[2017] IEHC 847

THE HIGH COURT

RECORD NO: 2017/156 JR

S.C. (A MINOR, SUING BY HIS MOTHER AND NEXT FRIEND N.C.)

Applicant

AND

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

JUDGMENT of Ms Justice Ní Raifeartaigh delivered on the 30th day of June 2017

1. This case concerns the expulsion from secondary school of a 14-year old boy. It comes before the Court by way of judicial review proceedings in respect of a decision of an Appeal Committee, established by the respondent pursuant to section 29 of the Education Act 1998, upholding the decision of the school in question to expel the child. It is alleged that the decision of the Appeal Committee is invalid by reason of a number of breaches of fair procedures; that the decision itself was disproportionate; and that an incident occurred at the conclusion of the hearing which gives rise to a problem of objective bias on the part of the Committee.

2. In broad terms, it may be said that the immediate precipitating factor for the child's expulsion related to the smoking of a cannabis joint, but that there were previous issues, such as two incidents for which he had been suspended, and a history of 'mitching' from school. At the time of his expulsion, the child was in second year at the school and was 14 years old. He has not attended school since his expulsion in May, 2016, although he has received some home tutoring and attends a study club in the University of Limerick. To date, he has not been able to secure a place at another school in Limerick.

3. The applicant child will be referred to throughout this judgment as S.C. or simply S. His mother will be referred to as Ms. N.C.

The school's Code of Conduct and Expulsion Policy

4. The Code of Behaviour for St. Munchin's Diocesan College includes the following within its examples of unacceptable behaviour: "Smoking in school, out of school while in school uniform or on school trips and school related activities" (emphasis added) and "The use/misuse of drugs as defined in the school's substance abuse policy."

5. In turn, the "Policy on Substance Use" for St. Munchin's College provides:

> "Students using or found in possession of illegal drugs will be removed from class or current school activity and An Garda Síochána and the students' parents/guardians will be informed. Furthermore, students suspected of using or being in possession of illegal drugs are liable to be removed from class or school activity pending an inquiry. The Principal and/or Deputy Principal and the appropriate Year Head should be informed at once and the student's parents/guardians requested to come to the College as soon as possible. The incident of use or possession will be investigated as fully as possible and the findings carefully recorded. Confidentiality should be observed during the period of investigation. In some cases it may be necessary to seek outside assistance, such as legal advice and/or the involvement of An Garda Síochána. A student using or in possession of illegal drugs will be suspended. However, parents need to be aware that the student may be expelled for the offence."

6. The school's Suspension and Expulsion Policy includes under the heading of "Suspension" certain examples of circumstances under which suspension may be imposed, which include: "Smoking anywhere in school uniform and/or on school outings"; "the possession of alcohol or any illegal substance *on school premises* or at school events" (emphasis added); "possession, use of, or supply of drugs or misuse of any substance *in the school grounds,* on school trips or during any school related activity. This also applies to students coming and going to school and at any time in school uniform." (emphasis added)

7. Under the heading 'Expulsion', the same document states:

> "Expulsion is the ultimate sanction imposed by the school on a student and as such, will only be exercised by the Board of Management in relation to cases of extreme indiscipline. In cases where the Principal judges that a student's actions are such that expulsion should be considered, the Principal will refer the matter to the Board of Management. Given the severity of the potential sanction, the school, in accordance with the principles of natural justice, will investigate extreme indiscipline cases thoroughly in advance of any hearing that could result in expulsion.

Expulsion will be considered in cases where the indiscipline of a student is so pervasive that teaching and learning become extremely difficult and where school authorities have tried a series of other interventions, and believe they have exhausted all possibilities of changing the student's behaviour. Such cases include but are not limited to:

> • The student being so disruptive that he is seriously preventing other students from learning.
>
> • The student being uncontrollable or grossly insubordinate to school management or other staff members and not amenable to any form of school discipline or authority.
>
> • The student's behaviour being a danger to himself or to others.
>
> • When guarantees of reasonable behaviour following repeated suspensions are not forthcoming or are not being met.
>
> • The student's conduct acting as a source of serious bad example and having an adverse influence on other students in the school."

8. It goes on to provide for exceptional circumstances where the Board may form the opinion that a student should be expelled for a first offence:

> "The kinds of behaviour that will result in a proposal to expel on the basis of a single breach of the Code of Behaviour

include but are not limited to

- A serious threat of violence against another student or member of staff.
- Any act of violence or physical assault.
- Supplying drugs to others in or out of school.
- Sexual assault.
- Sexual harassment.

In the interest of ensuring a fair and even-handed system for the imposition of expulsion, the Board of Management will take account of the following factors in determining expulsion:

- The nature and seriousness of the behaviour.
- The context of the behaviour.
- The impact of the behaviour.
- The interventions tried to date.
- Whether expulsion is a proportionate response.
- The possible impact of the expulsion."

9. As regards the procedures prior to expulsion, the document provides as follows:

"Part A: A detailed investigation will be carried out under the direction of the Principal

In investigating an allegation, in line with fair procedures, the Principal will:

- Inform the student and her parents/guardians about the details of the alleged misbehaviour and that it could result in expulsion.
- Give parents/guardians and the student every opportunity to respond to the complaint of serious misbehaviour before a decision is made and before a sanction is imposed.

Part B: A recommendation will be given to the Board of Management by the Principal

Where the Principal forms the view, based on the investigation of the alleged misbehaviour, that expulsion may be warranted, the Principal makes a recommendation to the Board of Management to consider expulsion. The Principal will:

- Inform the parents/guardians and the student that the Board of Management is being asked to consider expulsion.
- Ensure that parents/guardians have copies of records of the allegation against the student, copies of records of the investigation and written notice of the grounds on which the Board of Management is being asked to consider the expulsion.
- Provide the Board of Management with copies of the same comprehensive records as are given to parents/guardians.
- Notify the parents/guardians of the date of the hearing of the Board of Management and invite them to that hearing.
- Advise the parents/guardians that they can make both a written and an oral presentation to the hearing."

The red walk area

10. A matter which was emphasised in the applicant's submission was that it was of considerable importance as to whether certain behaviour took place within the school or outside the school; it was suggested that a confusion crept in from an early stage as to the location of the smoking incident admitted by the boy, which, it was argued, affected and tainted the overall decision-making process. In this regard, it was suggested that confusion was or may have been caused by the fact that there are two different locations known by the name of the "red walk." It may be useful to describe these two locations before embarking upon a chronology of events in the case.

11. The Statement of Opposition states that "The red walk area forms part of the school grounds, but is out of bounds to students." This contention is also contained in the Affidavit of David Quilter, the school principal, sworn on the 5th April, 2017, in which he stated that "The red walk area, as I explained to the Appeals Board, is a part of the school which is out of bounds to students, but which is within the school premises" which statement is repeated in the affidavit of Brian O'Donoghue sworn on the 5th April, 2017.

12. Caroline Keane, solicitor for the applicant, states the following in her affidavit of the 10th April, 2017:

"Whilst a portion of the Red Walk directly adjoins the school and playing grounds, the Red Walk is a walkway of approximately 1 kilometre in length, which is accessed from a public road. The Red Walk commences at Athlunkard Bridge

directly adjacent to a derelict house (which was historically the toll house for the bridge and which is now privately owned), and runs adjacent to St Munchin's School and playing grounds, continuing along the outer boundaries of many private properties and dwellings, and adjacent to the Corbally Baths, which were a public bathing area operated by the former Limerick Corporation. It is a commonly used walkway that members of the public, particularly walkers and joggers, freely use, and is marked as a walking trail on the digital map identified by the Applicant and exhibited at "CK5" herein. It appears to also have somewhat of a reputation for drug use, in particular, the area of the Red Walk directly behind the derelict house, which I understand is now owned by the Notice Party and which is the subject of a derelict site notice and I have seen it referred to in the local papers in this context. From my enquiries, I have learned that the Red Walk is maintained by Limerick Civic Trust on behalf of Limerick County Council and I understand that before Limerick Civic Trust assumed responsibility for its maintenance, it was maintained by Limerick City Council."

13. In the second affidavit of David Quilter, sworn on the 27th April, 2017, he stated:

> "The red walk area is a wooded part of the school premises that separates the school from the red walk immediately proximate to the river bank. Although the area is out of bounds, on occasion school children congregate there when misbehaving. The area is secluded and private. The description *the red walk area* is known by staff and students alike as referring to this portion of land. The entire school property is held in trust by the Diocese of Limerick. I should say that I fully accept that the red walk itself, which is public walkway along the bank of the river Shannon, is not on school property."

Chronology

14. The date of the joint-smoking incident was the 12th May, 2016. As noted, S.C. admitted that he had smoked a joint, but at the hearing it was repeatedly submitted that he had done so *outside* the school premises. The circumstances of how matters unfolded are set out in a note dated Monday 16th May, 2016, created by the school principal, Mr. David Quilter. This note included the following:

> "David Quilter received reports from a student and a parent that a second year student was selling illegal substances at the 2nd year locker area on Thursday May 12th. From the description and information received, it appeared that this student was likely Student B. It was noted that over the past 3 to 4 weeks in particular both student B and another second year student S.C. were persistently mitching – this continued despite interventions by Brian O'Donoghue and the imposition of sanctions."

The note went on to refer to the plan of action agreed upon, which included meeting S.C. to discuss their concerns and ascertain his responses. It also included removing student B from class and contacting his parents to ask them to join them. It may be noted that it was not planned to include S.C.'s mother in the questioning of S.C. The note continues that when they met S.C., he said as follows:

> "S.C. confirmed that Student B does smoke cannabis and had some in school last Thursday. He confirmed that he (Student B) approached a number of students to sell it. He kept pre-made joints in a Grand Theft Auto DVD case. Initially S.C. denied that he had bought a joint from Student B but later said that he had purchased one for €10 and *that he smoked it on Thursday afternoon while he was mitching from school (in the red walk area).* S.C. also claimed that Student C (2nd year) had also bought a joint. S.C. confirmed that Person A, who is from Clonlara village supplied the drugs to Student B (see below) and that this supply had sometimes taken place when both Student B and S.C. were mitching from school *on the Red Walk or near the bridge at Shannon* Banks. S.C. also said that he believed that Student D, Student E and Student F had bought a joint from Student B on Thursday morning but he could not be sure of this. He said that he knew that Student B smoked joints and that he could get anyone some if they wanted it." (emphasis added)

I note that various accounts were given by other students who were interviewed, which were also included in the principal's note.

15. By letter dated the 18th May, 2016, Ms. N.C. was invited to a meeting of the Board of Management "following a report from the principal regarding your son S.C.'s behaviour." The letter did not state what the nature of the behaviour was. It said that she was entitled to attend the meeting and make a presentation to the Board, and that S.C. may be present also if she so decided. She was advised that the Board had a range of sanctions available to it, up to and including expulsion from the school. She was not given any documents in advance of the meeting, and therefore did not know the content of the principal's note of her son's admission. Indeed, she did not know the substance of the allegation at all. This appears to have been in breach of the school's own policy, referred to above.

16. On the 30th May, 2016, a meeting of the Board of Management took place. The following is an extract from the Board of Management minutes:

> "The principal outlined that he had become aware that S.C. *had purchased some illegal drugs in the school and consumed it during school time in an out of bounds area* on the above mentioned Thursday. S.C. denies selling any drugs and *stated that he only consumed some on one occasion while mitching from school.* However he did admit to being in the company of other people on the school ground's perimeter while mitching from school when illegal substances were being sold and consumed." (emphasis added)

The extract goes on to record the mother's submission to the Board which was essentially a submission in mitigation and a promise that S.C. would reform. She did not deal with the issue of the location of the incident. The extract goes on to record that after she, her son, and Mr. Quilter had withdrawn from the meeting, and the Board discussed the case at length, the Board decided that he should be expelled from the school on the grounds that:

> "S.C. had *purchased and used illegal drugs within the school environment and during school time* (Policy on Substance Use)
>
> S.C. has shown that he is not amenable to the rules of the school (Code of Behaviour)
>
> His conduct is a source of serious bad example and has an adverse influence on other students.
>
> The health and safety of all the members of the school community and the welfare of our students has to be the main concern of all in the College."

17. By letter dated the 31st May, 2016, Mr. David Quilter, as Secretary to the Board of Management, informed Ms. N.C. that it had been decided to expel S.C.. The letter said:

> "It was agreed that following investigation:
>
> S.C. has been using illegal drugs within the school and during school time (Policy on substance Use)
>
> S.C. has shown that he is not amenable to the rules of the school (Code of Behaviour)
>
> His conduct is a source of serious bad example and has an adverse influence on other students
>
> The health and safety of all the members of the school community and the welfare of our students has to be the main concern of all in the college." (emphasis added)

18. A 'section 24 meeting' was held in the College on the 22nd August, 2016. The principal, the mother (Ms. N.C), the applicant child S.C., and a Miss Emma Fahy, Educational Welfare Officer in the Child and Family Agency, Limerick, were present on this occasion. A note of this meeting prepared by Ms. Fahy records *inter alia* that S.C. provided a letter of apology and that the mother and S.C. offered to provide regular drug tests to prove that he is not using drugs.

19. By letter dated the 21st September, 2016, Mr. Quilter, on behalf of the Board of Management, indicated that at a meeting held on the 20th September, 2016, the Board had confirmed the expulsion. It informed Ms N.C. of her right to appeal to the Department of Education.

20. An appeal dated the 3rd October, 2016, was lodged by the mother, Ms. N.C., with the Department of Education. The grounds of appeal were set out as being that she wished her son to have a chance to come back to the school, that he had made a big mistake and was very sorry for what he had done, that he wished to go back as he had Junior Certificate examinations this year and she did not want him to miss out on his future over one mistake.

21. By letter dated the 12th October, 2016, the Department wrote to the mother and indicated that all documentation submitted would issue to all parties involved in the appeal and that all relevant documentation should be received no later than the 28th October, 2016.

22. In accordance with the procedure, a facilitation process took place prior to the hearing, and the report of the facilitator dated the 20th October, 2016, set out what transpired. She recorded that she had made contact with Emma Fahy and that the latter had told her that S.C. was expelled "*for buying and using drugs near the school grounds*" and for having been "*missing from class during school time*." She described him as "*a nice child who is easily led*," and said that he was "*not usually in trouble*," that he was "*not the instigator in this case,*" that he was "*honest and admitted straight away that he was smoking drugs"* and that he was "*genuinely remorseful*." She also recorded the information provided by the school principal and I note that this included the comment that "*The principal and deputy principal spoke with S.C. first as they knew that he would tell the truth*." She said that the principal told her that S.C. "*admitted that on that day he purchased a joint from student B for €10 and smoked it while he was in an out of bounds area (bridge/red walk area) while 'mitching' from school*." As regards her meeting with S.C. and his mother, one of the bullet points states: "*He was honest. When questioned he admitted straight away that he bought drugs and smoked them in an out of bounds area. Smoked the drug once."*

23. The deadline for submission of documentation to the Appeals Committee, as seen above, was the 28th October, 2016. As of this date, the mother Ms. N.C. had not received any documentation from the school or the facilitator's report. These documents were ultimately furnished to her on the 2nd November, 2016.

24. The hearing of the appeals committee challenged in the present judicial review proceedings took place on the 9th November, 2016. The mother in her affidavit said that she attended the hearing with her daughter. She said that she had inquired in advance with the Educational Welfare Officer if S.C. could attend but was informed that this was not permitted. She had prepared a written statement in advance of the hearing. She wished to hand it in but was informed by the chairperson that he could not take it and that any documentation should have been submitted in advance of the hearing. She explained it was her statement and asked if she could read it out, and was told this was permitted, and she proceeded to do so. This account is confirmed by Sean Slowey, the chairperson of the committee. Ms. N.C. goes on to say that she was told that her written statement was "not relevant" and that the board had everything it needed. This is disputed by the chairperson.

25. The Court has seen a copy of the mother's speaking note, which provides a record of what she said at the hearing on the 9th November, 2016. It runs to about four pages and contains quite a number of matters. Obviously, it was prepared by someone who was not a lawyer or expert at preparing such documents. Ms. N.C. said that she had been assisted in preparing the document by the son's home tutor. Many of the matters raised are questions rather than submissions, and there are various repetitions, as well as assertions of fact. A summary of the issues raised in it is as follows. She complained of discriminatory treatment as between students C and D and her son insofar as they were treated more leniently and were not expelled. She referred to the Code of Behaviour insofar as it referred to drugs and said:

> "1. *S.C. did not buy drugs in school. He bought them on a public footbath by a river.*
>
> 2. *S.C. was not in uniform* as he had changed. So he neither used, possessed nor supplied drugs as set out in the policy and therefore didn't break the school rules.
>
> 3. Student C as per investigation report admitted buying drugs on school property and then supplying them to someone else, drug dealing in essence, so in reality he was even more guilty than S.C. in this instance." (emphasis added)

She questioned whether the school had conformed to its own policy in terms of informing students about drug use, at least in S.C.'s case. She questioned whether the school had provided him with any support or advice after the incident so that he would be given a chance to change. She suggested that her son had repeatedly been called "Jason" by a particular teacher, in circumstances where Jason was his brother who had been in the school and had a bad disciplinary record. She raised a concern that S.C. may have been treated differently because of the family name. She alleged that S.C. had been stabbed with a compass but that this had never been investigated or followed up by the school. She said that there was a stone throwing incident where S.C. was bullied and this was never followed up. She questioned the legality of his suspension for two weeks prior to the 30th May, 2016, in the absence of a Board of Management decision to this effect. She pointed out that she had not received written notice of the grounds on which the Board

was being asked to consider the expulsion, in breach of school policy. She raised the question of whether the school had exhausted all possibilities of changing a student's behaviour before expelling him, as they were required to do by their policy. She complained that she was not advised in accordance with the policy that she was entitled to make a written as well as an oral presentation and said that "*as I am not a confident speaker I was at a disadvantage as a result of not being informed properly*." She also said she would have taken the opportunity of having someone speak on her behalf. She referred to the expulsion letter of the 31st May, 2016, and said that it was incorrect because S.C. had not been using drugs within the school but rather had bought them while not in uniform and not on school property. She referred to positive reports from a teacher that S.C. had received while in second year. She queried whether the school had responded appropriately to his mitching. A third time, she raised the issue of the location, saying that:-

> *"S.C. admitted he bought a joint. He bought this off the school site on public property and was not wearing a uniform at the time. School records will show S.C. was late that morning and could not have bought the joint in the morning at school as he was not present. The school can support this if they have the record of attendance from that morning."*

As regards his history of suspensions, she said the following. She stated that the first suspension, which was for threatening another student with a penknife, was a reaction to the boy bullying him and that the school had failed to assist with the bullying, and that S.C.'s subsequent reaction was to align himself with a tougher boy, Student B. As regards the second suspension, which was in relation to the stealing of a penknife while on a school tour, she said that the school appeared to be taking the word of another student over that of S.C. as to who had stolen the knife.

26. After Ms. N.C. had concluded her reading of the document, it would appear that Mr. Quilter then presented his report as well as documentation relating to S.C.'s track history, including the two previous suspensions.

27. The hearing then concluded. Here, a specific allegation is made by Ms. N.C. that the principal, Mr. Quilter, remained in the hearing room for at least another ten minutes with the Committee members when everyone else had left the room. This allegation was strenuously denied by the chairperson as well as the principal and deputy principal. I will deal with the evidence in relation to this more fully below.

28. By letter dated the 23rd November, 2016, Ms. N.C. was informed that the appeal had not been upheld. The decision in the following terms, and the precise language used is, in my view, of considerable importance:

> "Having conducted a full hearing and re-examined the issues involved, the appeal committee decided that the Board of Management of St. Munchin's College, Corbally, Limerick acted in accordance with its stated Code of Behaviour in expelling S.C.
>
> The Board of Management accepted that, following investigation, it was established that S.C. had been using drugs within the school environment during school time. This was the main reason why he was expelled. [Policy on substance use-no.3].
>
> Another reason for his expulsion was the fact that S.C. had been suspended on two occasions in his First Year. He also had a poor record of attendance in first and second year. The Board of Management decided that guarantees of reasonable behaviour following repeated suspensions were not being carried out [page 5-supsension and expulsion policy].
>
> The Board of Management also believed that S.C. should be expelled because his conduct was acting as a source of serious bad example and having an adverse influence on other students in the school [page 5-Suspension and Expulsion policy].
>
> In arriving at its decision, the appeals committee took into account a range of issues, including the following:
>
> Written and Oral submissions of both parties
>
> Facilitator's report."

29. Since his suspension in May, 2016, S.C. has not attended any school. During the academic year 2016/17, he received 9 hours of home tutoring per week. He also attended a "study club" in the University of Limerick. In this regard, an Affidavit was sworn by a Mr. Sean Costello, who works as an educational support worker in the University of Limerick and has been in a position to observe S.C. since he started with the club. He said that "*in that time, we have been very impressed with S.C., he engages very positively with his tutors, he always comes prepared for his tuition*." S.C. was studying maths and science and other Junior Certificate subjects. He also said: "*S.C. applies himself diligently to his studies when at the study club. We have received positive feedback from S.C.'s tutors in terms of engaging with the tutors and applying himself to his studies, they have indicated that he is very willing and eager to learn and advance his studies*"; and "*In our experience, S.C. has been a model student in terms of his behaviour and engagement with other students at the study club. We have never had reason to speak with him about his behaviour or discipline. S.C. possesses very well developed social skills and engages well with all whom interact with him in the study club. I have no hesitation in recommending S.C. as a student*." He was also of the opinion that S.C. "*will fit right into a mainstream school environment."*

30. S.C. was unable to do his Junior Certificate in the summer of 2017 because he was not sufficiently prepared for it. This is unsurprising in light of the limited number of hours of home tutoring the child was receiving. The Court was told that S.C. has applied to a considerable number of different schools in Limerick for the academic year 2017-18, but to date has not been able to secure any place. In this regard, the applicant sought to amend the scope of these judicial review proceedings in order to maintain a claim that the Department of Education should be compelled to provide the applicant with a school place for September, 2017. The Court decided to postpone a decision on that aspect of matters until after its decision on the case as currently pleaded, not least because not all of the schools to which application has been made by S.C. have yet responded to his application.

Legal Issues

31. In *City of Waterford Vocational Education Committee v. The Secretary General of the Department of Education and Science and Ors*. [2011] IEHC 278, (unreported, Charleton J., High Court, 27th July, 2011) Charleton J. described the proper parameters within which an Appeal Committee established pursuant to section 29 of the Education Act, 1998, should conduct its appeal. In that case, the Committee had taken into account the availability of other places for the child in schools in the immediate area. In holding that this was not a proper matter to be taken into account, Charleton J. clarified what, conversely, should be taken into account:

> "The function of a school board in deciding on the expulsion of a pupil is to consider what is relevant to that decision. This does not include whether other placements may be available in the immediate area should the expulsion take place. Instead, the decision focuses on *the behaviour of the pupil and the context within which that behaviour occurred.* The appeals committee is in precisely the same position. The issue before it, therefore, *is whether the behaviour of the pupil, taken within the proper context, warrants the expulsion*. In the course of this judicial review, an affidavit was sworn by a member of the appeals committee giving a reason for the decision to overturn the expulsion of Delta Beta, which was otherwise absent from the decision. This reason was that the behaviour of the pupil did not warrant expulsion. It is clear that the law on administrative and judicial tribunals does not encompass the addition of reasons beyond the document wherein the decision is officially set out. Were such a procedure to be allowed, afterthoughts would replace the reliability which the parties to a tribunal are entitled to expect that the decisions of any judicial or administrative tribunal will encompass.
>
> As this is the first case of its kind to come before the High Court, it is therefore appropriate to indicate what factors can be taken into account by a board of management in considering an expulsion. *These factors will be the same for the appeals committee. In considering whether to require a student to leave a school, it is appropriate to focus on the behaviour of the pupil and the effect of that behaviour on the school; the track record of the pupil up to the point of the precipitating issue or issues; the attempts by the school at diverting, correcting or checking the behaviour; the merits of whatever mitigation is offered for the behaviour (by which I mean contrition, any explanation that is offered for behaviour, and any response of the pupil to the school's efforts); and the demerits of mitigation (by which I mean a lack of contrition, wilfulness, spite or an unwillingness to accept help).* What a school board, and thus what an appeals committee, cannot take into account are the alternatives which the education welfare officer may be in a position to offer; the resources of the school; and external resources. It is worth emphasising that on an appeal the appeals committee is concerned with whether or not the expulsion was warranted. This has nothing to do with whether there is an alternative place. The responsibility for that function is elsewhere. These are separate and distinct statutory functions. It would be wrong for an appeals committee not to grant an appeal where, in the first instance, the expulsion of the pupil was not warranted, simply because the pupil has an alternative place in education available to him or her and thus does not want to go back to the school. Equally, the appeals committee cannot grant an appeal because the pupil does not have an alternative place." (emphasis added)

As regards the procedures to be adopted, Charleton J. said:

> "A denial of fair procedures can undermine the fairness of a decision-making process. The procedures properly to be adopted for an adjudication or hearing depend upon the nature of the decision to be made and the nature of the hearing contemplated by the relevant statutory context. Many kinds of hearing can be fair. The criminal trial model does not always have to be perused. There are basic tenets to a fair hearing. Concisely put, people who have an immediate interest in the decision must be entitled to make representations. This may be done orally or in writing. No party before the tribunal can be given a stronger position than any other. Consequently, while it may be appropriate only in some circumstances to seek oral presentations, once one party is given an entitlement to make an oral presentation that facility cannot be denied to other parties. This ensures that the decision-making process is transparently fair. In some circumstances, questioning may be required to be allowed; see *Davey v Financial Services Ombudsman* [2010] IESC 30 (Unreported, Finnegan J, Supreme Court, 10th May 2010). Once the matter has been considered by the administrative body or tribunal by way of a hearing or a formal consideration of the relevant documents, or both, it cannot thereafter pursue it own inquiries or accept oral or written material from only one of the parties. To do so, would be to deprive the parties, or the party left out, of awareness of this material and thus to shut them out from making what might be an important point in reply."

32. Bearing the above matters in mind, I turn to the issues raised on behalf of the applicant in the present case.

Alleged breach of fair procedures by the Board of Management which are said to have tainted the appeal process before the Appeal Committee

33. Although all of the reliefs sought concerned the decision of the Appeal Committee appointed by the Department of Education, the first set of complaints in the Statement of Grounds concerned the procedures employed before the Board of Management hearing, not the Appeals Board. These were pleaded at paragraph 16(i) of the Statement of Grounds as follows:

> "A lack of fair procedures in the decision making process in circumstances where the Applicant was not afforded an opportunity to know the case against him and/or to respond to same in a timely manner and, in particular, was not afforded with the details of the complaints against him and the basis for seeking to expel him:
>
> a) before the meeting of the Notice Party on the 30th of May, 2016; and/or
>
> b) before the Review meeting of the Notice Party in September, 2016 during which representations were considered; and/or
>
> c) before the meeting with the facilitator in October, 2016; and/or
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> d) before the deadline for submission of documentation in support of an appeal fixed for the 28th of October, 2016."

The respondent and notice party argued that the applicant was not entitled to complain about breaches of the Board hearing in circumstances where the judicial review proceedings had been brought in respect of the Committee hearing only. The applicant by way of response relied upon the decision of the High Court (Eager J.) in *Lyons v. Longford Westmeath Education and Training Board* [2017] IEHC 272 for the proposition that a court may find that an earlier investigative stage in a disciplinary process may be reviewed by the Court, if the later decision under challenge in the judicial review was based upon the findings of the earlier investigation, or the earlier investigation was inextricably linked with the later decision. The *Lyons* case was one in which a bullying allegation was made against a teacher by a colleague. The investigation was carried out by a private company which had been specifically contracted to carry out the investigation. This involved the taking of statements and requiring the attendance of the applicant at interviews and meetings. There was no oral hearing at which the applicant was entitled to challenge or cross-examine the complainant in respect of her factual allegations of bullying. At the conclusion of the process, a report was produced, containing certain findings against the applicant. As a result of this, the respondent called a 'stage 4' disciplinary meeting, which could have led to the applicant's dismissal from his job. The applicant sought the right to cross-examine at the disciplinary hearing, but this was refused on the basis that the investigation process was complete and that the disciplinary hearing was not a *de novo* process. It was held by the High Court that that the procedure adopted by the private company to investigate the matter was in breach of Article 40(3)(1) and (2) of the

Constitution as there was a failure to hold an appropriate hearing at which the applicant through solicitor or counsel could have cross-examined the colleague who had alleged bullying. It was held that in circumstances where an individual's job was at stake and where factual allegations had been made, there needed to be a "constitutionally sound investigative process." Eager J. relied upon passages from the judgments in *Borges v. Fitness to Practice Committee* [2004] 1 I.R. 103, *Re Haughey* [1971] I.R. 217; *Maguire v. Ardagh* [2002] 1 I.R. 385 in reaching this conclusion.

34. The present case is not directly on all fours with the *Lyons* case because the Appeal Committee in the present situation was not in any way bound by the findings of the Board of Management; indeed, on the contrary, the Committee hearing is supposed to be a *de novo* hearing. Therefore, the Committee was free to hear evidence and reach its own conclusions on the evidence. However, the complaint made in the present case is that on the facts of the case there was an inextricable link between the breaches of procedures before the Board of Management and the outcome before the Committee, because the Committee relied heavily upon the Board's findings, even though it was supposed to reach its own findings. I prefer to deal with this issue under the rubric of the Committee's procedures and conclusions, as the issue of whether the Committee did not reach its own conclusions, rather than as a self-standing ground relating to the Board of Management procedures.

The Appeal Committee's refusal to accept a document from Ms. N.C. at the hearing on the 9th November, 2016
35. Complaint was made that Ms. N.C. was not allowed to hand in a written document in support of the appeal at the hearing before the Committee. This was pleaded at paragraph 16.ii(b) of the Statement of Grounds as follows:

> "the Applicant's mother was not permitted to submit written documents in support of the appeal when she had been unable to comply with the earlier deadline because of a failure to provide her with relevant documentation on the part of the Notice Party."

36. Ms N.C. had brought to the Committee hearing a written document which she had prepared after she had received, for the first time, a full set of documentation, including the school documents and the facilitation document. She asked to be allowed to hand in the document but this was refused; however, she was permitted to read the document itself at the hearing. The essence of her complaint is the difference between the Committee members hearing the contents of the document as distinct from reading the document. I am not persuaded that this difference amounts to a breach of constitutional justice.

Allegation that Appeal Committee members spent time alone with the school principal after the hearing
37. As has been described above, Ms N.C. made an allegation that after the hearing before the committee had concluded, the principal Mr. Quilter remained in the room with the committee members for a further ten minutes. This was pleaded in a number of places in the Statement of Grounds at paragraph 16.(ii)(e), 16 (iv), 16 (v) and 16(vi). There was agreement among all the parties that if this had in fact occurred, the decision of the Appeal Committee would have to fall on grounds of objective bias. However, the matter was disputed at a factual level. Accordingly, it is necessary to review the evidence in this regard.

38. In her first affidavit, Ms N.C. said:

> "When the presentation concluded we were told we could leave. I say that myself, my daughter, the deputy principal and Emma Fahy left the room. I say that even though we had left David Quilter remained in the hearing room for at least another ten minutes. I was concerned and I asked Emma Fahy why he was still inside the hearing room. She said she didn't know. I then had to leave; at the time I felt Mr. Q was still in the room."

39. In her affidavit, E.C., sister to the applicant, stated the following:

> "At the end of the meeting on 3rd November 2016, I left the hearing room with my mother, and Ms Emma Fahy. Another man whom I now know to be Mr Brian O'Donoghue, the vice principal of the Notice Party school, left immediately behind us. I say that Mr David Quilter did not leave the room with us or after us. My mother and I stayed in the waiting area just outside on the 1st floor, and we became concerned as to why the school principal had not come out of the meeting also. I recall that my mother walked over to Emma Fahy and asked her why Mr Quilter was still in the room. I heard my mother say "I thought the meeting was over" and Ms Fahy replied that she didn't know. Ms. Fahy does not dispute in her Affidavit that my mother spoke to her about the Principal remaining in the room. I clearly recall this conversation and I sincerely believe that Mr. Quilter did not leave the room at the same time as us nor did we leave the building in the manner described by Ms. Fahy. I fully agree with my mother's recollection of the events as they are faithfully recorded in her verifying affidavit and her second affidavit.
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> My mother and I left the waiting area after she had spoken with Ms. Fahy and we went downstairs. I went outside with my mother and we waited for the taxi we had called, but it was delayed and we walked down to the Crescent Shopping Centre. We were alone leaving the building."

40. This allegation was denied on affidavit by Mr. Slowey, the Chairperson of the committee, Mr. Quilter, the school principal, and Mr. O'Donohue, the then vice-principal. Ms. Fahy said that she did not recall the principal remaining in the room with the Committee once the hearing had concluded. She recollected the mother, daughter, principal and vice-principal all leaving the building at the same time. At the hearing, Mr. Slowey, Mr. Quilter and Mr. O'Donoghue were cross-examined in this regard.

41. Mr. Slowey gave evidence that he had been a teacher and then principal of a community school in Ballincollig and had retired in 2004. He had worked with the other committee members before but did not know Mr. Quilter. He described where everyone was sitting in the room during the hearing. He said that when the hearing was over, they said goodbyes to each other and the parties left. He was adamant that Mr. Quilter had not remained in the room after the other parties had left. He did not, in my view, have a clear recollection of the order in which persons left the room, but I do not consider this significant. Such matters of detail are unlikely to remain in memory unless there is some immediate reason to recall them, and this issue did not arise until the judicial review proceedings were launched and the affidavits sworn. He accepted that he had not received any training in relation to the issue of not speaking with one side in the absence of the other, but considered the matter to be so obvious as a matter of common sense that it did not require training.

42. Mr. Quilter, under cross-examination, said that after the hearing, he and Mr. O'Donoghue stood in a corridor area outside the door of the hearing room because the mother and daughter had congregated in the reception area, and he wanted to avoid any conversation or awkwardness, as the meeting had been tense at times. He did not recall them leaving, but said that from where he was standing, he would not have been able to see them because of the line of vision. The Court was shown photographs of the area. He said Mr. O'Donohue went to the toilet, came back, and then they left together. He said when they went downstairs, Ms. Fahy was going through revolving doors into the car park, and the mother and daughter were going to the right-hand side of the car park. He

and Mr. O'Donoghue went to their car on the left-hand side of the car park.

43. Mr. O'Donoghue, under cross-examination, said he was now working as a deputy principal in a different school. He said that he and Mr. Quilter stood outside the door of the hearing room after they had all left the room. They stood there chatting, he went to the toilet, returned, and then they left together. He says that the mother and daughter were outside the main door as they left. He did not recall meeting Ms. Fahy in the building, he said she was in the car park and there was no conversation between them.

44. There was no cross-examination of Ms N.C., her daughter, or Ms. Fahy.

45. Having regard to the contents of the affidavits and the oral evidence given on this issue, I have reached the view that what probably happened was that Mr. Quilter hung back in the corridor outside the hearing room after they all came out, because he did not want to have to interact with Ms N.C. or her daughter in the waiting area. Mr. O'Donoghue says that he chatted to him for a few minutes, then went to the toilet, came back, and they left together. I have looked at the photographs and it seems to me likely that the Ms N.C. and her daughter were not able to see Mr. Quilter in this particular position in the corridor, and mistakenly but genuinely drew the inference that he had stayed inside the room with the Committee members. They saw what they thought was Mr. O'Donohue leaving but in fact he only went to the toilet before returning to join the principal. In fact, the principal and vice-principal left the building together, around the same time as Ms. Fahy and slightly behind Ms N.C. and her daughter, but because the latter had turned right after leaving the building, while the principal and deputy principal turned left, Ms N.C. and her daughter did not see them leave. I have no doubt of the sincerity and genuineness of Ms N.C.'s belief as to what she swore to in her affidavit, but I am equally persuaded that the chairperson of the Committee and the principal and deputy principal told the truth on oath when they said that Mr. Quilter did not remain on in the hearing room after the hearing had concluded, and that the only explanation is that Ms N.C. drew an erroneous inference because she could not see Mr. Quilter hanging back in the corridor outside the hearing room.

Absence of evidential basis for conclusion of Committee/ the Committee's approach to factual determination

46. To the forefront of the applicant's submissions was how the Committee addressed the factual matter of where the joint-smoking incident took place (inside or outside school property) in the course of what was undoubtedly supposed to be a *de novo* form of hearing. It was submitted that the question of where the smoking had taken place was a matter of considerable importance because of the emphasis in the school's own policy documents on this matter. Counsel on behalf of the applicant drew the attention of the Court to a number of authorities. In *Fitzgibbon v. Law Society of Ireland* [2016] 2 I.L.R.M. 202, the Supreme Court considered the nature of an appeal to the High Court pursuant to s.11(1) of the Solicitors (Amendment) Act 1994. In the course of his judgment, Clarke J. said the following concerning *de novo* appeals, which makes it clear that the decision-maker must consider the evidence afresh and come to its own conclusions, including in respect of any factual matters:

> "It seems to me that the critical characteristics of a *de novo* appeal are two fold. First, the decision taken by the first instance body against whose decision an appeal is brought is wholly irrelevant. Second, the appeal body is required to come to its own conclusions on the evidence and materials properly available to it. The evidence and materials which were properly before the first instance body are not automatically properly before the appeal body. It seems to me that, by defining an appeal as a *de novo* appeal, any legally effective instrument necessarily carries with it those two requirements. […]
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> In summary, therefore, it seems to me that the use of the term "de novo appeal" or similar terminology, carries with it a requirement that the appellate body exercise its own judgment on the issues before it without any regard to the decision made by the first instance body against whom the appeal lies."

47. The applicant also relied upon A.*M.T. v. Refugee Appeals Tribunal and Minister for Justice, Equality and Law Reform*, [2004] 2 I.R. 607, in which the High Court quashed a decision of the Tribunal on the basis that, in reaching certain factual conclusions, reliance had been placed on matters in respect of which there was no relevant material before the tribunal (relating to the applicant's itinerary of travel before reaching Ireland), and there was an absence of relevant country of origin information (concerning the plausibility of his account of being illiterate and yet being employed as driver to secretaries of top government officials in the Cote d'Ivoire).

48. The applicant also relied upon *Kelly v. Commissioner of An Garda Siochana* [2013] IESC 47. This was a Garda disciplinary case in which there had been contested issues of fact concerning the interaction between the Garda in question and the owners of a pub in the early hours of the morning. The Garda had been charged with six counts, some of which were allegations of making false statements in relation to these interactions. A key issue was whether the Garda had actually entered the pub or not, because he had made statements in which he said he did, and describing what he saw there. A hearing took place over five days before a Board of Inquiry. The Board found that all six counts had been established and recommended that Garda Kelly be dismissed from service. Garda Kelly lodged a notice of appeal. The Appeal Board dismissed his appeal without a hearing on the basis that the grounds of appeal were without substance or foundation. This decision was recorded on a pre-printed form on which the other possible grounds for dismissal were deleted by hand, and this was the extent of information provided as to the decision dismissing his appeal. Towards the conclusion of his judgment, O'Donnell J. commented, at page 18:

> "The remarkable and somewhat unsettling fact is that Garda Kelly was dismissed by the application by the Appeal Board of a test the content of which was and remains unknown, to facts which are themselves, even now, unclear. In relation to the actual decision leading to his dismissal, not only does Garda Kelly not know the view the Board of Inquiry took of the facts, but, and perhaps more importantly, he does not know at this stage what the Board of Appeal thought the Board of Inquiry had decided in relation to all the facts."

It was held that the decision of the Appeal Board should be quashed and that the Board of Inquiry should furnish reasons for its decision, and matters could then proceed onwards from that point. It is probably fair to say, however, that this was a 'reasons' case, that is to say, a case in which there was a complaint as to the failure to give reasons, which the present case is not.

49. In the present case, counsel on behalf of the applicant argued that the Committee failed to conduct a genuinely *de novo* hearing and failed to reach its own independent conclusions on the important issue of fact regarding the location of the joint-smoking.

50. I have set out at paragraph 16 above the totality of the decision of the Appeal Committee as communicated to the mother, Ms. N.C.. The particular phrase in the decision dealing with the factual issue is: "*The Board of Management accepted that, following investigation, it was established that S.C. had been using drugs within the school environment during school time. This was the main reason why he was expelled*." It seems to me that the language used is somewhat peculiar. It does not explicitly refer to a Committee finding at all. It does not on its face reflect that the Committee appreciated that there was a conflict of fact or that it had chosen to resolve the conflict in a particular way. Typically, the sort of language that would express this would be something along the lines of: 'The Committee has considered the evidence before it on the issue of where the smoking took place and has come to the conclusion

that it took place within school grounds'. However, the language refers to what the Board of Management, *not the Committee itself,* had 'accepted', and this in turn, was based on what the 'investigation' had 'established'. This seems to be more in the nature of a description of what historically, had occurred, rather than a description of a live issue at the hearing upon which the Committee was adjudicating. Indeed, I might add, the language of the decision as a whole seems to proceed more from the point of view that the issue to be decided was whether the Board's decision was justified by reference to its policy, rather than a direct assessment of whether the child's behaviour warranted an expulsion, which should be the focus of the appeal, as identified by Charleton J. in the *Waterford VEC* case. It may be simply a question of unusual language, but there is in my view sufficient ambiguity to raise concern as to whether the Committee was applying the appropriate test to the task in hand.

51. Returning to the narrower factual issue of the location of the smoking incident, I take into account the following averments on affidavit by the Committee chairperson:

> "In relation to the contentions of the Applicant's mother about the merits of the expulsion itself and, specifically the issue concerning whether the Applicant had been smoking cannabis on the school grounds, I recall that this issue was the subject of oral submissions during the course of the hearing. During the course of the hearing the principal of the Notice Party outlined that the area in question was part of the grounds of the Notice Party and designated as "out of bounds" to students of the school."

Again, this language does not clearly reflect a consciousness on the part of the Committee that there was a conflict of evidence upon which they had to adjudicate on. He does go on to say in his affidavit that "*the Committee was satisfied that the Applicant was using drugs within the school environment during school time*," but this is not the language used in the decision itself ("*The Board of Management accepted that, following investigation, it was established that S.C. had been using drugs within the school environment during school time.")*

52. I am also conscious of the manner in which the hearing proceeded and how the factual issue arose in that context. As has been seen above, Ms N.C. brought a document into the hearing with her and was permitted to read it out. This is a very different situation from one in which a parent has engaged a lawyer or some other person experienced in advocacy to make submissions to the Committee. She was doing her best in a situation where the other parties in the room were highly educated and articulate professionals. She had not received the full school documentation until a week before the hearing on the 9th November, 2016, although she should have (under the school procedures) received it before she ever went to the Board meeting on the 30th May, 2016. Her pre-prepared document raised a large number of issues, as has been seen above. It may be that in those circumstances, the Board did not particularly appreciate the importance of the point she was seeking to make in respect of the location of the incident and that there was a conflict of evidence upon which they were required to adjudicate. Certainly, the decision bears little or no imprint of it if they did. I note what Mr. Slowey says in his affidavit, as set out above, but there again the emphasis is on what the principal said and there is no reference to any contrary evidence.

53. Taking all of the above into account, I am not convinced that the decision-making on the factual issue undertaken by the Committee clearly fell within the model of a proper *de novo* hearing as described by Clarke J. in the *Fitzgibbon* case. The decision of the Appeal Committee does not clearly separate itself from the first instance decision by the Board of Management; it could not be said, using the language of Clarke J. in *Fitzgibbon*, that the Committee had treated the Board's decision as irrelevant. On the contrary, it seems to have considered the Board's decision to be highly material to its own decision. The language used in the decision suggests that there was an inter-relationship between the Committee's own decision and that of the Board of Management, whereas its own decision should have been wholly independent.

54. However, a substantial obstacle was raised by the respondent and notice party to the Court deciding the case on the above ground. They submitted that the case in respect of which leave to bring judicial review proceedings had been granted was substantially narrower than the case as argued by counsel at the oral hearing. This is of course a particularly significant matter in judicial review cases, where issues must be determined within the parameters of the leave granted, as has been made clear by the Supreme Court in *A.P. v. DPP* [2011] 1 IR 729. The issue relating to the factual matter as to the location of the smoking incident had been pleaded at paragraph 16.(iii) of the Statement of Grounds in the following manner:

> "A breach of the requirements of constitutional justice by upholding a decision for which *no evidential basis* existed in upholding the Notice Party's decision to expel grounded on their finding that the Applicant had been 'using illegal drugs within the school.' This is not a factually sustainable conclusion and is unreasonable in law." (emphasis added)

The respondent and notice party argued that the oral submission of counsel on behalf of the applicant ranged far beyond the scope of this pleading, and indeed that it went so far, at some points in oral argument, as to suggest that there should have been a right to cross-examine at the Appeal Committee hearing on the factual issue as to where the incident had taken place. They argued that the only issue actually pleaded was a simple 'lack of evidence' argument, and this issue could only be decided in their favour because there was undoubtedly evidence before the Committee that the smoking incident took place within the school property, even if there was also evidence to the contrary.

55. I agree that the manner in which the matter was pleaded was narrower than the manner in which it was argued. In particular, I agree with the respondent and notice party that the matter was not pleaded in such a way as to entitle the applicant to argue the issue of a right to cross-examine at the Committee hearing. Moreover, no such right to cross-examine was ever requested on behalf of the applicant prior to or at the Committee hearing itself. I do not propose to deal with that issue at all. The question remains whether the 'lack of evidence' ground as pleaded is sufficiently connected with the defect in decision-making identified by the Court as to permit the Court to decide the case on the latter ground.

56. I have indicated my concerns above as to the decision of the Committee and the language used to express that decision, insofar as it dealt with the issue of fact as to the location of the smoking incident. If I am right in my view that the Committee did not reach an independent view of the facts, this is a fundamental defect in the manner in which the Committee approached its task. A question logically prior to the consideration of sufficiency of evidence is the question of whether the decision-maker was carrying out a review of the evidence in the first place. Further, while I do not make any finding on the submission of counsel that the child has a constitutional right to secondary education in a secondary school, there is no doubt that the secondary education of a child is an extremely important matter, which may affect his chances generally into the future and for the rest of his life. Thirdly, and perhaps most importantly of all, the defect that I consider to be present in the Committee's decision is not so far removed from the case as pleaded, when compared, for example, with the situation in the *A.P.* case. In the latter case, leave had been granted to argue that the prosecution of a fourth criminal trial in respect of sexual abuse allegations would be oppressive in circumstances where three earlier trials had resulted in jury discharged because of things said by the complainant. The Supreme Court held that the applicant was not entitled to rely on two entirely different matters, namely (1) delay prior to the prosecution; and (2) an issue relating to a

letter sent by the complainant prior to the first trial, asking the accused for money in the context of the sexual abuse allegations. There was therefore what might be called a significant disconnect between the ground in respect of which leave was granted in the *A.P.* case and the additional two grounds in respect of which no leave had been given. In the present case, the Court is concerned with the manner in which the Committee approached its fact-finding function. Further, I do not think the respondent or notice party were in any way prejudiced by the manner in which the applicant's case was presented in this regard. Accordingly, I do not think it would be wrong in principle for this Court to determine the case on the basis that the Committee did not correctly approach its fact-finding task and accordingly I propose to quash on that ground.

57. In conclusion, although with some reluctance because of the parameters of the pleading in the Statement of Grounds, I have reached the decision that the decision of the Committee should be quashed. My intention would be to remit the matter, so that a differently constituted Appeals Committee should consider the case and focus squarely, *inter alia*, upon the issues of fact relating to the smoking incident and make its own determination in clear and unequivocal terms, and explain its reasons for doing so.

58. I wish to add that, in my view, it would be helpful if an Appeals Committee were to use language more generally throughout its decision which makes it clear that it is making its own findings and not relying on Board of Management findings, and which makes it clear that it appreciates that the central issue before the Committee is not whether the Board followed its policy based on findings it (the Board) had made but, more directly, whether the Committee itself thinks the child should be expelled, based upon facts found by the Committee itself, and taking into account the matters set out by Charleton J., in the *Waterford VEC* case. As set out above, Charleton J. listed a large number of factors which should be considered, including those which weigh in favour of the child remaining in a school as well as the factors weighing in favour of expulsion. To these, I might add the age of the child; it seems to me that 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. Further, the school's own policy on expulsion contains a comprehensive list of matters to which regard should be had and makes it clear that expulsion is effectively a remedy of last resort.

59. In the circumstances, I do not think it necessary to rule on the submission on behalf of the applicant that the decision to uphold expulsion was in breach of the principle of proportionality as dealt with by the Supreme Court in *Meadows v The Minister for Justice, Equality and Law Reform and Ors* [2010] 2 I.R. 701. Any decision by the Court to that effect would be particularly troublesome in this particular arena because a finding that an expulsion decision should be struck down for a lack of proportionality would force a particular school to take the child back, and this is a step which this Court should be very reluctant to take. Further, I do not consider it necessary to rule upon the pleading that the treatment of the applicant was unfair and discriminatory having regard to the fact that other pupils involved in the same incident were not expelled. This would in any event be an extremely difficult argument to sustain in view of the potentially different prior histories of different students, and it was not pursued to any great extent in oral argument. Accordingly, I quash the decision solely on the ground of the manner in which the Committee addressed the issue of fact before it.

60. Needless to say, a re-hearing of the appeal should take place as soon as possible in view of the imminence of the 2017-2018 academic year and the possibility that the ultimate outcome of the second appeal hearing may be the same, which will create a situation where the applicant's proposed application for leave to make a case that the Department of Education has a constitutional obligation to provide him with a secondary school place will have to be addressed with urgency.