



Placing Request Appeal – Information for Parents and Guardians 2020

Note: The undernoted guidance has been amended in accordance with “The Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2020”.

This information will help you if you decide to appeal against the refusal of a placing request and takes into account current government guidance around social distancing and essential travel.

Education Appeal Committee - Right of Appeal

Where your placing request has been refused, you have a right of appeal to the Education Appeal Committee at Clackmannanshire Council. This Committee is independent of the education authority and has 3 members: two Elected Members and an independent Chair who has relevant experience and knowledge of education. You have 28 days from receiving the refusal letter to lodge your appeal. If there is a good reason for your appeal being late, the Appeal Committee may allow a late appeal. However, you should try to make sure that your appeal is sent with plenty of time to spare.

The Appeal Letter

Where possible, your letter of appeal should be sent to the e-mail address EAC@clacks.gov.uk. If you are unable to send it by e-mail, we will still accept a letter sent by post to the Clerk to the Education Appeal Committee, Kilncraigs, Alloa, FK10 1EB. If using the postal system, you may wish to send the appeal letter by recorded delivery post to show it has been sent and received.

Remember:

- State clearly that the letter is an appeal against the refusal of a placing request.
- State the name of the school you made a placing request for and give the name and date of birth of your child, together with your own contact details (address, telephone, e-mail address).
- Explain in summary why you want your child to attend that school. It is best to focus on why the school is a good placement for your child, rather than why it is a good school in general. You will have an opportunity to add more detail later.
- There is no need to send any supporting documents at this stage as you will be able to do this later.
- Keep a copy of the letter so that you can remember what you wrote.
- You can only make a placing request appeal to an Education Appeal Committee once every 12 months.

- Due to the current Government restrictions, the appeal hearing may take place in one of a number of ways. If you propose to deal with your appeal by written submission only and the education authority is agreeable to your proposal, the Education Appeal Committee can determine your appeal without the need for a hearing. In the absence of your appeal being determined in that way, a hearing will take place. The hearing can take the form of a telephone conference or by video link. A hearing by video link will depend on a secure means for the hearing being conducted in that way, and will require both the education authority and the Education Appeal Committee having access to such means. It is noted that a reasonable excuse for failing to comply with current Government restrictions is participating in legal proceedings, but in view of the Education Appeal Committee not being strictly legal proceedings, the requirement for a hearing in person is not envisaged. If the absence of a hearing in person reasonably restricts your appeal, please describe this in your appeal letter. Further, if there are any dates in the next few months when you will be unable to take part in an appeal hearing, you should mention them in the appeal letter so that the Clerk to the Appeal Committee can avoid those dates, if possible.

Acknowledgement

We will acknowledge receipt of your appeal within 28 days of receipt.

The Appeal Hearing

The appeal hearing will take place as soon as reasonably practicable within 3 months of your appeal being received. You will receive notification of the hearing date not less than 14 days before it is due to take place.

Representation

Whether the appeal hearing is by telephone conference, video conference or otherwise, you have the right to be heard or be represented at the hearing and can be accompanied by up to 3 other people, including the person representing you. Anyone can represent you. You may wish to seek the assistance of an advocacy group or a family friend. You have the right to be represented by a solicitor, but there is no Legal Aid available for an Education Appeal Committee hearing.

Supporting Documents

Even if you choose to be heard personally, or have representation, at the hearing, you can produce written submissions and other documents to refer to at the hearing. If you want to make reference to any documents in support of your appeal, these have to be sent to the Appeal Committee no later than 10 days before the hearing date. These should be sent to the e-mail address EAC@clacks.gov.uk. Again, if sending by post, you may wish to send these by recorded delivery. The Council also have to provide any supporting documents by the same time. Copies of all the documents will then be sent to both you and whoever is representing the Council. You should include any documents that you may wish to refer to during the appeal hearing.

Procedure at the hearing

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

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

Where there is agreement for written submission only, the Committee will consider all written information submitted by you and by the education authority before coming to a decision.

Decision of Education Appeal Committee

The decision may be delivered at the conclusion of the hearing or, if the Education Appeal Committee requires time to consider the appeal, you should be notified in writing within 28 days of the hearing.

The Legal test

The Education Appeal Committee may confirm the decision of the education authority if satisfied:

1. one or more grounds for refusing the placing request exist and
2. that in all the circumstances it is appropriate to confirm the decision.

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

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

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

Grounds for refusal

Grounds relating to school capacity

Placing the child at the specified school would ...

- (1) make it necessary for the education authority to take an additional teacher into employment
- (2) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school
- (3) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the education authority to elect either to create an additional class (or an additional composite class) in the specified school or to take an additional teacher into employment at that school
- (4) though neither of the tests set out in sub-paragraphs (1) and (2) above is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers

For the first three cases, the education authority is claiming that the year group is full, and for the fourth case that the school is full. The education authority is also permitted by law to keep some "reserved places" open to allow for families who may move into the school's catchment area after placing request decisions have been made.

Maximum class sizes

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

Primary Schools

P1	25 pupils
P2-P3	30 pupils
P3-P7	33 pupils
Composite Classes	25 pupils

Secondary Schools

S1-S2	33 pupils
S3-S6	30 pupils
Practical classes	20 pupils

If you wish to check the education authority's figures, you should ask for the details as part of your appeal letter.

The education authority is also entitled to consider the potential effect on future years of admitting additional pupils. For example, a primary school with 3 P1 classes, each with 20 pupils, would have room for an additional 15 pupils this academic year. However, that would mean that the following year, the school would have to create an additional P2 class. The 60 P1 pupils this year fit neatly into two P2 classes next year of 30 pupils each. Extra P1 pupils would mean that an additional P2 class would be required next year.

Other Grounds of Refusal

Placing the child in the specified school would ...

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

This may sound like the education authority is suggesting that your child is badly behaved or disruptive. This may not be the case. The authority could be suggesting that the impact of granting additional placing requests would be an overcrowded school which would have the stated effect on order and discipline and/or educational wellbeing.

Reserved places

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

- the number of reserved places held previously by the school;
- the number of children who previously filled reserved places;
- the number of reserved places held for the next academic year; and
- any written policy regarding reserved places.

Appeal to the Sheriff Court

A parent who has made an unsuccessful appeal to an Education Appeal Committee has a further right of appeal to the Sheriff Court. This right must be exercised within 28 days of the decision. You should seek legal advice promptly before contemplating an appeal to the Sheriff. The Sheriff is bound by the same provisions as the Education Appeal Committee. Legal Aid may be available for this stage.

Useful Publications

The following publications and websites may be of interest:

- COSLA Revised code of practice for the constitution and procedures of Education Appeal Committees in Scotland - published July 2001. The Clerk should be able to provide a copy of this Code on request.
- Scottish Government: A guide for parents on Choosing a School and the placing request system, November 2010
<https://www2.gov.scot/Resource/0050/00509525.pdf>
- Scottish Government: Determining Primary School Capacity -
<http://www.gov.scot/Resource/0046/00461513.pdf>