  | No s. 29 Expulsion Appeal      | Belated Appeal to the BOM              | Returned to School - reduced timetable |

Figure 23.

One EWO held that the difficulty parents face in finding a new school translates into an insurmountable task for many, particularly those from disadvantaged backgrounds:

Children are being blocked so that, if they lose the appeal, that is it, that is the end of education. ... in more recent years, more and more schools are tightening up their enrolment policy ... they are blocking children getting back into school because they don't want them ...the legal system is letting them down."

Mary (EWO)

Mary's contention is supported by John, who held that for some students, there are no practical, worthwhile alternatives available after expulsion:

They are gone, and there is nothing, no alternative, there is no backup. Even the fact that the schools are supposed to provide educational support up to the time he is excluded - sometimes they do it, sometimes they don't ... All the child feels is rejected, excluded, and isolated.

John (EWO)

Despite extensive efforts (before her appeal was upheld), Sinead failed to find a school willing to accept her son; including refusals by fee-paying schools and a grind college:

So that time, they wouldn't take him in the 'Grind College,' and I had gone to several schools because I thought (he) was going to be expelled and none of them would take (him). I couldn't get any school to agree to take him, so there was terrible heartbreak over the whole thing.

Sinead (parent of a formally expelled student)

Two of the parents of the informally expelled attended a BOM meeting after their child had left the expelling school. In Susan's case, the meeting consisted of a belated challenge post-expulsion. Meabh reluctantly removed her son from the school on the understanding that his informal removal would be done in secret:

He [the principal] said he had spoken to [Son] and that [Son] said that he did want to move back to the school in my area, and he as much as said, if you don't do this, it will be on [name's] record that he is expelled and you will not get him into another school ... But the old school assured me that they wouldn't breathe a word about why he was leaving. So really, I felt that my hands were tied, you know, I didn't want [Sons] education to stop. I wanted him to continue to do his Leaving Cert, so I felt that I had no choice in it.

Meabh (parent of an informally expelled student)

However, when Meabh sought to enrol her son in a new school, she was required to attend a full meeting of the BOM in order to have her application assessed.<sup>50</sup> She faced opposition from the BOM, which she believes stemmed from their knowledge that her son was informally expelled. She found the meeting very distressing and felt she was on trial:

I remember that meeting; it was so that I really felt I was on trial ... Oh no, it was just a really awful experience for me as a parent.

Meabh (parent of an informally expelled student)

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<sup>50</sup> Note. Meabh contends the board meeting was attended by the new incoming principal, who had not yet taken up his position, the deputy principal, and a number of BOM members whom Meabh knew personally. This added to her distress. It is noteworthy that the incoming principal did participate in the decision-making.

The BOM offer Maebh's son a school place. Her request that he be allowed to start after the spring break was refused. As a condition of enrolment, her son would take up his place in the new school starting the following September. This 'condition of enrolment' resulted in her son being out of school for six months, including holidays. Sarah described the informal expulsion and attending the BOM meeting as an intimidating process that lacked transparency:

They basically didn't want him in the school ... some of the meetings, now I didn't get there because some of them I would say were done behind my back. It was all kind of intimidating.

Sarah (parent of an informally expelled student)

The informally expelled students also highlighted the difficulties they faced in attempting to secure a new place in a post-primary school. Alan claimed that trying to enrol in a new school (one perceived as being of high status) was a pointless endeavour:

You see, usually – around (Town), there are about four schools. Three of those schools would be – you come out of primary and go into them, whatever, but usually, if you got kicked out of those three schools, you would be sent to the school I was in – the Tech. (ETB managed school) In my case, I was in the Tech first so, even if I did try to get into those secondary schools, they wouldn't take me because I would have been kicked away from the Tech like.

Alan (informally expelled student)

Thomas described his mother's unsuccessful attempt to enrol him in a new school:

It was my mother who rang them (the new school), and they just said they didn't want me. There was no meeting set up, if you know what I mean ... they didn't want it. No, they wouldn't listen to my mother.

Thomas (informally expelled student)

The contention articulated by Alan that it is not possible to secure a place in a secondary school if expelled (even informally) from a perceived lower status 'Tech' (ETB-managed school) links closely with Bourdieu's concept of *Doxa* as a deep-founded, unquestioned belief, taken as a norm (despite legislative provision to support equal access to schools). Alan's acceptance of his informal expulsion can be

understood in light of system justification theory; deep-rooted norms of experienced practices are taken as a given, which explains why Alan, who had become accustomed to and accepted inequality, also accepted the inevitability of his expulsion at the expense of his interests.<sup>51</sup> There is support for the work of Bourdieu, who highlights the reproductive function of education.<sup>52</sup> Mark failed to find a school willing to enrol his son, which resulted in his departing the formal education system. At the same time, Sinead overturned the decision to expel her son, who completed his formal education and graduated from university.

The interviewees' experiences support the contention that a record of expulsion is a significant obstacle when parents try to secure a new school for their children. Some schools adopt a rigid admission policy designed to prevent students who have been expelled from enrolling.<sup>53</sup>

The experiences of interviewees in pursuit of a place in a new school raise concerns in relation to the right to education. This right is supported by legislative provisions reflected in the objects of the Act of 1998, which promote equality of access to and participation in education and the provisions of the Act of 2018, which are intended to ensure that the way in which schools decide on applications for admission is structured fairly and transparently. The lived experiences described suggest a disjunction between legislative intention and its implementation in practice.

The Constitution stipulates that parents play a central role in their children's education.<sup>54</sup> The Act of 1998 formally recognised the voice of parents. The following section discusses parents' perceptions of the status afforded to their voices during the expulsion process.

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<sup>51</sup> John Jost & Orsolya Hunyady, 'The psychology of system justification and the palliative function of ideology' (2003) 13. *European review of social psychology* 111, p. 113.

<sup>52</sup> Note. For further discussion on Bourdieu's notion of the reproductive function of education, see section 3.2.1.

<sup>53</sup> See section 5.8 for discussion on decision-makers' observations on getting into a new school and section 6.7 for discussion on s. 29 chairpersons' recognition of the impact of expulsion.

<sup>54</sup> Constitution of Ireland, 1937, Art.42.

## 7.8. PARENTS' VOICE AND RELATIONSHIP WITH THE SCHOOL THROUGHOUT THE EXPULSION PROCESS

Parents interviewed reported communication between school and home regarding expulsion as a source of frustration. There is little evidence that the voices of the parents interviewed were awarded the status they deserved. Consistently, interviewees reported that they were not listened to by the principal or the BOM. Mark was very dissatisfied with the lack of willingness to entertain the points he made. 'No, she (the principal) definitely wasn't listening ... we didn't exist anymore.' Sinead was overcome by emotion on realising her contribution to the BOM meeting had no impact:

The chairperson turned to (the principal) and said what are you recommending, the principal said, 'I am recommending expulsion.' I was like, oh, Jesus Christ Almighty – they are not even thinking of listening to me or changing anything. I was quite kind of overcome, I started to cry.

Sinead (parent of a formally expelled student)

Maura concluded that the BOM meeting was a 'farce', that the principal didn't like her, and that genuine home-school communication was impossible. On the other hand, parents who successfully appealed were satisfied that the s. 29 committee was open and accepting of their presentations. Parents of the informally expelled are united in their view that their voice was not afforded due attention. Presented with scenarios that offered few options and no room for discussion, their voices were effectively ignored. The decision to expel was communicated via a phone call or a meeting with the principal or conveyed by their child. The school made the decision to transfer Richi from his school to an alternative provision without parental input:<sup>55</sup>

Me and my mam were told, at the end of the suspension, to come in for a meeting and that is when they told me that I had no choice – I was being sent to the (alternative) provision.

Richi (informally expelled student)

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<sup>55</sup> Note. Richi was transferred from an ETB-managed post-primary school to an ETB-managed alternative provision facility.

Research undertaken in England points to a tendency to associate the student's behaviour with their parent. This promotes the perception that the quality of parenting of those involved in these processes remains a strong focus, and judgments sometimes get made that are classist and gendered assumptions.<sup>56</sup> The findings of this study reinforce the above assertion. Parents feel a sense of responsibility for what emerged and feel judged on that basis:

But I actually think, you know, it is the parent on trial ... the parent comes in, and they are facing the principal ... they are trying to say, look, 'my child isn't this bad,' nearly taking all the responsibility of the action of the child. I felt that - I felt very much I was judged ... My private life was on the line. I have an awful memory of it, really:

Meabh (parent of an informally expelled student)

## 7.9. CONCLUSION

This research has demonstrated that social class influences parent-school interactions throughout the expulsion process. Parents from lower socio-economic classes are often less articulate, unfamiliar with expulsion-related terminology, and less powerful than parents from upper and middle-class backgrounds in home-school interactions. Parents reported feeling inadequate during BOM hearings, feeling as though their opinions were disregarded and that they were being blamed for their children's behaviour.

Students' rights in education include the right to autonomy, freedom of expression, the right to attend expulsion hearings, and the right to have their voices heard. This research has demonstrated that students' rights in education receive minimal attention during the expulsion process. Despite the provisions of international law, BOM chairpersons, s. 29 chairpersons, DOS and EWOs hold mixed views on the advisability of students participating in expulsion hearings. In contrast, parents and students express criticism of the inadequate attention given to their children's viewpoints.

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<sup>56</sup> Louise Gazeley, 'The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?' (2012) 16. *International Journal of Inclusive Education* 297, p. 308.

Notwithstanding the efforts of BOM chairpersons to ensure a friendly atmosphere at expulsion hearings, parents argue that the atmosphere at these hearings is quite unfriendly, ranging from cold to caustic and sometimes patronising.<sup>57</sup> This thesis contends that the criticism faced by boards stems from a collective ignorance among hearing attendees, which masks the good intentions of board members and parents alike. The ignorance is fuelled by inadequate BOM training,<sup>58</sup> a lack of information, advice, and advocacy for parents and a subsequent lack of parents' knowledge of what to expect at the hearing. These shortcomings manifest as BOM and EWO<sup>59</sup> role ambiguity, as well as a lack of clarity among parents on how best to prepare for the hearing. Impeded by a lack of knowledge of the right to challenge and information on how the process operates, unsupported parents are unlikely to challenge expulsion.

The view that the school overreacted and that the expulsion could have been averted if there had been genuine communication with the family was common among parents and students interviewed. The parents' assertion that schools do not fully appreciate the negative consequences of expulsion on the students and, more broadly, their families is well-founded. Interviews with the chairpersons of the appeal committee support this claim.<sup>60</sup> A substantial shift in parent-school relations is required to enable all parents to make an informed decision about challenging the expulsion of their children.

Power relations between parents and schools must change to reflect the relational aspirations outlined in constitutional provisions and legislation. There is a consensus among parents that the decision to expel is a *de facto* decision of the school principal; they believe school boards will not oppose their recommendation. Motivated by a determination to have a perceived unfair decision overturned and the desire to evade the negative consequences of expulsion, a minority of parents mount an appeal. The decision to challenge is influenced in the first instance by knowledge of the right to appeal, the availability of information on the practicalities of challenging and the availability of the social capital necessary to mount the challenge. While appellants contend that attending the oral hearing was intimidating, there was general satisfaction

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<sup>57</sup> Note. For further discussion on the atmosphere at the BOM expulsion hearing, see section 5.3.1.

<sup>58</sup> Note. For a discussion on BOM training, see section 5.2.

<sup>59</sup> Note. For a discussion on EWO training, see section 6.2.3.

<sup>60</sup> Note. For a discussion of s. 29 chairperson's views on the impact of expulsion, see section 6.7.

with the respectful manner in which the DOE hearing was conducted; it was deemed more official and impartial than its ETB counterpart. Mounting a s. 29 challenge can be very demanding both financially and emotionally. Overall, parents from lower socio-economic class backgrounds often lack the skills to negotiate with professionals; they need support to interact effectively with appeal committees; currently, this support is unavailable.

Despite general criticism by decision-makers of the non-involvement of EWOs in expulsion cases,<sup>61</sup> the parents of the formally expelled were complimentary of the help they received from the service. This is in keeping with some intermittent experiences of appeal committee chairpersons. On the other hand, parents of the informally expelled and their children are unaware of the existence of the EWS. They had no EWO support, despite the school's legal obligation to immediately inform the EWO in writing should a student be absent for more than twenty days.<sup>62</sup> The parents of the formally expelled students had the benefit of input from a Facilitator. They highlighted the respectful, helpful way the Facilitator approached the families. While their inputs did not resolve the disputes, they provided valuable advice to parents on how the oral hearing would proceed.

The significant power of the school principal is evident through informal expulsions, which are managed exclusively by the principal and, in some cases, facilitated by the EWO.<sup>63</sup> The prevalence of the practice is widely acknowledged by DOS, EWOs, BOM, appeal committee members, informally expelled students, and parents of informally expelled students. Portrayed by school principals as well-meaning, the vulnerable, compromised parents interviewed had little choice. They reluctantly agreed to the school's demands. Ambivalent attitudes among some decision-makers, an absence of legislative provisions addressing the issue, and DOE guidelines that remain silent on the matter have allowed informal expulsions to be a feature of the Irish education system. The necessity of addressing the coercion element of the

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<sup>61</sup> Note. DOS, BOM and s. 29 chairpersons were critical of the lack of involvement of the EWS in expulsion cases, particularly the nonattendance of EWOs at BOM and s. 29 oral hearings (see section 5.3.2, [BOM hearings] and section 6.2.3, [s. 29 oral hearings]).

<sup>62</sup> The Education (Welfare) Act 2000, s. 21(4).

<sup>63</sup> Note. For a discussion on EWS's involvement with informal expulsion, see section 5.6.3.

practice is evident, while maintaining the right of parents to withdraw their child if they make a voluntary, informed decision to do so.

The revelation that it is currently not possible to determine the number of children of compulsory school-going age who are not receiving education is disturbing. This does not discount the possibility that the actual number, if determined, may be zero.<sup>64</sup> However, the findings of this research, coupled with the author's professional experience as a teacher for some forty years, suggest otherwise. The findings of this research align with the above revelation, given the undertaking/suggestion to parents by some informally expelling principals that the expulsion will not be recorded or communicated to others. Therefore, the lack of engagement by the EWS with the parents and students informally expelled is, on the one hand, to be expected, and on the other, confusing, given that the EWOs interviewed accept that informal expulsion is a feature of the education system.

The experiences of parents and students interviewed here raise important questions about why the law on expulsion may not be followed correctly. Role ambiguity among key decision-makers, a misunderstanding of the law, and an over-reliance on professional judgement emphasise the necessity for further training.

To conclude, the assertiveness of upper- and middle-class parents, combined with the silence of the lower socio-economic class, highlights several issues surrounding expulsion. Contrary to the current provision, all parents must be given a fair and reasonable expulsion process. Addressing the issues of unreliable school attendance data, informal expulsion, and the related challenge of securing a new school for the expelled, along with providing sufficient support and advocacy for parents, would substantially enhance efforts to create a level playing field for families.

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<sup>64</sup> Note. The term 'not receiving any education' refers to not receiving any education at a particular time, whether protracted or short. It does not imply the child has never or will not receive a certain minimum education at a future date.

## 8. CONCLUSION AND RECOMMENDATIONS

### 8.1. CENTRAL RESEARCH QUESTIONS: CONCLUSIONS

The research questions which guided this research aimed to establish the current legal framework for school expulsion and to assess whether school BOMs are adequately equipped to engage in the school expulsion process as provided for in law. The questions also sought to determine whether or not appeal hearings are conducted with due regard to the principle of natural justice and informed by the children's rights agenda. In addition, the research questions examined the effectiveness or otherwise of legislative provision in supporting parents to vindicate their duty/right to ensure their children receive an education.

The questions addressed here required both internal and external perspectives and guided the decision to adopt a socio-legal interdisciplinary approach. A doctrinal analysis was undertaken to establish the current legal framework governing school expulsion.<sup>65</sup> Recognising that law operates within a broader social context, the legal analysis was complemented by a literature review of sociological aspects of expulsion. Bourdieu's key concepts provided a valuable analytical framework for understanding the power structure and tensions underlying expulsion decision-making within the educational field, against a discussion on the adverse consequences of school expulsion and related matters. This analysis situated the legal framework within its societal and educational context.<sup>66</sup> Building on this foundation, the study proceeded with an empirical investigation to access the perspectives and experiences of key decision-makers involved in the expulsion and appeal process. This element employed semi-structured interviews and drew on the first-hand experiences of decision makers to examine how legal and social considerations influenced decision-making to provide a comprehensive understanding of expulsion law in practice, as discussed in sections 4.5 and 4.6.

There is widespread recognition amongst decision-makers interviewed of the negative impact of expulsion on the expelled student and their family, as discussed throughout

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<sup>65</sup> Note. See chapter 2 for an analysis of the legal framework and legal principles governing school expulsion.

<sup>66</sup> See chapter 3 for a sociological analysis of school expulsion.

the thesis.<sup>67</sup> The study reveals that well-resourced, upper- and middle-class families are often able to mitigate the adverse consequences of expulsion. By contrast, students from lower socio-economic backgrounds are disproportionately affected, as is evident in parental accounts of their expulsion experiences (sections 7.3.4 and 7.4), insights from members of s. 29 appeal committees (section 6.7), and patterns of student re-engagement in mainstream education following expulsion.<sup>68</sup>

Establishing the extent to which education system insiders who rely mainly on self-reliant understandings truly comprehend the legal framework governing expulsion proved challenging. Practice reality highlights inadequate training and guidance, resulting in a gap between formal legal provisions and their application and instances of deliberate, albeit well-intentioned, non-compliance. For example, a BOM chairperson endorsed the practice of informal expulsion as going ‘above the normal call of duty’ (section 5.6.1); an EWO rationalised the informal expulsion of senior cycle students as ‘common-sense’ ones (section 5.6.3) or the s. 29 committee member who remarked that they ‘wouldn’t worry about the legal thing [aspect]’ (section 6.3). These perspectives illustrate an imperfect alignment between law and practice where decision makers prioritise perceived pragmatic considerations over adherence to the legal framework.<sup>69</sup> It is acknowledged that in the absence of adequate training, divergence between the law and practice is not grounds for criticism of the actions of non-lawyer decision-makers. Nevertheless, there is a pressing need to emphasise that the actions of expulsion-related decision-makers occur within a dedicated legal framework, adherence to which is mandatory.

It is imperative that the expulsion mechanism, as provided by the Oireachtas, be implemented in a manner that is both fair and consistent in keeping with the principles of natural justice.<sup>70</sup> A perceived need to support the school in all circumstances, coupled with an overreliance on the principal's professional competency, steers some BOMs to adopt a non-intervention strategy and an unwillingness to critically assess a

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<sup>67</sup> Note. For example, see sections 5.8 and 7.7.3.

<sup>68</sup> See sections 6.7. and Figure 19, for an overview of engagement in mainstream education following expulsion.

<sup>69</sup> Note. For discussion concerning the training provided for decision makers, see 5.2. BOM, 6.2.2 ETB S. 29 Committee, and 6.2.3 DOE Committee & EWO Training.

<sup>70</sup> Note. For discussion on the legal principles applicable to school expulsion decision-making, see section 2.4.

recommendation to expel, thereby undermining the board's status as the decision-maker, as discussed in sections 5.4 and 7.6.

Despite the availability of an accessible appeal mechanism, there is evidence that adversarial experiences at BOM oral hearings often impede a decision to appeal and dash the hopes of all but the well-resourced.<sup>71</sup> Many perceive the appeal process to lie within the education system. This perception stems in part from the insider status of committee members, the Minister's role in administering the appeal system and implementing committee decisions. The considerable degree of departmental involvement raises questions regarding the committee's independence and can potentially erode public confidence in the process. Enhanced committee member training and the development of comprehensive statutory-based guidelines would bolster the independence of committees and assist in addressing varying operational standards at appeal hearings.

Rooted in ambivalent attitudes toward legal obligations, informal expulsion remains a notable feature of the Irish education landscape, as illustrated above. Portrayed as a well-meaning endeavour and framed as a compassionate response grounded in a perceived duty of care to parents of students facing expulsion (section 5.6.1). This thesis challenges such representations, arguing that it constitutes a coercive mechanism for expulsion under the pretext of voluntary withdrawal. It facilitates the ejection of vulnerable students from school without due process, thereby elevating professional judgment above the law. It highlights the failure of the law to regulate expulsion properly, to protect the right to challenge expulsion and draws attention to a lack of accountability. Addressing the practice of informal expulsion should be a policy priority. The Irish courts have yet to address this form of expulsion; therefore, its legal status remains unresolved.

The involvement of the EWO in expulsion cases was welcomed by decision makers and described as especially helpful in cases where parents of lower socio-economic class backgrounds lack the skills to engage in formal meetings or have language difficulties. The courts emphasised the importance of the role of the EWO. Hedigan J. described the role of the EWO as a vital one, acting to ensure that there is no untoward

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<sup>71</sup> Note. For discussion on barriers to appeal, see section 7.3.3.

break in the continuous education of a child.<sup>72</sup> However, their involvement in expulsion cases appeared to be inconsistent and varied across regions, raising some concerns about the level of support available during expulsion hearings and oral appeals. Committee chairpersons often had to make considerable efforts to ensure EWO attendance at appeal hearings. Some chairpersons and DOS noted instances where prior commitments were not met, resulting in a perception among some decision-makers that the support offered was limited. However, parents of formally expelled students generally spoke positively about the contribution of their EWO. In contrast, students and parents affected by informal expulsion were, for the most part, unaware of the service.

Despite rejecting the rationale behind informal expulsion, some EWOs reluctantly advise parents to comply with the school's demands. One EWO reported collaborating with the school principal to facilitate informal expulsions, thereby calling into question the independence and integrity of the office. Although hampered by inadequate training and constrained by an unfavourable power imbalance with schools, EWO involvement is highly regarded where such involvement occurs.

A critical aspect of school expulsion relates to the prospect of finding a new mainstream school willing to enrol an expelled student. The findings of this research confirm that the task is challenging and, in some cases, extremely difficult. As acknowledged by EWOs, the expectation that they will secure alternative mainstream education post-expulsion is unrealistic. The effective refusal of schools to enrol expelled students is a key factor promoting informal expulsion. Notwithstanding that a s. 29 challenge to a refusal to enrol is available to parents, significant hidden soft barriers, such as matching option subjects of the expelled and the level at which they are taught, may render an offer of a place worthless.

Parents' experience of BOM hearings is best described as disempowering, amidst a sense that they were being blamed for their children's behaviour. They voiced feelings of inadequacy, as their views were often disregarded. Notwithstanding the students' right to be heard under international law, Irish school expulsion law does not guarantee students the right to address the decision-makers directly in expulsion cases. This

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<sup>72</sup> O'Donovan v. Board of Management of De La Salle College Wicklow & Ors., [2009] IEHC 163, para. 56.

thesis argues that students should be given this option at appeal hearings, should they wish to present in person an explanation for their behaviour or challenge disputed evidence.

The abolition of the facilitation stage of the appeal mechanism has attracted widespread criticism from committee chairpersons, despite the process seldom meeting its stated objective. The facilitator offered invaluable support, information, and advice to parents on how to approach oral hearings. The value of this aspect of the service should not be underestimated. Schools often have access to legal advice, either through their national representative body or by direct engagement at local level, ultimately funded by the State. By contrast, most parents lack the financial resources to engage legal advice. This imbalance entrenches inequality in expulsion proceedings.

## **8.2. RECOMMENDATIONS FOR FUTURE DEVELOPMENTS**

The impact of expulsion on a student's life may, in some cases, be more severe than some criminal convictions. However, the expulsion and appeal process is less robust than that of a criminal conviction, where significant procedural safeguards are available. The recommendations presented here are based on a radical rethink of the expulsion and appeals process. They are considered wholly necessary to address the identified weaknesses and promote procedural fairness, accountability and transparency.

The recommendations include:

1. Robust systems and processes in schools prior to expulsion, including mandatory training on the law governing expulsion powers for all BOM members and principals; more consistent consideration of unmet needs, particularly those related to SEN prior to expulsion; and improved communication between the school, the student, and the parents through in-person meetings prior to expulsion and ensuring that their representations are taken into account.

2. The integration of training on the school expulsion law and sociological aspects of expulsion into initial teacher education to equip future teachers to develop inclusive practices aimed at reducing reliance on expulsion as a disciplinary measure.

3. The establishment of a National School Expulsion Appeals Body.

The new national appeals body shall be established with the statutory mandate to oversee and adjudicate appeals brought under s. 29 of the Act of 1998. Its key responsibilities will include case management, appointment of appeal committees, procedural oversight and systematic monitoring of expulsion practice.

a. Composition and Powers of Appeal Committees.

Appeal committees established shall include both educational specialists and non-educationalists to ensure balanced and impartial decision-making. The committees so established shall retain existing decision-making powers with extended authority to issue directives requiring the expelling school to facilitate an expelled student's participation in state examinations during the academic year of expulsion.

b. Provision of Free Legal Aid.

Appellants shall be entitled to legal advice prior to the oral hearing. The appeals body will ensure this service is available free of charge through a partnership with legal aid advisors or through in-house legal counsel. This initiative is intended to enhance appellants' ability to participate effectively and equitably in oral hearings, regardless of background or personal circumstance.

c. Advocacy Service for Parents

An advocacy service shall be established to assist parents in navigating the expulsion process. Advocates will offer non-legal support, information and assistance with documentation. This service is particularly important for families with limited literacy, language barriers, or socio-economic disadvantage.

d. Student Advocacy Service

An easily accessible, student-friendly advocacy service should be established as an independent, confidential support mechanism providing one-to-one socio-legal advocacy to students engaged in the school expulsion and appeal process. By adopting a collaborative approach with each student, the service will promote fairness, transparency, and accountability, empowering students through enhanced awareness of their rights and responsibilities.

Core functions should include direct assistance and guidance, including representation at meetings as a support person, preparation for BOM and s. 29 oral hearings. The optional involvement of peer advocates should be available where deemed appropriate. To safeguard trust and impartiality, the service should operate entirely independently of the Department of Education and be accessed through an online platform or in-person consultation.

Additionally, the service should carry an explicit mandate to identify systemic issues arising from casework and to issue evidence-informed recommendations for policy improvement to the national school expulsion appeals body. Through these mechanisms, the service would ensure that students' voices are heard effectively and consistently throughout all stages of disciplinary and appeals processes.

e. Withdrawal Review Officer

To address the issue of informal expulsion / coerced withdrawals from school, the national body shall appoint a Withdrawal Review Officer. This role will involve independent verification of the voluntariness of school withdrawals, with the mandate to investigate and report on patterns suggesting informal expulsion practices. The report will contribute to a systematic oversight and policy recommendations aimed at identifying and reducing exclusionary practices.

f. Independent Mediator

An Independent Mediation service will be established within the new body to offer mediation services between schools and parents/students before the appeal goes to an oral hearing. The aspiration is to resolve disputes in a restorative fashion, promote collaborative resolutions and enhance future home/school relationships where appropriate.

By embedding legal support, advocacy, independent mediation and oversight into the structure of the expulsion and appeal process, the reforms will embrace a rights-based approach.

4. Legislative Amendment

Amendment to the Act of 2000 to provide for:

- a. A meeting to take place between the EWO and parents prior to the BOM expulsion hearing.
  - b. The EWO attend the expulsion hearing to support and advise the parents.
  - c. The EWO attend the s. 29 oral hearing to support and advise the parents.
5. The incorporation of the provisions of Article 12 of the UNCRC into school expulsion law to facilitate the inclusion of the students' views at all stages of the expulsion and appeal process.
6. The redesign of the school funding model to eliminate the risk of incentives that might encourage schools to align expulsion decisions with annual funding allocation dates or to discourage schools from enrolling expelled students. The modification should incorporate a mechanism to adjust allocation following expulsion, and for that allocation to be forwarded to a new school should the student secure a place in a new school. The adjustment to the funding should reflect the true position of enrolment and acknowledge the actual expulsion.

7. The development of a comprehensive EWO job specification detailing the duties of the officer.
  - a. Legislative amendments and regulations are needed to mitigate the risk of EWOs departing from their statutory remit and involvement in informal expulsion.
  - b. To address the EWO-School power imbalance, this thesis recommends that, in addition to legislative amendments to strengthen the position of the EWO in expulsion cases, attention should be paid to initial qualifications, terms of employment, in-service training and support for EWOs.

### BIBLIOGRAPHY

#### BOOKS

- Allen, M. *The Sage encyclopedia of communication research methods*. (London: Sage Publications) 2017.
- Arksey, H., & Knight, P. T. *Interviewing for social scientists: An introductory resource with examples*. (London: Sage Publications) 2012.
- Barbour, R. S. *Introducing Qualitative Research*. (London: Sage Publications) 2008.
- Bourdieu, P., & Passeron, J. C. *Reproduction in Education, Society and Culture*. (London: Sage Publications) 1977.
- Bourdieu, P., & Passeron, J. C. *Reproduction in education, society, and culture* (Vol. 4). (London: Sage Publications) 1990.
- Bourdieu, P. *Outline of a Theory of Practice*. (Cambridge: Cambridge University Press) 1977.
- Bourdieu, P. *Distinction. A social critique of the judgment of taste*. (London: Routledge & Kegan Paul) 1984.
- Bourdieu, P. *The State Nobility: Elite Schools in the Field of Power*. (California: Stanford University Press) 1989.
- Bourdieu, P. *The logic of practice*. (California: Stanford University Press) 1990a.
- Bourdieu, P. *In other words, Essays toward a reflexive sociology*. (California: Stanford University Press) 1990b.
- Bourdieu, P. *Language and Symbolic Power*. (Cambridge: Polity Press) 1991.
- Bourdieu, P., & Wacquant, L. *An Invitation to Reflexive Sociology*. (Chicago: University of Chicago Press) 1992.
- Bourdieu, P. *Pascalian Meditations*. (California: Stanford University Press) 2000.
- Bourdieu, P. *Masculine Domination*. (Cambridge: Polity Press) 2001.
- Braun, V., & Clarke, V. *Thematic Analysis: A Practical Guide*. (London: Sage Publications) 2022.
- Byrne, D., & Smyth, E. *No Way Back? The Dynamics of Early School Leaving*. (Dublin: The Liffey Press) 2010.

- Cahillane, L., & Schweppe, J. *Legal Research Methods. Principles and Practicalities*. (Dublin: Clarus Press) 2016.
- Carey, D. J. *The Essential Parents' Guide to Special Education in Ireland*. (Dublin: Primary ABC) 2005.
- Creswell, J. W., & Creswell, J. D. *Research design: Qualitative, quantitative, and mixed methods approaches*. (London: Sage Publications) 2023.
- Donson, F. J., & O'Donovan, D. *Law and public administration in Ireland*. (Dublin: Clarus Press Ltd.) 2015.
- Denscombe, M. *The good research guide: for small-scale social research projects*. (London: McGraw-Hill: Open University) (2007).
- Edwards, R., & Holland, J. *What is qualitative interviewing?* (London: Bloomsbury Academic) 2013.
- Fujii, L. A. *Interviewing in social science research: A relational approach*. (New York: Routledge) 2017.
- Gill, K., Quilter-Pinner, H., & Swift, D. *Making the difference: Breaking the link between school exclusion and social exclusion*. (London: Institute for Public Policy Research) 2017.
- Glendenning, D. *Education and the Law*. (Dublin: Butterworths Ireland Ltd.) 1999.
- Glendenning, D. *Education and the Law*. (Dublin: Tottel Publishing) 2012.
- Gray, D. E. *Doing research in the real world*. (London: Sage Publications) 2014.
- Grenfell, M. J., *Pierre Bourdieu: Education and Training*. (London: Continuum. Teachers College Record) 2007.
- Grenfell, M. J., *Pierre Bourdieu: key concepts*. (London: Routledge Publication) 2014.
- Grosswald Curran, V. *Comparative Law: An Introduction*. (Durham, North Carolina: Carolina Academic Press) 2002.
- Hammersley, M., & Atkinson, P. *Ethnography: principles in practice*. (London: Routledge Publication) 1989.
- Harris, N. S., Eden, K., & Blair, A. *Challenges to school exclusion: exclusion, appeals, and the law*. (London: Routledge Falmer) 2000.
- Hogan, G., & Whyte, G. *M.J. Kelly: The Irish Constitution*. (Dublin: Tottel Publishing) 2003.
- Kilkelly, U. *Children's Rights in Ireland: Law, Policy, and Practice*. (Tottel Publishing Ltd.) 2008.

- Kilkelly, U. *Children's Rights in Ireland. Law, Policy and Practice*. (Dublin: Tottle Publishing Ltd.) 2016.
- Lincoln, Y., & Guba, E. *Naturalistic inquiry*. (London: Sage Publications) 1985.
- Mahon, O. *A User's Guide to the Education Act*. (Ennis, Co. Clare: Clare Education Centre) 2000.
- May, T. *Social research: issues, methods and process*. (Buckingham: Open University) Press) 2011.
- Morgan, D. G., & Hogan, G. W. *Administrative Law in Ireland*, 3rd ed. (Dublin: Round Hall Sweet & Maxwell) 1998.
- Morris, A. *A practical introduction to in-depth interviewing*. (London: Sage Publications) 2015.
- O'Mahony, C. *Educational Rights in Irish Law*. (Dublin: Thomson Round Hall) 2006.
- Parker, C., Scott, S., & Geddes, A. *Snowball sampling*. Sage research methods foundations. (London: Sage Publications) 2019.
- Parsons, C. *Education, Exclusion and Citizenship*. (Taylor & Francis e-Library) 2002.
- Richardson, J. G. *Handbook of Theory and Research for the Sociology of Education*. (London: Greenwood Press) 1986.
- Savin-Baden, M., & Howell Major, C. *Qualitative research: The essential guide to theory and practice*. (London: Routledge Publications) 2013.
- Schwandt, T. A. *Dictionary of qualitative inquiry* (2nd ed.). (London: Thousand Oaks, Sage Publications) 2001.
- Schwandt, T. A. *Dictionary of qualitative inquiry* (3rd ed). (London: Sage Publications) 2007.
- Seale, C. *Researching Society and Culture*. (London: Sage Publications) 2012.
- Tashakkori, A., & Teddlie, C. (Eds.). *SAGE handbook of mixed methods in social & behavioral research*. (London: Sage Publications) 2010.
- Webb, J., Schirato, T., & Danaher, G. *Understanding Bourdieu*. (London: Sage Publications) 2002.
- Whyte, G. *Social Inclusion and the Legal System: Public Interest Law in Ireland. The Legitimacy of Judicial Activism on behalf of the Disadvantaged*. (Dublin: Institute of Public Administration) 2002.

## BOOK CHAPTERS

- Arthur, S., Mitchell, J., & McNaughton Nicholls, C. Designing Fieldwork, In Jane Ritchie, Jane Lewis, Carol McNaughton Nicholls & Rachel Ormston (Eds.), *Qualitative research practice: A guide for social science students and researchers* (pp. 147-176). (London: Sage Publications) 2014.
- Ball, S. J., & Vincent, C. New class relations in education: the strategies of the 'fearful' middle classes. In Jack Demaine (Ed.), *Sociology of Education Today* (pp. 180-194). (Hampshire: Palgrave Publishing) 2001.
- Bourdieu, P. The School as a Conservative Force. In J. Eggleston (Ed.), *Contemporary research in the Sociology of Education* (pp. 32-46). (London: Routledge Publication) 1974.
- Bourdieu, P. The forms of capital. In John G. Richardson (Ed.), *Handbook of theory and research for the sociology of education* (pp. 241-258). (Greenwood Press) 1986.
- Chynoweth, P. Legal Research. In Andrew Knight & Les Ruddock (Eds.), *Advanced Research Methods in the Built Environment* (pp. 28-37). (Oxford: Wiley/Blackwell) 2008.
- Corlett, S., & Mavin, S. Reflexivity and researcher positionality. In Catherine Cassell, Ann L Cunliffe, Gina Grandy (Ed.), *The SAGE handbook of qualitative business and management research methods: History and traditions* (pp. 377-398). (London: Sage Publications) 2021.
- Craven, C. Bullying and School Discipline. In Dympna Glendenning & William Binchy (Eds.), *Litigation Against Schools: Implications for School Management* (pp. 145-178). (Dublin: First Law Ltd.) 2006.
- Creswell, J. W. Controversies in mixed methods research. In Norman K. Denzin & Yvonna S. Lincoln (Eds.), *Strategies of qualitative inquiry* (pp. 101-134). (London: Sage Publications) 2013.
- Cunneen, M., & Harford, J. The Principal route: gender matters. In Kay Fuller & Judith Harford (Eds.), *Gender and Leadership: Women achieving against the Odds*. (pp.147-174). (Oxford: Peter Lang). 2016, p. 148-149.
- Dobinson, I., & Johns, F. Legal Research as Qualitative Research. In Mike McConville & Wing Hong Chui (Eds.), *Research methods for law* (pp. 18-47). (Edinburgh: Edinburgh University Press) 2017.
- Gallagher, S. What Is Phenomenology? In *Phenomenology* (pp. 1-10). Palgrave Philosophy Today. (London: Palgrave Macmillan) 2022.

- Glendenning, D. School Discipline: Balancing Individual Student Rights and the Common Good. In Dymrna Glendenning & William Binchy (Eds.), *Litigation Against Schools: Implications for School Management* (pp. 180-201). (Dublin: First Law Ltd.) 2006.
- Holstein, J. A., & Gubrium, J. F. Animating interview narratives. In David Silverman (Ed.), *Qualitative Research* (pp. 149-167). (London: Sage Publications) 2011.
- Johnson, B., & Gray, R. A history of philosophical and theoretical issues for mixed methods research. In Abbas Tashakkori & Charles Teddlie (Eds.), *Sage handbook of mixed methods in social and behavioural research* (2nd ed., pp. 69-94), 2010. doi.org/10.4135/9781506335193
- Kilkelly, U. The protection of children's rights in Ireland: Monitoring the Monitoring Process of the U.N. Convention on the Rights of the Child. In Dennis Driscoll (Ed.), *Irish Human Rights Review 2000* (pp. 17-40). (Dublin: Round Hall Sweet & Maxwell) 2000.
- Lewis, J., Ritchie, J., Ormston, R., & Morrell, G. Generalising from qualitative research. In Jane Ritchie, Jane Lewis, Carol McNaughton Nicholls (Eds.), *Qualitative research practice: A guide for social science students and researchers* (pp. 347-366). (London: Sage Publications) 2013.
- MacRuairc, G. 'Big mad words' – schools, social class and children's perceptions of language variation. In Jim Deegan, Dymrna Devine & Anne Lodge, (Eds.), *Primary Voices: Equality, Diversity and Childhood in Irish Primary Schools* (pp. 144-163). (Dublin: Institute of Public Administration) 2004.
- McManus, M. Discipline in Pupils Excluded from School, In Ved P. Varma (Ed.), *Management of Behaviour in Schools* (pp. 218-233). (New York: Routledge Publication) 2014.
- Miller, J., & Glassner, B. The Inside and the Outside: Finding Realities in Interviews. In David Silverman (Ed.), *Qualitative Research: Theory, Method and Practice* (pp. 131-148). (London: Sage Publications) 2011.
- Thomas, J. Reexamining the ethics of internet research: Facing the challenge of overzealous oversight. In Mark D. Johns, Shing-Ling Chen & Jon G. Hall (Eds.), *Online social research: Methods, issues, and ethics* (pp. 187-201). (Oxford University Press) 2004.
- Thompson, J. B. Editor's Introduction. In Pierre Bourdieu (Ed.), *Language and Symbolic Power* (pp. 1-31). (Cambridge: Polity Press) 1991.
- Van Hoecke, M. Objectivity in Law and Jurisprudence. In Jaakko Husa, Mark Van Hoecke (Eds.), *Objectivity in law and legal reasoning* (pp. 3-20). (London: Hart Publishing) 2013.

- Wacquant, L. J. D. Foreword, In Pierre Bourdieu (Ed.), *The State Nobility: Elite Schools in the Field of Power* (pp. ix-xxii). (Stanford: Stanford University Press) 1998.
- Whyte, G. Inclusive Education under Irish Law. In G. De Beco, S. Quinlivan & J. E. Lord (Eds.), *The right to inclusive education in international human rights law* (pp. 497-513). (Cambridge University Press) 2019.

## JOURNAL ARTICLES

- Agasisti, T., Catalano, G., & Sibiano, P. 'Can schools be autonomous in a centralised educational system? On formal and actual school autonomy in the Italian context' (2013) 27. *International Journal of Educational Management* 292
- Banks, J., & Smyth, E. 'We Respect Them, and They Respect Us: The Value of Interpersonal Relationships in Enhancing Student Engagement' (2021) 11. *Education Sciences* 634.
- Bhat, P. I. 'Doctrinal Legal Research as a Means of Synthesizing Facts, Thoughts, and Legal Principles' (2020). *Idea and Methods of Legal Research* 88.
- Blackham, A. 'When law and data collide: the methodological challenge of conducting mixed methods research in law' (2022) 49. *Journal of Law and Society* 87.
- Bourdieu, P. 'Intellectual field and creative project' (1969) 8. *Social science information* 89.
- Bourdieu, P. 'Social space and the genesis of appropriated physical space' (2018) 42. *International journal of urban and regional research* 106.
- Brady, A. 'Proportionality, Deference and Fundamental Rights in Irish Administrative Law: The Aftermath of Meadows' (2010) 32. *Dublin University Law Journal* 136.
- Braun, V., & Clarke, V. 'Using Thematic Analysis in Psychology' (2006) 3. *Qualitative Research in Psychology* 77.
- Brown, M., McNamara, G., O'Brien, S., Skerritt, C., O'Hara, J., Faddar, J., ..., & Kurum, G. 'Parent and student voice in evaluation and planning in schools' (2020) 23. *Improving Schools* 85.
- Canny, A., & Hamilton, M. 'A state examination system and perpetuation of middle-class advantage: an Irish school context' (2018) 39. *British Journal of Sociology of Education* 638.

- Chaim, N. 'Sampling Knowledge: The Hermeneutics of Snowball Sampling in Qualitative Research' (2008) 11. *International Journal of Social Research Methodology* 327.
- Chammas, G. 'The Insider-Researcher Status: A Challenge for Social Work Practice Research' (2020) 25 *The Qualitative Report* 537.
- Chavez, C. 'Conceptualizing from the inside: Advantages, complications, and demands on insider positionality' (2008) 13. *The qualitative report* 474.
- Cole, T., McCluskey, G., Daniels, H., Thompson, I., & Tawell, A. 'Factors associated with high and low levels of school exclusions: Comparing the English and wider UK experience' (2019) 24. *Emotional and behavioural difficulties* 374.
- Cotterrell, R. 'Subverting Orthodoxy. Making Law Central: A View of Sociolegal Studies' (2002) 29. *Journal of Law and Society* 632.
- Cuellar, A. E., & Markowitz, S. 'School suspension and the school-to-prison pipeline' (2015) 43. *International Review of Law and Economics* 98.
- Daniels, H., & Cole, T. 'Exclusion from school: short-term setback or a long term of difficulties?' (2010) 25. *European Journal of Special Needs Education* 115.
- Daniels, H. 'Exclusion from School and Its Consequences' (2011) 1. *Psychological Science and Education* 38.
- Dika, S. L., & Singh, K. 'Applications of social capital in educational literature: A critical synthesis' (2002) 72. *Review of educational research* 31.
- Dixon, M. 'A Doctrinal Approach to Property Law Scholarship: Who Cares and Why?' (2014) 3. *Property Law Review* 160.
- Done, E. J., Knowler, H., & Armstrong, D. 'Grey exclusions matter: mapping illegal exclusionary practices and the implications for children with disabilities in England and Australia' (2021) 21. *Journal of Research in Special Educational Needs* 36.
- Done, E. J., & Knowler, H. 'A tension between rationalities: "off-rolling" as gaming and the implications for head teachers and the inclusion agenda' (2022) 74. *Educational Review* 1322.
- Doyle, G., & Keane, E. 'Education comes second to surviving': parental perspectives on their children's early school leaving in an area challenged by marginalisation' (2019) 38. *Irish Educational Studies* 71.
- Doyle, D. M., Muldoon, M., & Murphy, C. 'Education in Ireland: accessible without discrimination for all?' (2020) 24. *The International Journal of Human Rights* 1701.

- Drisko, J. W. 'Transferability and Generalization in Qualitative Research' (2024). *Research on Social Work Practice* 1.
- Edgerton, J. D., & Roberts, L. W. 'Cultural capital or habitus? Bourdieu and beyond in the explanation of enduring educational inequality' (2014) 12. *Theory and research in education* 193.
- Engward, H., Goldspink, S., Iancu, M., Kersey, T., & Wood, A. 'Togetherness in separation: Practical considerations for doing remote qualitative interviews ethically' (2022) 21. *International Journal of Qualitative Methods* 1.
- Falk, I., & Guenther, J. 'Designed generalization from qualitative research' (2021) 26. *The Qualitative Report* 1075.
- Fleming, J. 'Recognizing and resolving the challenges of being an insider researcher in work-integrated learning' (2018) 19. *International Journal of Work-Integrated Learning*, 311.
- Ford, T., Parker, C., Salim, J., Goodman, R., Logan, S., & Henley, W. 'The relationship between exclusion from school and mental health: a secondary analysis of the British Child and Adolescent Mental Health Surveys 2004 and 2007' (2018) 48. *Psychological Medicine* 629.
- Forde, C., Horgan, D., Martin, S., & Parkes, A. 'Learning from children's voice in schools: Experiences from Ireland' (2018) 19. *Journal of Educational Change* 489.
- Gazeley, G. 'The role of school exclusion processes in the re-production of social and educational disadvantage' (2010) 58. *British Journal of Education Studies* 293.
- Gazeley, G. 'The impact of social class on parent-professional interaction in school exclusion processes: deficit or disadvantage?' (2012) 16. *International Journal of Inclusive Education* 297.
- Gazeley, L., Marrable, T., Brown, C., & Boddy, J. 'Contextualising Inequalities in Rates of School Exclusion in English Schools: Beneath the tip of the ice-Berg' (2015) 63. *British Journal of Educational Studies* 487.
- Goldstone, R., Baker, W., & Barg, K. 'A comparative perspective on social class inequalities in parental involvement in education: structural dynamics, institutional design, and cultural factors' (2023) 75. *Educational Review* 976.
- Greene, J. C., Caracelli, V. J., & Graham, W. F. 'Toward a Conceptual Framework for Mixed-Method Evaluation Designs' (1989) 11. *Educational Evaluation and Policy Analysis* 255.

- Hanafin, J., & Lynch, A. 'Peripheral voices: Parental involvement, social class, and educational disadvantage' (2002) 23. *British Journal of Sociology of Education* 35.
- Harris, A., & Goodall, J. 'Do parents know they matter? Engaging all parents in learning' (2008) 50. *Educational Research* 277.
- Harris, R., & Parsons, C. 'School exclusion and English remedies: A failure to protect children' (2014) 17. *Education Public Law and the Individual* 20.
- Hatton, L. A., 'Disciplinary exclusion: the influence of school ethos' (2013) 18. *Emotional and behavioural difficulties* 155.
- Hickey, T. 'Zalewski and the future of Irish public law' (2024) 87. *The Modern Law Review* 466.
- Hodge, N., & Wolstenholme, C. 'I didn't stand a chance: how parents experience the exclusions appeal tribunal' (2016) 20. *International Journal of Inclusive Education* 1297.
- Holmes, A.G.D. 'Researcher Positionality - A Consideration of Its Influence and Place in Qualitative Research - A New Researcher Guide' (2020) 8. *Shanlax International Journal of Education*, 1.
- Imich, A. J. 'Exclusions from School: Current Trends and Issues' (1994) 36. *Educational Research* 3.
- Irwin, S., & Elley, S. 'Parents' hopes and expectations for their children's future occupations' (2013) 61. *The Sociological Review* 111.
- Jacobs, N., & Harvey, D. 'Do parents make a difference to children's academic achievement? Differences between parents of higher and lower achieving students' (2005) 31. *Educational Studies* 431.
- Jeynes, W. H. 'A meta-analysis: The relationship between the parental expectations component of parental involvement with students' academic achievement' (2024) 59. *Urban Education* 63.
- Johnson, R. B., & Onwuegbuzie, A. J. 'Mixed methods research: A research paradigm whose time has come' (2004) 33. *Educational Research* 14.
- Jones, K. L., Tymms, P., Kemethofer, D., O'Hara, J., McNamara, G., Huber, S., Myrberg, E., Skedsmo, G., & Greger, D. 'The unintended consequences of school inspection: the prevalence of inspection side-effects in Austria, the Czech Republic, England, Ireland, the Netherlands, Sweden, and Switzerland.' (2017) 43. *Oxford Review of Education* 805.
- Jost, J. & Hunyady, O. 'The psychology of system justification and the palliative function of ideology' (2003) 13. *European review of social psychology* 111.

- Kaaristo, M. 'Everyday power dynamics and hierarchies in qualitative research: The role of humour in the field' (2022) 22. *Qualitative Research* 743.
- Kavanagh, A. M., & Dupont, M. 'Making the invisible visible: managing tensions around including Traveller culture and history in the curriculum at primary and post-primary levels' (2021) 40. *Irish Educational Studies* 553.
- Lazard, L., & McAvoy, J. 'Doing reflexivity in psychological research – What's the point? What's the practice?' (2017) 17. *Qualitative Research in Psychology* 159.
- Liefaard, T. 'Child-friendly justice: protection and participation of children in the justice system' (2015) 88. *Temp. L. Rev.* 905.
- Lin, N. 'Building a network theory of social capital' (1999) 22. *Connections* 28.
- Lundy, L. 'Voice' is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33. *British Educational Research Journal* 927.
- Lynch, K., & Moran, M. 'Markets, Schools, and the Convertibility of Economic Capital: The Complex Dynamics of Class Choice' (2006) 27. *British Journal of Sociology of Education* 221.
- McCormack, O., O'Flaherty, J., & Liddy, M. 'Perception of Education and Training Board (ETB) schools in the Republic of Ireland: an issue of ideology and inclusion.' (2020) 39.4. *Irish Educational Studies* 535-552.
- Macrae, S., Maguire, M. E. G., & Milbourne, L. 'Social exclusion: exclusion from school' (2003) 7. *International Journal of Inclusive Education* 89.
- MacRuairc, G. 'Where words collide: social class, schools, and linguistic discontinuity' (2011) 32. *British Journal of Sociology of Education* 541.
- Martin, M. 'School Matters: The Report of the Task Force on Student Behaviour in Second Level Schools, 2006' (2006) 20. *REACH: Journal of Inclusive Education in Ireland* 5.
- Maxwell, J. A. 'Why qualitative methods are necessary for generalization' (2021) 8. *Qualitative Psychology* 111.
- McCluskey, G., Riddell, S., Weedon, E., & Fordyce, M. 'Exclusion from school and recognition of difference' (2016) 37. *Discourse: Studies in the Cultural Politics of Education* 529.
- McCrudden, C. 'Legal Research and the Social Sciences' (2006) 122. *Law Quarterly Review* 632.
- Mills, M., Riddell, S., & Hjörne, E. 'After exclusion what?' (2015) 19. *International Journal of Inclusive Education* 561.

- Monahan, K. C., VanDerhei, S., Bechtold, J., & Cauffman, E. 'From the School Yard to the Squad Car: School Discipline, Truancy, and Arrest' (2014) 43. *Journal of Youth and Adolescence* 1110.
- Monk, D. 'Children's rights in education - making sense of contradictions' (2002) 14. *Child and Family Law Quarterly* 45.
- Monk, D. '(Re) constructing the Head Teacher: Legal Narratives and the Politics of School Exclusions' (2005) 32. *Journal of Law and Society* 399.
- Morse, J. M. "Cherry picking": 'Writing from thin data' (2010) 20. *Qualitative health research* 3.
- Munn, P. 'Parental influence on school policy: some evidence from research' (1998) 13. *Journal of Education Policy* 379.
- Munn, P., Cullen, M.A., Johnstone, M., & Lloyd, G. 'Exclusion from school: a view from Scotland of policy and practice' (2001) 16. *Research Papers in Education* 23.
- Munn, P., & Lloyd, G. 'Exclusion and Excluded Pupils' (2005) 31. *British Educational Research Journal* 205.
- Nagel, I. H. 'The legal/extra-legal controversy: Judicial decisions in pretrial release' (1983) 17. *Law & Society Review* 481.
- Ngwoke, R. A., Mbano, I. P., & Helynn, O. 'A critical appraisal of doctrinal and Non-doctrinal legal research methodologies in contemporary times' (2023) 3. *International Journal of Civil Law and Legal Research* 8.
- Noyes, A. 'Pupil voice: purpose, power, and the possibilities for democratic schooling' (2005) 31. *British Educational Research Journal* 532.
- O'Brien, F. 'Nemo iudex in causa sua: Aspects of the No-bias rule of constitutional justice in courts and administrative bodies' (2011) 2. *Irish Journal of Legal Studies* 26.
- O'Donoghue, M. 'Putting working-class mothers in their place: social stratification, the field of education, and Pierre Bourdieu's theory of practice' (2013) 34. *British Journal of Sociology of Education* 190.
- O'Mahony, C. 'The Same, but Different? Article 42A and the Threshold for State Intervention in Family Life: In Re JJ'. (2022) 4. *Irish Supreme Court Review* 162.
- O'Mahony, C., Brennan, R., & Burns, K. 'Informed consent and parental rights in voluntary care agreements' (2020) 32. *Child and Family Law Quarterly* 373.
- O'Regan, F. 'Exclusion from school and attention-deficit/hyperactivity disorder' (2010) 2. *International Journal of Emotional Education* 3.

- Opdenakker, R. 'Advantages and disadvantages of four interview techniques in qualitative research. Forum Qualitative Sozialforschung/Forum' (2006) 7. *Qualitative Social Research* Art. 11.
- Parker, C., & Ford, T. 'Editorial Perspective: School exclusion is a mental health issue' (2013) 54. *Journal Of Child Psychology & Psychiatry* 1366.
- Parker, C., Whear, R., Ukoumunne, O. C., Bethel, A., Thompson-Coon, J., Stein, K., & Ford, T. 'School exclusion in children with psychiatric disorder or impairing psychopathology: a systematic review' (2015) 20. *Emotional and behavioural difficulties* 229.
- Parsons, C. 'Social Inclusion and School Improvement' (1999) 14. *Support for Learning* 179.
- Parsons, P. 'School exclusion: the will to punish' (2005) 53. *British Journal of Educational Studies* 187.
- Pinquart, M., & Ebeling, M. 'Parental educational expectations and academic achievement in children and adolescents - a meta-analysis (2020) 32. *Educational Psychology Review* 463.
- Polit, D. F., & Beck, C. T. 'Generalisation in quantitative and qualitative research: Myths and strategies' (2010) 47. *International Journal of Nursing Studies* 1451.
- Råheim, M., Magnussen, L. H., Sekse, R. J. T., Lunde, Å., Jacobsen, T., & Blystad, A. 'Researcher-researched relationship in qualitative research: Shifts in positions and researcher vulnerability' (2016) 11. *International journal of qualitative studies on health and well-being* 1.
- Reay, D. 'A useful extension of Bourdieu's conceptual framework? Emotional capital as a way of understanding mothers' involvement in their children's education?' (2000) 48. *The Sociological Review* 568.
- Rodgers, M. 'Education Judicial Review of Appeals Committees' (2014) 32. *Irish Law Times* 35.
- Runswick-Cole, K. 'The Tribunal was the most stressful thing: more stressful than my son's diagnosis or behaviour: the experiences of families who go to the Special Educational Needs and Disability Tribunal (SENDisT)' (2007) 22. *Disability & Society* 315.
- Salole, A. T., & Abdulle, Z. 'Quick to Punish' (2015) 72/72. *Canadian Review of Social Policy* 124.
- Saltmarsh, S., & McPherson, A. 'Un/satisfactory encounters: communication, conflict, and parent-school engagement' (2022) 63. *Critical Studies in Education* 147.

- Scârnecki-Domnişoru, F. 'From Sample to Population Generalization in Qualitative Research' (2024) 29. *The Qualitative Report* 2362.
- Schrama, W. 'How to carry out interdisciplinary legal research. Some experiences with an interdisciplinary research method' (2011) 7. *Utrecht Law Review* 147.
- Sharma, L. R., Bidari, S., Bidari, D., Neupane, S., & Sapkota, R. 'Exploring the mixed methods research design: types, purposes, strengths, challenges, and criticisms' (2023) 5. *Global Academic Journal of Linguistics and Literature*.
- Skerritt, C., Brown, M., & O'Hara, J. 'Student voice and classroom practice: how students are consulted in contexts without traditions of student's voice' (2023) 31. *Pedagogy, culture & society* 955.
- Skiba, R. J., Arredondo, M. I., & Williams, N. T. 'More than a metaphor: The contribution of exclusionary discipline to a school-to-prison pipeline' (2014) 47. *Equity & Excellence in Education* 546.
- Skiba, R. J., & Losen, D. J. 'From Reaction to Prevention: Turning the Page on School Discipline' (2016) 39. *American Educator* 1.
- Skinner, B., Leavey, G., & Rothi, D. 'Managerialism and teacher professional identity: Impact on well-being among teachers in the UK' (2021) 73. *Educational Review* 1.
- Soedirgo, J., & Glas, A. 'Toward active reflexivity: Positionality and practice in the production of knowledge' (2020) 53. *PS: Political Science & Politics* 527.
- Sullivan, A. 'Cultural capital and educational attainment' (2001) 35. *Sociology* 893.
- Tessier, S. 'From field notes, to transcripts, to tape recordings: Evolution or combination?' (2012) 11. *International Journal of Qualitative Methods* 446.
- Thompson, I., Tawell, A., & Daniels, H. 'Conflicts in professional concern and the exclusion of pupils with SEMH in England' (2021) 26. *Emotional and Behavioural Difficulties* 31.
- Thorsteinsson, G., & Ólafsson, B. 'A survey on students design decisions in Design and Craft education in Icelandic schools' (2011) 18. *Techne Series-Research in Sloyd Education and Craft Science A* 153.
- Vähäsantanen, K., & Saarinen, J. 'The power dance in the research interview: manifesting power and powerlessness' (2013) 13. *Qualitative Research* 493.
- Vick, D. W. 'Interdisciplinarity and the Discipline of Law' (2004) 31. *Journal of Law and Society* 163.
- Vincent, C., & Martin, J. 'School-based parents' groups - a politics of voice and representation?' (2000) 15. *Journal of Education Policy* 459.

- Wacquant, L. 'Homines in extremis: What fighting scholars teach us about habitus' (2014) 20. *Body & Society* 3.
- Whitehouse, M. 'Illegal school exclusion in English education policy' (2022) 27. *Emotional and Behavioural Difficulties* 220.
- Wilkins, A. 'Citizens and/or consumers: mutations in the construction of concepts and practices of school choice' (2010) 25. *Journal of Education Policy* 171.
- Williams, A. 'How to ... Write and analyse a questionnaire' (2003) 30. *Journal of Orthodontics* 245.
- Wilson, C., Janes, G., & Williams, J. 'Identity, positionality and reflexivity: relevance and application to research paramedics' (2022) 7. *British Paramedic Journal* 43.
- Wilson, D., Croxson, B., & Atkinson, A. "What gets measured gets done" Headteachers' responses to the English secondary school performance management system' (2006) 27. *Policy Studies* 153.
- Woodley, X. M., & Lockard, M. 'Womanism and snowball sampling: Engaging marginalized populations in holistic research' (2016) 21. *The Qualitative Report* 321.

#### CONFERENCE PAPERS

- Clarke, F. '*Education in the Courts*'. (2015). Paper delivered. Conference Title: Education and the Law. St. Angela's College, Sligo.
- Glendenning, D. '*Squaring the Circle: Balancing Church-State Interests in Education (Admissions to School) Bill 2015*'. (2015a). Paper delivered. Conference Title: Education and the Law. St. Angela's College, Sligo.
- Glendenning, D. '*Section 29 Appeals: Where do we stand now*' (2015b). Paper delivered. Conference Title: Education and the Law. Trinity College Dublin,
- Kilkelly, U. '*The UN Convention on the Rights of the Child: protecting children's rights across generations*'. (2023). Paper presented. Frontiers of Children's Rights Summer School. Leiden University, the Netherlands.
- Liefwaard, T. '*International Children's Rights: Protecting Children's Rights and Interests Across Generations*'. (2023). Paper presented. Frontiers of Children's Rights Summer School. Leiden University, the Netherlands.
- Skelton, A. '*Making Children's Rights Real: Access To Justice*. Frontiers of Children's Rights'. (2023). Paper presented. Summer School. Leiden University, the Netherlands.

## CIRCULARS, REPORTS, AND PUBLICATIONS

Department of Children and Youth Affairs, '*National strategy on children and young people's participation in decision-making, 2015-2020.*' (2015). Dublin: Government Publications.

Department of Education and Science, '*Circular letter M48/01. Appeal Procedures Under Section 29 of the Education Act 1998.*' (2001). Available at <https://circulars.gov.ie/pdf/circular/education/2001/M48.pdf>

Department of Education and Science, '*Circular Letter 20/02. Appeals Procedures Under Section 29 of the Education Act 1998.*' (2002). Available at <https://www.gov.ie/en/department-of-education/circulars/appeals-procedures-under-section-29-of-the-education-act-1998/>

Department of Education, *Procedures for hearing and determining appeals under Sections 29(1)(a) and 29(1)(b) of the Education Act, 1998 (applicable to appeals made from 12th November 2020 onwards.* (Published: April 2022). Available at <https://www.gov.ie/en/publication/19941-appeals-against-expulsion-or-suspension-for-a-period-or-periods-totaling-not-less-than-20-school-days-in-a-school-year/>

Department of Education, *Inspectorate Profile: Ireland.* (pp. 1-17). Standing International Conference of Inspectorates, 2024, p.7. Available at [https://sici-inspectorates.org/swfiles/files/SICI\\_InspectorateProfile\\_2024\\_Belgium\\_Ireland.pdf?utm\\_source](https://sici-inspectorates.org/swfiles/files/SICI_InspectorateProfile_2024_Belgium_Ireland.pdf?utm_source)

Department of Education and Youth. *Department of Education Inspectorate Report 2024: Appendix 2 - Inspectorate staff as at 5 September 2024.* (2025). Government of Ireland. Available at [https://assets.gov.ie/static/documents/09fe3ad4/Appendix\\_2\\_-\\_Inspectorate\\_Staff\\_as\\_at\\_1\\_September\\_2025.pdf](https://assets.gov.ie/static/documents/09fe3ad4/Appendix_2_-_Inspectorate_Staff_as_at_1_September_2025.pdf)

Horgan, D., Forde, C., Martin, S., Parkes, A., & O'Connell, A. '*Seen and Not Heard: Children and Young People's Experiences of Participation in the Home, School, and Community.*' (2015). Dublin: Department of Children and Youth Affairs.

Gleeson, J. *Gender Equality In Education In The Republic Of Ireland (1984-1992).* Available at [https://archive.oireachtas.ie/1992/APPENDIX\\_01031992\\_1.html?utm\\_source=chatgpt.com](https://archive.oireachtas.ie/1992/APPENDIX_01031992_1.html?utm_source=chatgpt.com)

McCoy, S., & Byrne, D. '*Shadow education uptake among final year students in Irish secondary schools: Wellbeing in a high stakes context.*' (2022). ESRI Working Paper No.724. Dublin: Economic and Social Research Institute.

- National Educational Welfare Board, '*Developing a Code of Behaviour: Guidelines for Schools*'. (2008). Dublin: National Educational Welfare Board.
- Office of the Commissioner for Children, '*Education in Focus*.' (2016). Available at <https://www.oco.ie/app/uploads/2016/11/Education-In-Focus.pdf>
- Rules of the Superior Court (1986)
- Social Inclusion Unit, Department of Education, '*Review of Out-of-School Education Provision, Version 2*.' (2021). Dublin: Department of Education.
- Smyth, E., Banks, J., O'Sullivan, J., MacCoy, S., Redmond, P., & McGuinness, S. '*Evaluation of the National Youthreach Programme (No. 82). Research Series*.' (2019). The Economic and Social Research Institute (ESRI).
- Thornton, M., Williams, J., McCrory, C., Murray, A., & Quail, A. '*Growing Up in Ireland: Design, instrumentation, and procedures for the child cohort at wave two (13 years)*.' (2016). Dublin: Department of Children and Youth Affairs.
- Tusla Education Support Services. '*The Home School Community Liaison Scheme*.' (2019). Available at. <https://www.tusla.ie/tess/information-for-parents-and-guardians-tess/home-school-liaison-community-liaison/>
- Tusla Educational Welfare Service, '*Annual Publications Analysis of School Attendance Data in Primary and Post-Primary Schools*.' (2024). Available at <https://www.tusla.ie/services/educational-welfare-services/publications/research-and-statistics/>

## THESES

- Buchner, J. J. '*The constitutional right to legal representation during disciplinary hearings and proceedings before the CCMA*.' (2003). (Doctoral dissertation, University of Port Elizabeth).
- Flynn, P. '*Authentic listening to student voice and the transformative potential to empower students with social, emotional, and behavioural difficulties in mainstream schools*.' (2013). (Doctoral dissertation, Trinity College Dublin). Available at <https://www.tara.tcd.ie/handle/2262/67953?show=full>
- Gilbride, M. '*The Unequal Operation of Power in Irish Education: An Exploration and Evaluation of the Development and Operation of the Section 29 Appeal System and the Extent to which it has Addressed Power and Inequality Issues in Irish Education*.' (2013). Doctoral thesis. Available at <http://eprints.maynoothuniversity.ie/4993>.

## MEDIA ITEMS

- Finnegan, P. 'Concerns raised over answering of parliamentary questions' (2025). See <https://www.rte.ie/news/politics/2025/0523/1514460-taoiseach-parliamentary-questions/>
- Hyland, A. 'We have an unacceptably high level of school suspensions and expulsions.' (2017). Available at <https://www.thejournal.ie/readme/opinion-we-have-an-unacceptable-high-level-of-school-suspensions-and-expulsions-3714434-Nov2017/>
- Collins, M., Morgan, D. G., Cahillane, L., & Sheehy Skeffington, T. 'Quasi-Judicial Decision-Making Post-Zalewski.' (2021). [Webinar]. The Law Reform Commission. Available at [https://www.youtube.com/watch?v=IXUSik5S4t0&ab\\_channel=LawReformCommission](https://www.youtube.com/watch?v=IXUSik5S4t0&ab_channel=LawReformCommission)

## UNITED NATIONS PUBLICATIONS

- CRC/C/GC/1 General Comment No. 1, 'The Aims of Education'. (Geneva: United Nations) (2001).
- CRC/C/GC/5 General Comment No. 5, 'General measures of implementation of the Convention on the Rights of the Child'. (Geneva: United Nations) (2003).
- CRC/C/GC/12 General Comment No.12, 'The Right of the Child to be Heard'. (Geneva: United Nations) (2009).
- CRC/C/GC/13 General Comment No. 13, 'on the right to protection from all forms of violence'. (Geneva: United Nations) (2011).
- CRC/C/GC/14 General Comment No. 14, 'on the right of the child to have his or her best interests taken as a primary consideration (Article 3, at para. 1)'. (Geneva: United Nations) (2013).

## UK GOVERNMENT PUBLICATIONS AND REPORTS

- Atkinson, M. 'Always Someone Else's Problem.' (2013). Office of the Children's Commissioner's Report on Illegal Exclusions. (London: Office of the Children's Commissioner.
- Department for Education, 'Permanent and fixed period exclusions from schools in England: 2010/11 year.' Available at <https://www.gov.uk/government/statistics/permanent-and-fixed-period-exclusions-from-schools-in-england-2011-to-2012-academic-year>

- Ferguson, L., & Webber, N. '*School Exclusion and the Law: A Literature Review and Scoping Survey of Practice.*' (2015). Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2523194](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2523194)
- Franks, O. '*The Franks Report on Administrative Tribunals and Enquiries. Committee on Administrative Tribunals and Enquiries.*' (1957) London: Her Majesty's Stationery Office.
- Gaffney, H., Farrington, D. P., & White, H. '*Interventions to prevent school exclusion: Toolkit technical report.*' (2021). Available at <https://youthendowmentfund.org.uk/wp-content/uploads/2021/06/School-exclusions-technical-report-june.pdf>
- Graham, B., White, C., Edwards, A., Potter, S., & Street, C. '*School exclusion: a literature review on the continued disproportionate exclusion of certain children.*' (2019). Available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/800028/Timpson\\_review\\_of\\_school\\_exclusion\\_literature\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800028/Timpson_review_of_school_exclusion_literature_review.pdf).
- Graham, B., White, C., Edwards, A., Potter, S., Street, C., & Hinds, D. '*Timpson review of school exclusion: consultation outcome.*' (2019), p. 8. Department for Education. <https://dera.ioe.ac.uk/id/eprint/33359>
- Great Britain. Cabinet Office, '*New opportunities: Fair chances for the future*' (Vol. 7533). (2009). (London: The Stationery Office.
- Kulz, C. '*Mapping the Exclusion Process: Inequality, Justice, and the Business of Education.*' (2015). In Communities Empowerment Network. Available at <http://conflictatters.eu/conference-2017/wp-content/uploads/2017/10/Mapping-the-Exclusion-Process.pdf>.
- Ofsted, '*The annual report of Her Majesty's chief inspector of education, children's services, and skills 2017/18.*' (2019). Available at <https://www.gov.uk/government/publications/ofsted-annual-report-201718-education-childrens-services-and-skills/the-annual-report-of-her-majestys-chief-inspector-of-education-childrens-services-and-skills-201718>
- Osler, A., Street, C., Lall, M., & Vincent, K. '*Not a problem? Girls and exclusion from school.*' (2002). Leicester: University of Leicester. New Policy Institute and Centre for Citizenship Studies in Education.
- Strand, S., & Fletcher, J. '*A Quantitative Longitudinal Analysis of Exclusions from English Secondary Schools.*' (2014). In UO Department of Education Report. University of Oxford.
- Timpson, E. '*Timpson review of school exclusion.*' (2019). [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/807862/Timpson\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf)

Wolstenholme, C., Coldwell, M., & Stiell, B. '*First-tier Tribunal Exclusion Appeals Systems.*' (2014). Sheffield Hallam University Centre for Education and Inclusion Research. Department for Education. Available at. <http://shura.shu.ac.uk/10087/1/DFE-RR313.pdf>

## OTHER

A.S.T.I. '*An Information Leaflet - Responding to Serious Indiscipline in Schools.*' (2004). Available at <https://www.asti.ie/document-library/leaflet-indiscipline-policy-november-2004/>

ETBI, '*Board of Management Functions & Responsibilities. A Brief Guide for ETB School / College Board of Management Members.*' (2020). Available at [https://www.etbi.ie/wp-content/uploads/2020/11/ETBI\\_BOM\\_Booklet.pdf?x79718](https://www.etbi.ie/wp-content/uploads/2020/11/ETBI_BOM_Booklet.pdf?x79718)

INTO, '*Discipline in the Primary School.*' (2002). Available at <https://www.into.ie/app/uploads/2019/10/Discipline-in-the-Primary-School.pdf>

Irish Primary Principals' Network, '*Submission to the Department of Education and Skills - Education (Admission to School) Act 2018. - Revisions to Section 29 of the Education Act 1998.*' (2020). Available at [https://www.ippn.ie/images/IPPN\\_Submission\\_on\\_Admissions\\_Act\\_-\\_Section\\_29\\_Final.pdf](https://www.ippn.ie/images/IPPN_Submission_on_Admissions_Act_-_Section_29_Final.pdf)

Teachers' Union of Ireland, '*Response, Regulatory Framework For School Enrolment (Department of Education and Skills).*' (2011). Dublin. Available at <https://www.tui.ie/education/education-submissions.1503.html>

TUI, '*An Approach to Discipline in Schools.*' (2004). Available at [tui.ie](http://tui.ie)

|             |
|-------------|
| Appendix II |
|-------------|

Introduction

- ☐ Reiterate the necessity to abide by data protection responsibilities.
  - Personal data or sensitive organisational information should not be disclosed.
- ☐ Re-explain the purpose of the study. Encourage questions.
- ☐ Introduce the research questions to participants and outline the schedule for completing the research.
- ☐ Re-explain the ethical considerations and the protections in place for the participants involved in the study. - (ETB CE Gatekeeper consent – if appropriate).
- ☐ Reiterate the measures taken to protect confidentiality and data storage.
- ☐ Ensure that participants are aware that they can withdraw from the study at any time or retract their interview testimony within a two-week period.
- ☐ The interview will take up to 40-60 minutes.
- ☐ The interview will be audio-recorded.
- ☐ The data collected by the interview will be used in the thesis and may be published in research publications, research reports, and conference presentations.

Thank you for all that valuable information.

Is there anything else you'd like to add before we end?

## Participant Information Sheet

## Education and the Law:

Describing, analysing, and understanding school expulsion and the law in Ireland.

Thank you for considering participating in this research project. This document explains the research and its implications, enabling you to make an informed choice. My name is Enda Cawley. I am a Teaching Council registered second-level teacher currently studying for a Doctor of Philosophy (Law) at University College Cork. I am undertaking a research thesis in the area of Education and the Law, which will focus on the legal framework for school expulsion in Ireland. The working title of my thesis is 'Education and the Law: Describing, analysing and understanding school expulsion and the law in Ireland.' My supervisors at UCC are Professor Conor O'Mahony (School of Law) and Dr. Catherine Forde (School of Applied Social Studies).

This research aims to examine the views of those who have responsibilities or involvement in the school expulsion process in order to develop a comprehensive understanding of school expulsion in Ireland. In particular, the interview will explore your views and past experiences of issues surrounding your experience of expulsion and Section 29 appeals, if appropriate. Should you choose to participate, you will be invited to participate in a once-off interview. The interview will be audio-recorded and is expected to take approximately 45 minutes. Participation in this research offers the opportunity to reflect on current practice, engage in self-reflection, exercise professional autonomy, and contribute to the development of our knowledge on the topic of school expulsion. Involvement in this study is entirely voluntary. If, at any time during the interview, you feel that you do not want to answer a question or discuss a certain topic, you can simply let me know and say that you do not wish to answer that question or discuss that topic or that you wish to end the interview. Once the interview has been concluded, you can choose to withdraw your contribution at any time in the subsequent two weeks. This study has obtained ethical approval from the UCC Social Research Ethics Committee and the Tusla Research Ethics Committee. All of the information you provide will be confidential, and your anonymity will be protected throughout the study. The provisions of Children First inform the only exception to this: National Guidance for the Protection and Welfare of Children. Where information that indicates there is a serious risk concerning a child protection concern is disclosed, the matter will immediately be referred to the Child and Family Agency.

Once the interview is completed, the recording will immediately be transferred to an encrypted laptop and erased from the recording device. The data will then be transcribed by the researcher or a professional transcription service, which will sign a non-disclosure agreement. Audio files will be sent to the transcriber through an encrypted file transfer service. Once the transcription is complete, the audio recording will be deleted, and only the anonymised transcript will remain. In line with the University's Code of Research Conduct, the data will be held securely for a minimum period of ten years after the completion of the research project.

I will fulfil all legal requirements under the Data Protection Acts 1988 - 2018 and the General Data Protection Regulation and ensure that no evidence of your identity appears in the thesis. Any extracts from your interview that are quoted in the thesis will be entirely anonymous. If you are unhappy with any aspect of this research, you can raise the matter with me or my supervisors or resort to the Tusla Complaints Policy and Procedures.

The study's results will be seen by my two supervisors, a second marker, and the external examiner. Future students may also read the thesis. The information you provide may contribute to research publications, reports, and conference presentations.

It is not anticipated that there will be any adverse outcomes from participating in this study. However, the topic under discussion is a sensitive one and talking about your experience may cause you some distress, as some of the questions are personal in nature. Should you experience distress from participating in the research, the following support services may be of assistance:

Tusla Health, Wellbeing and EAP - <https://www.tusla.ie/health-wellbeing-and-eap/>

Samaritans - Freephone 116 123 (24 hours a day) or Text 087 2 60 90 90

Email [jo@samaritans.ie](mailto:jo@samaritans.ie) Visit [www.samaritans.ie](http://www.samaritans.ie) for details of the nearest branch

Pieta House - Helpline 1800247247 or text HELP to 51444 - [www.pieta.ie](http://www.pieta.ie)

If you have any queries about this research, you can contact Enda Cawley at [117224002@umail.ucc.ie](mailto:117224002@umail.ucc.ie) / 086 1091757.

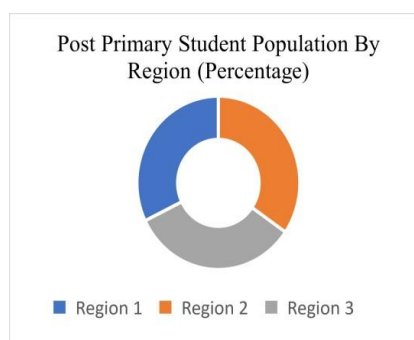
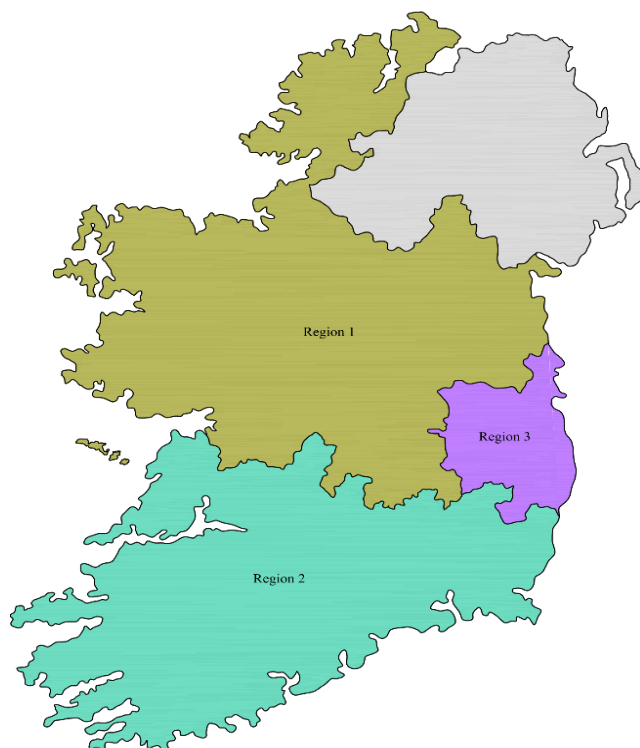
If you agree to take part, please read and sign the attached consent form.

Thank you for considering this request.

## RESEARCH GEOGRAPHICAL REGIONS

## Post-Primary School Student Population per Region

| Region 1  | Region 2  | Region 3 |
|-----------|-----------|----------|
| 116937    | 125422    | 120540   |
| Galway    | Carlow    | Dublin   |
| Roscommon | Kilkenny  | Kildare  |
| Mayo      | Cork      | Wicklow  |
| Sligo     | Limerick  |          |
| Leitrim   | Clare     |          |
| Longford  | Kerry     |          |
| Westmeath | Tipperary |          |
| Cavan     | Wexford   |          |
| Monaghan  | Waterford |          |
| Donegal   |           |          |
| Louth     |           |          |
| Meath     |           |          |
| Laois     |           |          |
| Offaly    |           |          |



Participant Consent Form

Education and the Law:

Describing, analysing, and understanding school expulsion and the law in Ireland.

- ☐ The researcher has explained to me what this research is about and why I was asked to be interviewed.
- ☐ I know what this research is about.
- ☐ I have had the chance to ask questions about the research.
- ☐ I know that I don't have to be interviewed if I don't want to.
- ☐ I know that if I sign this form, I agree to be asked questions and to have my answers audio recorded.
- ☐ If I change my mind during the interview and don't want to be involved, I know that I can stop, and anything that was recorded or written down will be destroyed. I can review on request and amend the transcript of my interview.
- ☐ I know that my real name will not be used at all during the research process.
- ☐ I agree to allow quotations from my interview to be published in research publications, research reports, and conference presentations.
- ☐ I know that my answers are confidential unless there is reason to believe that either I or someone else may be in danger.
- ☐ If I decide that I don't want my answers to be used, I can withdraw my contribution within two weeks after the interview.
- ☐ I know that I can contact the researcher, Enda Cawley, at any time if I have any queries or concerns about the research or what I have said.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Name in block letters \_\_\_\_\_

## Gatekeeper Information Letter

### Education and the Law:

Describing, analysing, and understanding school expulsion and the law in Ireland.

Dear,

My name is Enda Cawley. I am a Teaching Council registered second-level teacher currently studying for a Doctor of Philosophy (Law) at University College Cork. To this end, I am undertaking a nationwide study in Education and Law that will focus on the legal framework for school expulsion in Ireland. I write to you to seek your consent to conduct part of the research fieldwork in your administrative area.

The working title of my thesis is: “Education and the Law: Describing, analysing and understanding school expulsion and the law in Ireland”. The purpose of this research is to develop a comprehensive understanding of school expulsion in Ireland. The study, which focuses on permanent expulsion at post-primary school level, will include interviews with Directors of Schools, Section 29 committee members, Chairpersons of school BOM, Education Welfare Officers, adults previously expelled from school, and others directly involved in the expulsion and the Section 29 appeal process.

Involvement in this study is entirely voluntary. Participants will be invited to a one-off interview. The interviews will be audio-recorded and are expected to take approximately 40-60 minutes each.

If, at any time during the interview, participants feel that they do not want to answer a question or discuss a certain topic, they can let me know and say that they do not wish to answer that question or discuss that topic or that they wish to end the interview. Once the interview has been concluded, participants can choose to withdraw their contribution at any time during the following two weeks.

Strict measures will be implemented to maintain anonymity, and confidential data will not be made available to a third party. The only exception is when information that indicates a serious risk to somebody is disclosed, such as a child protection concern.

Once the interview is completed, the recording will immediately be transferred to an encrypted laptop and erased from the recording device. The data will then be transcribed by the

researcher or a professional transcription service, which will sign a non-disclosure agreement. Audio files will be sent to the transcriber through an encrypted file transfer service. Once the transcript is complete, the audio recording will also be deleted, and only the anonymised transcript will remain. In line with the University's Code of Research Conduct, the data will be held securely for a minimum period of ten years after the completion of the research project.

I will ensure that no evidence of the identity of individuals or organisations will appear in the thesis. Any extracts from interviews that are quoted will be included with the permission of the individual participant, and quotes used in the thesis will be anonymous.

The study's results will be seen by my two supervisors, a second marker, and the external examiner. Future students may also read the thesis. With the participants' permission, the information provided by interviewees may contribute to research publications, research reports, and conference presentations.

It is not anticipated that participating in this study will result in adverse outcomes. However, the topic under discussion is sensitive, and participants who discuss their experiences may encounter some distress as some of the questions are personal in nature. Should participants experience distress arising from participating in the research, contact details of support services will be provided.

This study has obtained ethical approval from the UCC Social Research Ethics Committee. If you have any queries about this research, you can contact Enda Cawley at [encawley@tcd.ie](mailto:encawley@tcd.ie) / 086 1091757.

If you agree to facilitate the study, please sign the attached consent form and the accompanying consent letter. Thank you for considering this request.

---

Enda Cawley

## Gatekeeper Consent Form

Education and the Law:

Describing, analysing, and understanding school expulsion and the law in Ireland.

- I have read and understood the Information letter, which provides an outline of the purpose and nature of the study.
- I have had an opportunity to think about whether or not to facilitate the conduct of an element of the research fieldwork.
- I understand the fieldwork involves interviewing members of school boards of management, members of Section 29 appeal committees and staff members directly involved in the administration of expulsions and s.29 appeals hearings. I understand that participation in interviews will be voluntary.
- I understand my role is limited to that of facilitator.
- I understand that participants will interact directly with the researcher and not the gatekeeper.
- I understand that I can withdraw my consent without repercussions at any time, either before the research starts or during the fieldwork.
- I understand that the anonymity of the organisation which I represent and the individuals participating in the study will be ensured in the write-up.
- I understand that disguised extracts from the interviews conducted may be quoted in presentations, publications and research reports.

I agree to facilitate the above study. I give my consent voluntarily.

Name of Gatekeeper: \_\_\_\_\_ Date: \_\_\_\_\_ Signature: \_\_\_\_\_

Name of Researcher: \_\_\_\_\_ Date: \_\_\_\_\_ Signature: \_\_\_\_\_

1. What experience/qualifications are required to be a member of a BOM?
2. What training or support did you receive for the role?
  - 2.1. Have you received specific training on issues relating to s. 29 appeals?
  - 2.2. Is there support/advice available to the BOM before, during, and after an expulsion and appeal?
3. Tell me about your experience of the expulsion process: BOM meeting, s. 24 meetings (school and EWO), s. 29 appeal hearing, or other.
  - 3.1. Can you outline what happens when the BOM meets the parents/student prior to deciding on an expulsion?
  - 3.2. What was your primary concern during this meeting(s)?
  - 3.3. Tell me a bit about the s. 29 appeal(s) your school was involved in?
    - 3.3.1. Was there a facilitator appointed? How useful did you find their input?
  - 3.4. How would you describe the atmosphere at the appeal hearing?
  - 3.5. Are the concerns of the school adequately recognised by the appeal committee?
  - 3.6. Are you satisfied with the composition of appeal committees? Why?
4. How would you describe your knowledge \ understanding of the law and guidelines surrounding school expulsion?
  - 4.1. Is written evidence circulated to the BOM in advance of the meeting?  
Quality of documentation/evidence.
  - 4.2. Do you scrutinise reports/policies/documentary evidence thoroughly?
  - 4.3. What are your views on the merits or otherwise of informal expulsions?
  - 4.4. How influential are you as a BOM member in coming to a decision to expel?
  - 4.5. Is it reasonable to expect lay members of the BOM to have a sufficient understanding of the complex legal and constitutional principles necessary to defend the school's decision at s. 29 appeal hearings?
5. How independent and fair is the expulsion process, in your view?
  - 5.1. As a board member, does your loyalty lie with the Board, the principal, the student, the school community, or others?
  - 5.2. To what extent does the Board rely on the professional competency and recommendation of the principal when coming to a decision to expel?

- 5.3. What represents fair procedure for you in terms of how the BOM processes an expulsion?
- 5.4. Are the past experiences/responsibilities of the teacher representatives on the BOM considered in the context of an expulsion?
- 5.5. Does the evidence presented at the BOM meeting influence you to a large degree, or do you rely on common sense ... do you take it all at face value?
- 5.6. Do you perceive any conflict of interest resulting from the dual role of local politician/ business person and member of a BOM?
- 5.7. Has the issue of possible conflicts of interest been discussed by the BOM?
- 5.8. How can you be sure that the BOM is operating in an unbiased manner, or does it need to?
6. In your opinion, does the BOM have flexibility in the way it applies the law?
  - 6.1. How would you describe the underlying principles that guide the work of the Board? What part does each of the following play?
    - a. The concept of natural justice
    - b. The application of common sense
    - c. Adhering to the legal process
    - d. The best interest of the student
7. How much influence does the school principal have in the expulsion process?
  - 7.1. How would you describe your relationship with the principal?
  - 7.2. To what degree does the Board rely on the professional competence of the principal when considering his/her recommendation to expel? Why?
  - 7.3. How much influence does the school principal have over BOM members?
  - 7.4. Would you agree that the input of the Board amounts to a rubber-stamping exercise?
8. In your experience, do parents have influence in the expulsion process?
  - 8.1. In your opinion, does the expulsion process as currently structured adequately safeguard the right of the child who is being expelled?
  - 8.2. Given that a young person has a fundamental right to education, how do you reconcile this right with expulsion from your school?
  - 8.3. Why are some parents unwilling to challenge expulsion?
  - 8.4. In your opinion, how can parents be supported in vindicating their rights and the rights of the student?

9. In your opinion, should the student facing expulsion be centrally involved in the decision-making?
  - 9.1. Should they have a right to attend the BOM meeting to put their case forward?
  - 9.2. Are they capable of engaging with the BOM in a meaningful way?

1. What are your responsibilities in matters relating to s. 29 expulsion appeals?
  - 1.1. Have you had experience as a member of a BOM, a school principal, and/or as a member of an s. 29 appeal committee?
  - 1.2. Have you received training on the legal framework and guidelines regarding expulsion?
2. How are s. 29 appeals managed in your ETB? Is there a dedicated s. 29 officer?
  - 2.1. How are the s.29 committee members recruited?
  - 2.2. Do you have particular inclusion or exclusion criteria to guide this task?
  - 2.3. Are s.29 committee members provided with training? Who provides the training? Please give details of the training they receive.
  - 2.4. Is the s. 29 committee briefed prior to the oral hearing? Who provides the briefing? Please give an outline of the type of briefing provided.
3. Are there efforts made by the ETB to resolve the matter through mediation (formally or informally) before the case goes to a full hearing?
  - 3.1. Are there other ways the school / s. 29 committees are assisted in resolving the matter prior to going to a full hearing?
  - 3.2. Do you advise the principal or BOM on the particulars of individual expulsion/appeal cases?
  - 3.3. Have you been involved in s. 24 meetings (school / EWO)? Please give details.
4. Are the concerns of the school adequately recognised by the appeal committee?
5. How would you approach a scenario where it is alleged the student had committed a criminal offence which led to their expulsion?
  - 5.1. Would you proceed and organise an appeal hearing, or would you refer the matter to the Gardaí? Has this happened before?
6. Do you scrutinise (or glance at) reports/policies / documentary evidence provided to the s. 29 committee in advance of a hearing?
7. Should the law be amended to make it harder / easier to expel or to prohibit expulsion?
8. Do you see s. 29 appeals as operating within the education system or as a process detached from the education system?
  - 8.1. Is the system for determining appeals transparent and consistent in your view?
  - 8.2. Would you consider these systems to be independent?

- 8.3. How can an appeal committee avoid bias, or the appearance of bias, given that it is generally populated by persons either from or associated with the education system?
- 8.4. Do you perceive any conflict of interest resulting from a committee member holding dual roles, for example, holding the role of local politician/school principal or ETB official and s. 29 committee member?
9. What are your views on the merits or otherwise of informal expulsions?
10. In your opinion, how much influence does the school principal have over the expulsion process?
  - 10.1. Over BOM members at the BOM stage?
  - 10.2. Over S, 29 committee members at the appeal?
11. In your opinion, what are the positive/negative aspects of the school expulsion arrangements?
  - 11.1. What do you see as the strengths and shortcomings associated with -?
    - (a) The initial decision-making process. (b) The appeal mechanism?
  - 11.2. Do you have suggestions for improvements to the process [amendments to current provision]?
12. In your opinion, does the expulsion process, as currently structured, adequately safeguard the right to education of the student being expelled?
  - 12.1. How well does the current legislative provision support parents in vindicating their constitutional right to send their child to a school-type of their choice?
13. In your experience, do parents have influence in the expulsion process?
  - 13.1. In your opinion, why are some parents unwilling to challenge their child's expulsion?
14. In your opinion, should a student facing expulsion be centrally involved in the decision making process?
  - 14.1. Do you think a student facing expulsion should have a right to participate in the s. 29 hearing in order to put their case forward? What forms might their participation take/how could their participation be facilitated?

14.2. Are students capable of engaging with the committee in a meaningful way?

15. Does the ETB maintain a database or a record of school expulsions?

[Overall, within the ETB or per school or both]

15.1. The number of expulsions

15.2. The number of appeals

15.3. The outcome of appeals

1. Have you had experience in the field of education, excluding your role as an EWO?
2. Have you received training/information on issues surrounding s. 29 appeals?  
Who provided it? Is it adequate?
  - 2.1. Can you access advice in relation to a particular expulsion if needed? From whom?
3. Is there adequate support/advice available to parents who wish to challenge expulsion?
4. What is the main role of the EWS in relation to a student facing expulsion?
  - 4.1. How do you go about securing your objective(s)?
  - 4.2. Does the EWS have a policy to encourage or discourage parents to take s. 29 appeals?
  - 4.3. What is your experience of s. 24 meetings?
 

|                                             |                                                               |
|---------------------------------------------|---------------------------------------------------------------|
| 4.3.1. Where are they held?                 | 4.3.4. What is the primary reason for holding such a meeting? |
| 4.3.2. Who attends on behalf of the school? | 4.3.5. How successful is the s. 24 initiative?                |
| 4.3.3. Do parents/students attend?          |                                                               |
  - 4.4. What is your experience with the involvement of the facilitator?
  - 4.5. What are your views on the merits or otherwise of informal expulsions?
  - 4.6. How successful is EWS in ensuring that an expelled student stays in mainstream education?
  - 4.7. Are you satisfied that the appeal committee adequately recognises the concerns of the EWS, parents, and students?
  - 4.8. Are you satisfied with the composition of appeal committees? What, if any, changes would you recommend to the committee's membership?
5. Are you in favour of having legal advice at s. 29 committee expulsion hearings? Why?
  - 5.1. In your opinion, has the outcome of recent judicial review proceedings influenced how schools/appeal committees approach expulsion? If yes, in what way(s)?
  - 5.2. In your opinion, is it reasonable to expect EWO to have a sufficient understanding of the complex legal and constitutional principles necessary to take a s. 29 appeal?
6. Tell me about your experience with regard to the workings of a s. 29 hearing.

- 6.1. In your experience are s. 29 appeal hearings conducted formally or informally? How would you describe the atmosphere at a hearing, usually?
- 6.2. How common is it for the EWS to take an s. 29 appeal?
- 6.3. What are the factors that the Service takes into consideration when deciding to take such an appeal?
- 6.4. How common is it for the EWS to make submissions to an s. 29 appeal committee?
- 6.5. What has been your experience in terms of the impact of such a submission on the outcome of the proceedings?
7. Can you describe the procedure for progressing an expulsion case in fair and independent terms?
  - 7.1. In your experience working on expulsion cases, do you encounter instances of
    - 7.1.1. Bias within the process
    - 7.1.2. Loyalty to the school as an institution
    - 7.1.3. Conflict of interest inherent in decision-making
    - 7.1.4. Lack of transparency and consistency of decision making
8. In your opinion, does the current legislative provision adequately support parents in vindicating their Constitutional right to send their child to a school-type of their choice?
9. If it came to your attention that a student had been expelled without the case being referred to the EWS, what would your attitude to this be? Why?
10. How would you describe the underlying principle that guides the work of the EWS? In this context, how important is -
  - 10.1. The best interest of the child
  - 10.2. The application of common sense
  - 10.3. Adhering to the legal process
11. In your experience, how influential is the school principal with regard to the ultimate decision of a school to expel? Who really has the power to expel - BOM or the principal?
  - 11.1. Do you feel obliged or pressured to support the position of the school/principal?
12. What are the positive/negative aspects of school expulsion arrangements?

- 12.1. What are the strengths and shortcomings associated with the s. 29 appeals mechanism?
- 12.2. Do you have suggestions for improvements to the expulsion process [amendments to the current provision]?
13. Given that a young person has a fundamental right to education, how do you reconcile this right with expulsion from school?
14. In your experience, should the student facing expulsion be centrally involved in the decision-making process.
  - Should they have a right to attend a s. 29 appeal hearing to put their case forward?
  - Is the student capable of engaging with the s. 29 committee in a meaningful way?
15. In your experience, why are some parents unwilling to challenge expulsion?

1. Do you have professional experience in the field of education or outside of education that you bring to the work of the committee when considering an expulsion?
  - 1.1. What experience/qualifications are required to be a member of an s. 29 committee?
2. Have you received information/training on issues surrounding s. 29 appeals? Who provided it? Is it adequate?
3. Have you experienced working with an independent facilitator? How useful was that?
  - 3.1. How was the independent facilitator recruited?
  - 3.2. In your opinion, what qualifications/experience must the facilitator have?
4. Have you had experience with EWO involvement? How useful was that?
  - 4.1. Did they act as an advocate for the school or parent/student, or as an appellant?
5. Tell me about the workings of a s. 29 appeal hearing.
  - 5.1. Are they conducted formally or informally?
  - 5.2. Do you consider the work of the committee to be part of the disciplinary process in action or as part of a legal process?
  - 5.3. Are you satisfied that the committee recognises the concerns of all parties?
  - 5.4. Are you satisfied with the operation of and the composition of appeal committees?
  - 5.5. If no, what changes would you recommend to the operation/membership?
  - 5.6. How well informed are you on the current legal framework regarding expulsion?
  - 5.7. Has the committee much autonomy in terms of how it processes an appeal?
    - i. To deliver the right outcome.
    - ii. To provide for the best interest of the student.
  - 5.8. Do you receive pre-hearing legal advice or other briefings relating to the cases?
  - 5.9. In your opinion, is the decision-making of s.29 committees transparent and consistent?

6. Is it reasonable to expect lay members of a committee to have an understanding of the complex legal and constitutional principles necessary to conduct a s. 29 appeal hearing?
  - 6.1. Would you be in favour of having legal advice at s. 29 committee expulsion hearings?
  - 6.2. Has the outcome of recent judicial review proceedings influenced your work as a member of an appeal committee? If yes, in what way(s)?
  - 6.3. What are your views on the merits or otherwise of informal expulsions?
  - 6.4. Do you scrutinise, or glance at reports/policies / documentary evidence thoroughly when considering an appeal?
  - 6.5. How would you approach a scenario where it is alleged that the expelled student has committed a criminal offence within the school context?
7. In your opinion, how influential is the school principal with regard to the ultimate decision of a school to expel? Who really has the power to expel - BOM or the principal?
8. Would you allow the school or parents to present witnesses at a committee hearing?
  - 8.1. Would you permit witnesses to be cross-examined?
  - 8.2. Would you accept evidence at appeal which has not been before the BOM?
  - 8.3. Does the evidence presented at the appeal hearing influence you a lot, or do you rely on common sense ... do you take it all at face value?
  - 8.4. What should happen if new important evidence comes to light after the committee has come to a decision?
  - 8.5. Are parents able to ask the right questions/access the right information at hearings?
9. What represents fair procedure in terms of how the committee processes an appeal?
  - 9.1. As a committee member, where does your loyalty lie?
  - 9.2. Is the issue of possible sources of bias discussed by the s. 29 committee?
  - 9.3. How can appeal committees avoid bias or the appearance of bias?
  - 9.4. Do you perceive any conflict of interest resulting from the dual roles of [school principal/ ETB official] and s.29 committee member?
  - 9.5. Does an s. 29 committee need to operate in an unbiased manner?

10. If it came to your attention that a student had been expelled without the case being referred to the BOM or EWS, what would your attitude to this be?
11. How would you describe the underlying principles that guide the work of the committee? *In this context, how important is:*
  - i. *The concept of natural justice*
  - ii. *The application of common sense*
  - iii. *Adhering to the legal process*
  - iv. *The best interest of the student*
12. In your opinion, are committee members reluctant to disagree with the position of the school? Is the work of the committee a rubber-stamping exercise?
13. What are the -
  - 13.1. *Strengths of the current arrangements?*
  - 13.2. *Shortcomings of the current arrangements?*
  - 13.3. *Possible improvements to the current arrangements?*
14. Should the student facing expulsion be centrally involved in the decision-making process?
  - *Have a right to attend the s. 29 committee hearing to put their case forward.*
  - *Are they capable of engaging with the committee in a meaningful way?*
15. Given that a young person has a fundamental right to education, how do you reconcile this right with expulsion from a particular school?
16. Does the current legislative provision adequately support parents in vindicating their Constitutional right to send their child to a school type of their choice?
17. In your opinion, why are some parents unwilling to challenge their child's expulsion?

1. Were you invited to meet the BOM before the expulsion to put forward your side?
  - 1.1. Did you attend the meeting? Why, what was your primary motivation for attending?
  - 1.2. Did you do any preparation for the meeting? Did you receive any support/advice on how to prepare? From whom? How much? Was it helpful?
  - 1.3. Did you get legal advice? Was it helpful?
  - 1.4. Did you bring a third party to support you? Did your child attend with you? Why?
  - 1.5. Looking back now, how do you feel about the BOM meeting? (or your decision not to attend).
2. Do you think the meeting was conducted fairly? In what way?
  - 2.1. Was there anything that prevented you from being able to put your side forward?
    - 2.1.1. Did you feel the members of the Board had suitable expertise to decide on expulsion? In your opinion, were they qualified, impartial, polite, and respectful?
    - 2.1.2. Do you have any other comments you would like to make on the board membership?
  - 2.2. Was the school principal present at the BOM meeting?
  - 2.3. In your opinion, how much influence did the principal have in the meeting?
3. When deciding to challenge the school's decision, did you consider lodging a complaint with the Ombudsman for Children or the Equality Tribunal - why?
4. Was there involvement from EWS? Do you know why/ why not?
  - 4.1. In what way (if any) did the EWO support you?
    - 4.1.1. Advise/assist you with the process?
    - 4.1.2. Attend the appeal hearing?
    - 4.1.3. Help find a new school for your son/daughter?
  - 4.2. How useful was the involvement of the EWO?
  - 4.3. Was there an independent facilitator appointed?
    - 4.3.1. How useful was the involvement of the facilitator?
5. What was your primary reason(s) for taking a s. 29 appeal? (ETB, ETB to DES, or DES).

- 5.1. Who was involved in making the decision to appeal? Was your son/daughter (other) involved?
- 5.2. Did you look for or receive support or information/guidance? (School, DES, EWS, legal advisor, parent association, internet, friends/family, other)
  - 5.2.1. In what ways did this information/guidance influence your decision? -  
or
  - 5.2.2. Looking back now, do you feel this would have been helpful?
- 5.3. How did you apply for the appeal? Can you explain the process?
- 5.4. How did you find the process of applying for the appeal? Was it easy or hard?
- 5.5. Did you receive support/advice on how to apply for the appeal? If so, from who? How helpful was the support?
6. What was your experience of the appeal hearing? What happened?
  - 6.1. Do you think it was conducted independently, fairly? In what way?
  - 6.2. Were there enough opportunities for you to speak and/or put forward evidence?
  - 6.3. Did you feel you were able to put forward your case as well as possible?
  - 6.4. Was there anything that prevented you from being able to make your case?
  - 6.5. Were the committee members suitably qualified, impartial, and respectful?
  - 6.6. Was the school principal present at the appeal hearing?
  - 6.7. How much influence did the principal have at the hearing?
  - 6.8. As you progressed through the challenge, did any conflicts of interest emerge?
  - 6.9. What was the outcome of the appeal?
7. Did your child get into a different school?
  - 7.1. Tell me about that – was the EWO involved – who helped you most?
  - 7.2. How did your son/daughter get on in the new school?
8. Tell me about the personal and financial cost of taking the appeal.
 

|                       |                                                         |
|-----------------------|---------------------------------------------------------|
| 8.1. Personal time    | 8.4. Financial cost (estimate)                          |
| 8.2. Impact on family | 8.5. Were you aware of these costs before you appealed? |
| 8.3. Stress           |                                                         |
9. Prior to taking the challenge to the expulsion of your child, were you aware of the law and the guidelines on school expulsion?

- 9.1. How would you rate your knowledge of the law on expulsion and guidelines now?
- 9.2. Are you aware that:
  - 9.2.1. You have a right, indeed an obligation, to have your child educated.
  - 9.2.2. That your child has a right to education?
  - 9.2.3. What is your understanding of the right to education?
- 10. In your opinion, what are:
  - 10.1. The strengths of the s. 29 appeal mechanism?
  - 10.2. The shortcomings of the s. 29 appeal mechanism?
- 11. Do you have any suggestions to improve the process [amendments to current provision]?
- 12. Should a student facing expulsion be centrally involved in the decision-making?
  - 12.1. In your opinion, is your son/daughter capable of engaging with the BOM / s. 29 hearing in a meaningful way?
- 13. What was the impact of the expulsion on:
  - 13.1. Your child
  - 13.2. Your family
  - 13.3. Yourself
  - 13.4. Your relationship with your child
- 14. How well was your voice heard throughout the expulsion process?
  - 14.1. Do you feel as though your voice was listened to as much as the other participants throughout the process?

1. Did the school inform you that your son/daughter was expelled?
  - 1.1. How did you find out about the expulsion?
    - a. Phone call
    - b. Email
    - c. Letter
    - d. Meeting
    - e. Other
2. Did you look for support/advice on what your options were?
3. Were you informed by the school of your right to challenge the decision to expel?
4. Were you invited to meet the BOM to put forward your side?
  - 4.1. Did you attend the meeting? Why / Why not?
  - 4.2. What was your primary reason for attending / not attending?
  - 4.3. Did you do any preparation for the meeting? Why / Why not?
  - 4.4. Did you receive any support/advice to prepare? By whom? How much? Was it helpful?
  - 4.5. Did you bring a third party to the meeting to support you? Did your son/daughter attend with you?
  - 4.6. Did you get legal advice? Why? Was it helpful? Looking back, how do you feel about that?
5. Did you consider lodging a complaint with the Ombudsman for Children or the Equality Tribunal - why? What was the outcome?
6. To your knowledge, was there involvement from EWS?
  - Did the EWO provide support to you and your child?
  - 6.1. Advise/assist you with the expulsion process?
  - 6.2. How useful was the involvement of the EWO?
7. Did you challenge the school's decision by way of a s. 29 appeal?
  - Why did you not take a s. 29 appeal? what was your main reason(s)?
  - 7.1. Who was involved in making the decision? Was your son/daughter involved?
  - 7.2. Did you look for or receive information and advice on taking an appeal?  
(From whom: School, DES, EWS, legal advisor, parent association, internet, friends/family, other)
  - In what way, if any, did this influence your decision not to appeal?

- 7.3. Looking back now, do you feel information/advice would have been helpful to you in deciding to appeal or not to appeal?
- 7.4. Did you foresee any conflicts of interest if you had decided to challenge the expulsion?
- 8. Did your child get into a different school/centre?
  - 8.1. Tell me about that – who helped you most?
  - 8.2. Did the school try to get a new school/centre?
  - 8.3. Did the EWO help find a new school/centre?
  - 8.4. How did your son/daughter get on in the new school /centre? (if appropriate).
- 9. Were you aware that there is no provision in law to allow a school to expel your child informally?
- 10. Tell me about your understanding of your son/daughter's right to education.
  - 10.1. Are you aware that:
    - a. You have a right, indeed an obligation, to have your child educated?
    - b. Your child has a right to education?
  - 10.2. How would you rate your knowledge of the law on expulsion and related guidelines prior to and after the expulsion?
- 11. In your opinion, should the student facing expulsion be centrally involved in the decision-making process?
  - 11.1. Are they capable of engaging with the school, the BOM, and the s. 29 committee in a meaningful way?
- 12. How well was your voice heard throughout the expulsion process? Do you feel your voice was listened to as much as the other people involved?
  - 12.1. What was the impact of the expulsion on:
  - 12.2. Your child
  - 12.3. Yourself
  - 12.4. Your family
  - 12.5. Your relationship with your child?

1. What age were you at the time of the expulsion?
2. Did your parents get a letter to say you had to leave the school, or how were they told?
3. Were you and your parents invited to meet the BOM to give your side of what happened?
  - 3.1. Did you attend?
  - 3.2. Who made that decision?
  - 3.3. Do you feel it was the right decision?
4. Did you do anything to prepare for the meeting with the BOM? If yes, what did you do? [detail]
  - 4.1. Did you get any support to prepare for the meeting? (From whom? ... School, DES, EWS, legal advisor, parent association, internet, friends/family, other).
  - 4.2. If yes, was it helpful?
  - 4.3. If not, looking back now, do you think it would have helped to get advice?
5. How did you feel the BOM meeting went? Did you get a chance to say what you wanted to say?
  - 5.1. Did the BOM listen to what you had to say? Did you feel you got a fair hearing?
  - 5.2. Was there anything that stopped you from being able to say what you wanted to? E.g. was it scary in any way? How/why?
  - 5.3. Did you feel the BOM members were reasonable in their approach?
  - 5.4. Did you know any of the BOM members present from outside or inside the school?
  - 5.5. Overall, putting aside the outcome of the meeting, do you think it was good to meet with the BOM? What are your reasons for saying that?
6. Were you informed of your right to appeal the decision of the BOM?
7. Did you/your parents appeal? Why/Why not? If yes, where was the appeal heard?
 

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|--------------------------|--------------------------|
| (a) ETB Appeal Committee | (b) DES Appeal Committee |
|--------------------------|--------------------------|
8. Were you involved in deciding to take an s. 29 appeal?
  - 8.1. What did you think about the decision to appeal? Did you want to appeal? Why?
  - 8.2. Did you talk to anyone to get advice about it?

- 8.3. Did you attend the appeal hearing? (Over 18 years old). Why/why not?
- 8.4. Who made the decision about attendance? Do you feel it was the right decision?
9. What was the outcome of the appeal?
10. What was your experience of the appeal hearing? (Over 18 years old).
  - 10.1. Do you think it was conducted fairly? In what way?
  - 10.2. Were there enough chances for you to speak and/or put forward evidence?
  - 10.3. Did you feel you were able to put forward your case as well as possible?
  - 10.4. Was there anything that prevented you from being able to make your case?  
e.g. Was it intimidating in any way? How/why?
11. Did you receive support/advice to apply for the appeal? If so, who from? What support did you receive? How helpful was the support?
12. Did the EWO get involved in your case? Was that helpful?
13. Did you get into a different school?
  - 13.1. Tell me about that – who helped you most?
  - 13.2. Did the school try to help you get into a new school?
  - 13.3. Did the EWO help get you enrolled in a different school?
  - 13.4. How did you get on in the new school?
14. Are you aware that:
  - 14.1. You have a right to be educated?
  - 14.2. That your parents have an obligation to have their child educated?
15. Why do you think you were asked to leave school?
  - 15.1. What was the best part of leaving that school?
  - 15.2. What was the worst part of leaving that school?
16. Do you think it was fair that you were expelled?
17. Did leaving that school effect:
  - a) Your social life/friends
  - b) Your employment prospects
  - c) Your relationship with your family members
  - d) Your educational progress
  - e) Did your life change as a result of being asked to leave the school?
18. Are there any other aspects of leaving that school you feel are important?
19. Do you feel differently about your expulsion now compared to how you felt at the time?