

# Schools and the Right to Discipline

A Guide for Parents and Caregivers



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Wellington  
Community Law Centre

This book was initially produced with the financial assistance of the Legal Services Agency.  
Subsequent reprints and this edition have been funded through the Office of the Children's Commissioner.



MANAAKITIA A TATOU TAMARIKI  
**CHILDREN'S  
COMMISSIONER**

**Published by:**

Wellington Community Law Centre  
Level 2, 84 Willis Street  
PO Box 24-005, Wellington 6142  
info@wclc.org.nz

First edition May 1999

Second edition September 1999

Third edition December 2002

Fourth edition October 2005

Fourth edition updated February 2008

Fifth edition January 2011

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ISBN 978-0-473-17271-8

Printed by Lithoprint Ltd

Cover design and illustrations throughout:

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The most up-to-date version of *Schools and the Right to Discipline* can be found online at:

**www.communitylaw.org.nz**

**www.occ.org.nz**

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# Introduction

Welcome to the fifth edition of this long-standing publication, *Schools and the Right to Discipline*.

*Schools and the Right to Discipline* is the partner publication of a national information service for parents: the Parents Legal Information Line (PLINFO). PLINFO is a free service, and was established by the Wellington Community Law Centre in 1999. Annually, PLINFO receives a large number of calls about school-related issues. These calls are generally from parents and caregivers, and are about a broad range of issues, from school fees to concerns about bullying, or punishments, or possible breaches of student privacy. Calls to PLINFO continue to illustrate that parents and caregivers do not have easy access to information about the rights and responsibilities of their children, themselves, or their children's schools.

How did this guide for parents and caregivers come about? The Education Act 1989 established a Parents' Advocacy Service, but that service was later abolished. The service had been an important part of the concept of Tomorrow's Schools, and its abolition meant that parents lost a source of support and information. PLINFO, and its partner publication, *Schools and the Right to Discipline*, were both attempts to fill that gap. The guide's ongoing popularity with parents, caregivers, and schools, suggests that it is fulfilling its aim. *Schools and the Right to Discipline* was originally produced with financial assistance from the Legal Services Agency, while subsequent reprints and this edition have been through the Office of the Children's Commissioner. The free PLINFO helpline is also supported by the Office of the Children's Commissioner.

*Schools and the Right to Discipline* is now more than 10 years old. It has established itself as a source of practical, accessible and reliable information about legal issues in New Zealand's schools. It is written by lawyers working in the field, who regularly assist parents and caregivers to navigate their way through school processes. *Schools and the Right to Discipline* also has valuable input from education specialists and staff from the Ministry of Education. It is called *Schools and the Right to Discipline* because of its substantial focus on the limits on a school's power to discipline or punish students. But it also has legal information concerning other key issues facing students at school, including bullying, privacy and students with disabilities.

Many people – certainly not just parents – hope that the law will offer a solution to their problems. This is often not the case. Legal remedies can be expensive, take a long time to pursue and do little to improve relationships. But knowledge is power. Parents have far more chance of being able to negotiate a satisfactory outcome for their children, if they understand what their rights are, and what their children's rights are, within the school system.

The free PLINFO service (0800 499 488) is available for parents, caregivers, students and advocates who are seeking further assistance, or clarification on any of the material in this guide. It is also important for parents to be aware that the Office of the Children's Commissioner (OCC) trains children's advocates in areas such as the care and protection of children and education law. These advocates can support families through the school disciplinary process, or provide information about children's rights, and are available in a number of regions. The OCC can be contacted on '0800 A CHILD'. YouthLaw, a community law centre for children and young people, has a nationwide advocacy service and advice line (09 309 6967), and enables young people to access legal representation on educational matters in the Auckland region.

This edition of *Schools and the Right to Discipline* is significantly expanded, and includes major updates to almost every chapter.

The booklet also contains two new chapters: a brief chapter on private schools (Chapter 18), and an introductory chapter on restorative practices in schools (Chapter 19). In some respects, both of these chapters are outside the traditional boundaries of this guide. Although *Schools and the Right to Discipline* is a guide to legal issues in state and integrated schools, we have included the private schools chapter because we regularly receive calls to the PLINFO service about students' rights in private schools. While this guide deals mostly with schools using traditional disciplinary measures (such as stand-downs, suspensions, exclusions and expulsions), we have included the restorative practices chapter in recognition of the apparent growing interest nationally in alternative systems. Our experience leads us to endorse restorative justice schools' aims of keeping more students in school, for longer, and of addressing problems underlying events which lead to disciplinary attention.

Recent major changes to the education landscape have also been considered for this edition. In 2010, National Standards in reading, writing and mathematics for students enrolled in years one to eight were introduced. Schools are now obliged to provide parents with written reports on their child's progress and achievement, in relation to these standards, at least twice a year. Also in 2010, the Ministry of Education completed a major review of Special Education for students with disabilities and diverse educational needs. There was an increase in funding for Special Education programmes. The Ministry of Education also confirmed increased funding for Alternative Education providers in 2011, to ensure that students are better supported to get back into regular education, or to move on to employment.

As a last word, we would like to emphasise that communication with teachers and principals is essential. No matter what this guide says about the rights and wrongs of the situation, if parents are concerned, in any way, about any aspect of their child's progress or behaviour, they should talk to someone at the school as soon as possible.

## Acknowledgements

### **First edition (1999)**

- Ann Dalziell, Specialist Education Services, Wellington
- Jane Brook, Advocate, IHC National Office
- Sue McKinnon, Advocate, IHC Northern Regional Office
- Anne Dickinson, Rector, St Patricks College Wellington
- Youth Law Project
- Graeme Collins, MTC Print, Wellington
- Andrea Jamison, Ministry of Youth Affairs

### **Third edition (2002)**

- Jan Breakwell, Ministry of Education

### **Fourth edition (2005)**

- John Hancock, Effie Lokeni, Deborah Lawson, YouthLaw
- Rod Davis, Office of the Children's Commissioner
- Elinor Tester, NZ Teachers Council
- Jan Breakwell, Ministry of Education
- Graeme Collins, MTC Print, Wellington

### **Fifth edition (2010)**

- Columba Boyack, Ministry of Education
- Jan Breakwell, Ministry of Education
- Janis Carroll-Lind, Office of the Children's Commissioner
- John Hancock, YouthLaw
- Christine O'Brien, St Thomas of Canterbury College
- Matthew Proctor, PLINFO volunteer
- Greta Menzies, illustrator and designer
- Felicity McNeill, Alexandra Keeble and Hannah Northover, Wellington Community Law Centre

# 1. Right to Education

## Does my child have an automatic right to an education?

Yes. Section 3 of the Education Act 1989 states that every person who is a New Zealand citizen or permanent resident, is entitled to a free education at any state school, from when they turn five until the end of the year in which they turn 19. (Note that girls are not entitled to attend a boys-only school and vice versa.)

The Education Act also makes it compulsory for children between the ages of six and the day they turn 16 to be enrolled at school and to attend. However, an exemption may be given to students under seven if the student has to walk more than three kilometres to a school.

The UN Convention on the Rights of the Child also sets out a child's education rights. Article 28(1) states that:

State parties [governments] recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity they shall, in particular:

- (a) make primary education compulsory and available free to all
- (b) encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need
- (c) make higher education accessible to all on the basis of capacity by every appropriate means
- (d) make educational and vocational information and guidance available and accessible to all children
- (e) take measures to encourage regular attendance at schools and the reduction of drop-out rates.

## What different kinds of schools are there?

In New Zealand, there are three different kinds of schools:

- State schools, which are primary schools, intermediate schools, composite schools or secondary schools established by the Ministry of Education and funded by the government.
- Integrated schools, which receive the same amount of government funding as state schools but are allowed to retain their 'special character'. Catholic schools are an example of this type of school. They must teach the New Zealand curriculum, but this teaching can reflect their special character. Agreeing to a school's special character and to paying fees can be a condition of enrolment.



- Private schools, which are owned, run and supported by private people or organisations, rather than by the government. Private schools may receive some government funding, but they are allowed to teach a different curriculum.

The rights and obligations of students in state or integrated schools are largely found in the Education Act. Private schools are not subject to the same regulations as state or integrated schools, and most of the information in *Schools and the Right to Discipline* does not apply to these schools.

## What are my child's rights in a private school?

Enrolment at a private school is governed by a contract (agreement), usually between a student's parents and the school. When enrolling, parents and students are making an agreement with the school: parents will pay fees and students will abide by the school rules, and in return the school will provide the student with an education. If at any time a student's actions amount to a breach of this contract, they will be dealt with according to the school's established disciplinary procedure. Nevertheless, parents may rely on an implied term of the contract that the school behave in a fair and reasonable manner, even in the absence of an established disciplinary process.

Private schools are not required to teach the same curriculum as state schools. They can devise their own curriculum and assessment standards, but these will be reviewed by the Education Review Office.

The Education Act requires that a private school inform the Ministry of Education after a student has been suspended. If the student is under 16 and is not reinstated or enrolled in another school, the Ministry of Education must attempt to consult with the student, their parent and the

school before making arrangements for the student to be enrolled in another school. Although not subject to most of the Education Act, private schools are bound by the Privacy Act 1993 and the Human Rights Act 1993.

See Chapter 18 for further information about private schools.

### **What if I want to teach my child myself?**

You can apply to the Ministry of Education for an exemption. The Ministry will generally grant this if it is satisfied that your child will be taught as well and as regularly as they would be at a registered school. This is commonly known as 'home schooling'.

### **Are there any other possible exemptions?**

Yes, a child who has special needs may have all their schooling provided by an approved specialist service.

Also, if your child has turned 15, and you believe that because of educational problems or behavioural issues he or she is not getting any benefit from remaining in school, you can ask the Ministry of Education for a certificate of early leaving exemption, under section 22 of the Education Act.

### **My child has a disability. Does this affect entitlement to education?**

No. Section 8 of the Education Act clearly states that 'people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not'. For further information see Chapter 11.

# 2. Rights of Boards of Trustees and School Staff

## BOARDS OF TRUSTEES

The Education Act 1989 established boards of trustees. Parents of children in the school elect members of the board of trustees, for no longer than a three-year term. The procedure for election is laid down in the Education Act and the Education (School Trustee Elections) Regulations 2000.

The Education Act gives the board wide powers and rights.

A board has 'complete discretion to control the management of the school as it thinks fit' and may also make bylaws for the control and management of the school, 'subject to any enactment, the general law of New Zealand, and the school's charter'.

A board of trustees comprises:

- at least three, but no more than seven parent representatives (most have five). Most integrated schools have five elected parent representatives and four appointed proprietor representatives
- the principal
- a staff representative (unless it is a small school where the principal is the only staff member)
- other people co-opted by the board (optional)
- a student representative (if the school has secondary students).

A board of trustees should inform parents of planned meetings and welcome parents to those meetings.

Responsibilities of a board of trustees include:

*Ensuring that the school has a written charter.* This is a signed agreement between each board of trustees and the government. It states the aims, purposes and specific objectives of the school and includes the national aims and objectives of all schools that give effect to the government's National Education Guidelines (NEGs).

A charter should be reviewed regularly to reflect the changing educational needs of students. The charter must also reflect New Zealand's cultural diversity, with special emphasis on Māori culture and language. All reasonable steps must be taken to provide instruction in Māori language and culture for students whose parents request it. The Ministry of Education checks that the charter is developed or updated in accordance with the Education Act. The charter must be made available to parents.

*Making decisions which affect the control and management of the school.* These include financial, property, staffing and discipline matters.

## What happens if a board does not perform competently?

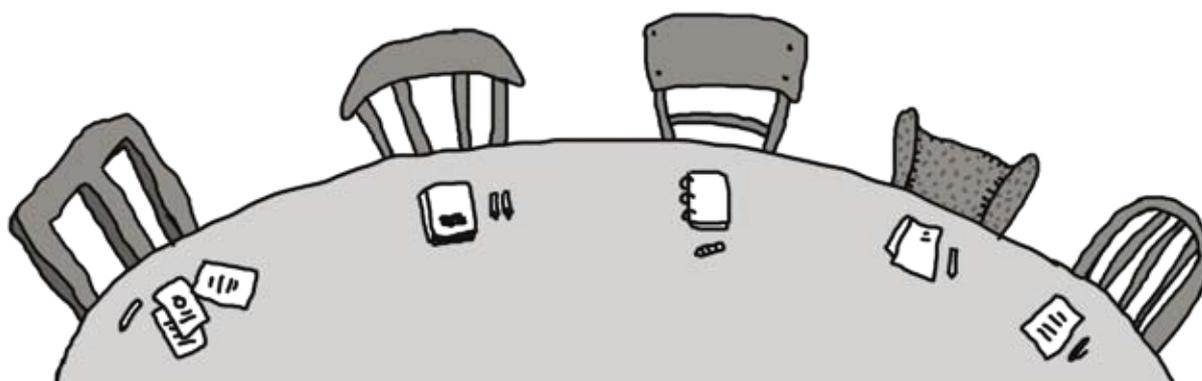
Part 7A of the Education Act sets out a range of interventions to address risks posed by a board to:

- the operation of the school
- the welfare or educational performance of students.

Interventions include (section 78I(1) of the Education Act):

- a request by the Secretary for Education for information
- a requirement that the board engage specialist help
- a requirement for the board to prepare and carry out an action plan
- the appointment of a limited statutory manager
- the dissolution of the board and the appointment of a commissioner.

Either the Minister of Education or the Secretary for Education can apply these interventions if they think there is a risk to the operation of the school or the welfare or educational performance of its students. You should contact the Ministry of Education if you want to request intervention.



## **I have an issue I want to take to the board.**

### **What should I do?**

Generally you should try and talk over the issue with the principal first. However, if you feel you cannot approach the principal, or you are not happy with their response, you could:

- phone or write to the chairperson of the board asking for time to participate at the next meeting  
or
- write to the chairperson outlining the issue and saying what action you would like taken. Your letter to the chairperson should be marked 'confidential' and addressed to chairperson, care of the school.

## **I am not happy with the way the board has dealt with the issue. What can I do?**

Ask the board for a copy of its complaints procedure. It is important to put your complaint in writing, clearly outlining the facts around the issue you are complaining about, as well as what you would like done to put things right.

If you are not satisfied with the board's response, you can consider taking your concerns to one of the agencies listed in Chapter 20, or to one (or all) of the following government departments:

### **Ministry of Education (MOE):**

The MOE oversees the conduct of all state and integrated schools. Complaints can be made with your local MOE office.

### **Office of the Children's Commissioner (OCC):**

The OCC's role is to protect the rights of children and young people aged 18 and under. They can receive complaints about school matters, investigate serious issues and make recommendations to schools.

### **Education Review Office (ERO):**

The ERO generally visits schools every three years to ensure that they are being run properly. The ERO does not deal with individual complaints, but if several complaints have been received (either from an individual or a group of parents) they will look into the problem on their visit. All complaints will be noted and could affect the school's ERO report, which is a public record. Complaints to the ERO should be made in writing.

### **The Office of the Ombudsmen**

The Ombudsman can investigate complaints about decisions made by boards of trustees. Complaints can be made in writing. The Ombudsman's role is to investigate whether the board has followed correct processes; not whether the

## **Authority given or delegated**

### **Education Act 1989**

gives authority to:



### **Board of Trustees**

to control and manage schools (subject to other New Zealand laws). This includes making policies and bylaws to put those policies into effect.



### **Principal**

employed by board of trustees as Chief Executive Officer to manage the day-to-day affairs of the school.



### **School Staff**

The principal delegates certain responsibilities to teachers and administrative staff.

board should have reached a different decision. While the Ombudsman's recommendations are not binding, schools usually take them seriously. The Ombudsman prepares an annual written report to Parliament, which includes the names of schools that have ignored the recommendations.

## **SCHOOL STAFF**

### **What gives a teacher the right to discipline my child?**

Section 75 of the Education Act gives a board of trustees complete discretion to control and manage their school subject to the general law of New Zealand. This means that boards have the authority to make reasonable rules, and the teachers employed by them can exercise reasonable disciplinary powers and enforce these rules. See the table above.

### **Making a complaint about a teacher**

If you have concerns about a teacher's professional conduct, competence or physical or mental fitness to teach, you should first discuss these with the principal. If the matter is not resolved, you can lodge a complaint with the teacher's employer (the board of trustees). See Chapter 20.

If your complaint cannot be investigated by the school because:

- the teacher has left the school
- there is a risk the school might not deal with the complaint effectively because of a conflict of interest (for example, the teacher is married to the board's chairperson)
- you are not satisfied with the way the complaint was dealt with by the school
- there is some other exceptional circumstance,

the complaint can be lodged with the New Zealand Teachers Council, provided the teacher is registered. Teachers should not be employed if they are not registered.

The complaint must be in writing, with the details of the allegation clearly set out. It is important to note that the Council will not pursue any complaint that lacks substance. A complaint form can be printed from the Council website: **[www.teacherscouncil.govt.nz](http://www.teacherscouncil.govt.nz)** or the Council can be contacted for a form. See Useful Contacts.

# 3. Parents' and Students' Rights



## When should I be informed about a problem with my child?

As soon as is reasonably possible. If the problem is minor (for example, being late once, talking in class) you may not be contacted, but if the problem keeps recurring you must be notified.

Section 77(b) of the Education Act 1989 states that a principal must take all reasonable steps to inform parents of matters that they believe are:

- 'preventing or slowing the student's progress through the school; or
- harming the student's relationships with teachers or other students.'

'Parent' includes a legal guardian, where they are involved in the day-to-day care of a child.

The Education Act also gives effect to the National Administration Guidelines (NAGs) which say that schools are required to inform students and their parents about progress and achievement. Parents of primary school children must receive twice yearly written reports on the student's progress and achievement in relation to the National Standards.

There are other reasons a parent should be kept informed of problems with a student:

- Sometimes students are reluctant to talk about the source of a problem and parents can reveal things like family situations, marriage/relationship break-up, bereavement, bullying, etc. It helps if appropriate teachers understand a student's circumstances.
- Parental involvement is an important part of the partnership between parents and schools. Students often feel more secure if they know their parents and school are working together.
- If they know a problem exists, parents can support a student to do whatever is required, for example by supervising homework, etc.

If you feel that the school has not kept you well informed, ask the principal for an explanation. Ensure that the school knows how to contact you and indicate your willingness and your expectation that you will be kept informed.

## What are the school's obligations to students?

Boards of trustees of state and integrated schools (and the governing bodies of private schools) are responsible for the care of students. Schools have a duty to provide a safe learning environment:

- Education Act: requires schools to follow Ministry of Education policies and guidelines.
- Health and Safety in Employment Act 1992: When a school is responsible for a student (for example, during school hours, on school grounds, or at a school-related activity), all practicable steps must be taken to ensure that no harm occurs to students due to the action or inaction of school staff.
- Duty of care: Once students are accepted for enrolment, schools have a duty of care not to cause injury.
- Ethical duty: All registered teachers who hold a practicing certificate are bound by the New Zealand Teachers Council's code of ethics to promote student wellbeing.

See Chapter 9 for more on the school's obligations in relation to bullying.

## What rights do I have to access information about my child? What rights does a student have to access their own information?

Under privacy laws, students have the right to access all personal information held by the school about them. While parents should generally be given a copy of their child's school report, they do not have an automatic right to all

information held at the school about their child. Schools may exercise their discretion when considering requests for information. See Chapter 15 for more information.

### **If I do not have ‘day-to-day care’ of my child, can I still access information held at their school?**

Generally when parents separate, one parent has day-to-day care (previously called custody) and the other parent has contact (previously called access). All parents, including non-custodial parents and legal guardians, should (subject to the Privacy Act 1993, safety concerns, other legislation or a court order):

- receive copies of their child’s school reports
- be able to participate in PTA and other school functions
- receive information about school trips, camps and co-curricular activities
- be contacted by the school if urgent medical treatment is required
- be able to attend parent-teacher interviews (parents who are separated may request that parent-teacher interviews be conducted separately for each parent).

Nevertheless, depending on their age and maturity, students may withhold their consent to information being given to their non-custodial parent. Schools may withhold information on these grounds.

Schools must also give effect to a written parenting agreement or a court order about the release of information to either parent. As court orders are complex, parents who want to apply for one should seek help from a lawyer.

### **What happens when separated parents can’t cooperate on issues concerning their child at school?**

If parents can’t agree, either parent could apply for a Family Court order to determine the issue. This may include:

- Religion: Schools can generally rely on one parent’s permission for the child to attend religious education. However, if there is disagreement, the school should seek permission from both parents or adhere to any court order.
- Photographs: Schools can provide photographs to parents, unless there is a court order preventing it.

Judge Pethig in *L v H* (1996) refused a non-custodial parent’s request for photographs of his child, ruling that the request was for the father’s benefit, not the child’s, who was actually frightened of him.

### **What rights does a student have in the discipline process?**

According to the principles of natural justice (which are specifically referred to in section 13(c) of the Education Act, the New Zealand Bill of Rights 1990 and the UN Convention on the Rights of the Child), a student has the right to speak and be heard. The teacher should talk to the student, identifying the problem and explaining how the school rules have been breached. The teacher should also explain the effect of the breach, if any, on others at the school.

The student should be given an opportunity to explain their behaviour.

The student should be punished only if he or she cannot give a reasonable explanation.

If the misbehaviour is repeated, or there are a number of incidents, the school may keep a record of these. Some schools keep a record of even the most minor incidents. This record may be used to prove ‘continual disobedience’ under the Education Act.

Use of such a record to show ‘continual disobedience’ is open to challenge by parents and students. For more information see Chapter 13.

### **Is there a set discipline structure in schools?**

Although schools differ, many share a common structure for discipline:

- subject teacher or perhaps head of department for that subject
- form teacher
- dean
- assistant or deputy principal
- principal.

The deputy principal and principal are generally involved only if the problem is really serious or cannot be solved in the initial stages.

The school guidance counsellor may also be involved in disciplining a student, but counsellors generally prefer to remain outside the discipline process so that they can be another support for the student.

# 4. School Rules

## How are school rules made and enforced?

New Zealand schools are self-governing – each school sets its own school policies and rules to maintain discipline and order.

School rules (by-laws) can be made by boards of trustees. However, rules must comply with the school charter, which incorporates the National Administration Guidelines (NAGs) and the National Education Guidelines (NEGs), and with the general law of New Zealand, both statutory and case law.

If a student or parent disagrees with a proposed or current school rule, they may write to the board or ask to attend a board meeting to explain their point of view.

Before forming a rule, the board of trustees should take into account things like:

- Have parents and students been consulted? (Note that while consultation with parents is always desirable, the board is not legally required to do so).
- Can the rules be legally enforced?
- Are the rules reasonable, and relevant to students and their education needs?
- How will parents and students be informed of the rules?
- What will happen if the rules are broken?

School rules and bylaws should be in written form and must be able to be accessed by parents and students.

Rules should also be appropriate for the age group. For example, a primary school rule may say, 'Children are not permitted to play in the rain at lunchtime'. It is unlikely that the same rule could be applied to secondary school students.

The rules, and the consequences of breaking them, will probably be contained in the school's discipline policy. However, it is important for parents to know that New Zealand courts have held that school rules cannot carry an automatic penalty. All the circumstances of the situation must be considered carefully. School rules should be flexible and allow for exceptions in certain cases.

## What if I disagree with the discipline policy?

Enrolment at a state or integrated school is not a private contract. The board's scope and source of authority has been mandated by statute, not through private agreement. You should request a copy of the discipline policy prior to enrolling your child at a school. Policy is binding on the student. If you have never seen a copy of the policy being

applied to your child, talk to the principal about your concerns.

Punishments are covered in Chapter 5.

## For what sorts of behaviour is a student likely to be punished?

The reality is that schools differ widely in their expectations of students, and in the sorts of behaviour they find acceptable or unacceptable. For instance, some schools and teachers would accept a student's questioning of an order as a person's right to be fully informed, while others would see it as insubordination and unacceptable.

Behaviour that is against school rules is likely to include:

- bullying
- fighting
- swearing
- spitting
- gambling
- being insulting
- vandalism
- stealing
- behaving in a way which prevents other students or staff from being able to work
- bringing prohibited items to school such as knives, alcohol, drugs, cigarettes or skateboards.

Schools will also expect students to comply with certain standards, for example:

- being on time for class
- being prepared for class, with paper, pens, correct books and completed homework/assignments
- wearing correct uniform
- bringing notes to explain absences
- participating constructively in class work.

Primary school rules may also include things like designated play areas and road safety.



## Does school discipline extend outside the school gates?

Generally, no, but in certain circumstances it can, for example:

- when a student is in school uniform
- on school trips (parents will generally be asked to sign an agreement before a school outing)
- on a school bus
- during school hours (if the student is playing truant)
- when at a special school event
- when otherwise representing the school
- on the journey to and from school (see below).

Students in school uniform can generally be seen as representatives of the school; the school therefore has authority over them. However, the law in this area is unclear because it has not been tested in a New Zealand court. The extent of a school's authority over a student in uniform outside school hours depends on the circumstances.

Generally, students remain under the school's control during the journey to and from school, but there are a number of issues to consider. If children are picked up or dropped off by parents, then they are under their parents' authority. However, if they are travelling by school bus, they remain under the school's authority. Many schools also believe they have authority over students who are walking, cycling or using public transport en route to and from school.

Whether or not a school has responsibility for a student outside the school gates depends on things like:

- Geographical closeness to the school – for example, a school could take disciplinary action if a student swore at a teacher just outside the school gate, or if a local resident informed the school that a group of students was taking apples from his tree on their way home.
- Safety issues – for example, a school could take disciplinary action if children were seen in the vicinity of a school, just after school finished, throwing stones over a viaduct on to cars below.

A school cannot usually exert authority over a student when it is obvious that the student is not on school premises, is not representing the school, and it is outside of school hours. In these instances, there is insufficient connection with the school. For example, a school could not suspend a student for smoking cannabis at a private party at the weekend. This may be a matter for the police, but as it is not directly related to the student's schooling, it is beyond the scope of the school's authority.

Nevertheless, a school may be within its rights to take action over a student who, for example, damaged

a school's reputation outside of school hours. Overseas courts have upheld schools' authority when students have made damaging accusations about school staff or other students online. However, the New Zealand courts have not determined this issue.

## What can I do if I disagree with the punishment given to my child?

Contact the school first, check the facts and ask for an explanation. You can also check that the punishment complies with the:

- New Zealand Bill of Rights Act 1990
- Education Act 1989
- Human Rights Act 1993
- Race Relations Act 1971
- UN Convention on the Rights of the Child
- The charter of the school
- National Administration Guidelines (NAG 5)
- Health and Safety in Employment Act 1992

The Parents' Legal Information line (PLINFO), the Office of the Children's Commissioner or your local community law centre can help you to check. If the punishment was legal, but you felt it was too severe or not appropriate, or that your child's version of events was not taken into account, you should approach the teacher concerned. If you are not satisfied with the explanation, complain to the principal.

You are also entitled to take your concerns to the board of trustees. You should do this in writing and address your letter to the Chairperson.

## Education Review Office (ERO)

You can put your complaint in writing and send it to the Education Review Office (ERO), which is a body that checks whether a school is running as it should. The office will file the complaint and then check these concerns when its officers visit the school.

If the complaint is particularly serious, or a number of parents voice the same concern, the ERO can order a special audit of the school, or bring a planned audit forward.

## Office of the Ombudsman

An Ombudsman complaint could be another avenue, in a situation where the rule was clearly inconsistent with the school's statutory authority.

See Useful Contacts.

# 5. Legal and Illegal Punishments

## WHAT SCHOOL PUNISHMENTS ARE LEGAL?

### Written work

Any written work given, such as lines and essays, should be reasonable and take into account the ability of the student (for example, a dyslexic student should not be punished by being given extra writing to do).

### Detention

If a detention is to be held outside school hours, it is good practice for schools to provide parents with advance notice, to allow them to make the necessary arrangements. The school may assume that parents give their consent if they do not voice an objection.

If lunchtime detention is given, students should still be given enough time to have lunch and to go to the toilet.

It is quite common for class detentions to be given 'until someone owns up' or 'because so many have been talking'. However, these may violate the Bill of Rights, which says that people cannot be detained without good reason. If you or your child is unhappy about a class detention, discuss it with the subject teacher, form teacher or dean.

### Extra work around school

This can involve:

- picking up rubbish
- sweeping and general cleaning.

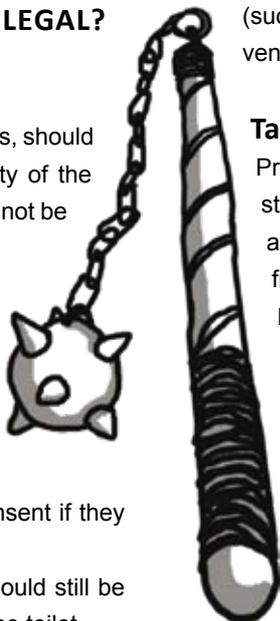
This work should not be done in usual class time and students must be given the equipment necessary for the job, for example, covering for their hands to deal with unpleasant rubbish. Student safety must be ensured.

### Time-out or sending students out of class

Although 'time-out' can offer both student and teacher an opportunity to defuse or cool the situation, it must be used carefully and not for long periods at a time. Section 3 of the Education Act 1989 says that everyone in New Zealand over the age of five is entitled to an education. Sending students outside the classroom may violate this right if done often.

When considering time-out, a school should make an assessment of the subjective psychological impact this would have on a student. The duration of time isolated from other students and the environment in the time-out room

(such as its size, whether it has natural light and proper ventilation) would be directly relevant to this.



### Taking away privileges

Privileges should not be removed if in doing so the student's education could be affected. For example, a student should not be punished by being kept back from a trip to see a play or film which is part of the English syllabus. The sorts of privileges which can be taken away are:

- attending a sports game
- attending a school dance (unless the dance was not organised by the school but by the Parent Teachers Association, for example, or by another group as a fundraising exercise)
- participating in a class outing, for example a picnic.

### Behaviour management programmes

Programmes which help students to learn self-discipline or to change behaviour, such as anger management or drug awareness programmes, are creative ways of helping students with behavioural problems. They should not be regarded as a form of punishment but as a potentially effective tool in changing behaviour.

### Reprimand in front of principal and parents

This can be compared to a 'caution' under the youth justice system when young people are warned at the police station by a senior police officer in front of their parents. In the school situation, a reprimand can take place in the principal's office.

### Daily Reports

A student's behaviour can be monitored through the use of daily reports: a report card is filled in by teachers and shown to the principal, deputy principal, dean or a nominated teacher at the end of the day. Schools will be able to take action if the student behaves poorly.

### Behavioural contracts

Behavioural contracts are usually written as a condition of reinstatement after a student has been stood-down or suspended. They should be negotiated with the student and his or her parents and should not be imposed on the student. The contract should state specific expectations and goals, and

should be a two-way agreement, recognising the school's duty to provide guidance and counselling for the student, as well as the conditions to which the student and parents agree. Terms of such an agreement should be reasonable, realistic and attainable by the student. The student should not be set up to fail. If the student breaches the agreed terms, the principal may ask the board of trustees to hold another meeting to discuss the situation. **Withdrawal of a student from the school if they do not keep to the terms of the contract must not be a condition of the contract.** Each case must be treated individually. The only way a school can suspend, exclude or expel a student is through the school suspension/expulsion process.

## **DISCIPLINE PRACTICES THAT ARE NOT LEGAL OR ARE SUSPECT**

### **Corporal or physical punishment**

Such practices are forbidden by section 139A of the Education Act, which covers all correction or punishment by physical force, such as caning or hitting, and throwing things such as chalk or dusters at students. Any deliberate or attempted application of force against a student could be considered an assault and lead to a criminal prosecution, even if the student is not hurt. However, if there has been actual injury, parents should promptly take their child to the doctor for a medical certificate. This can be used as evidence or as part of a complaint to the school. While students or their parents may also consider contacting the police, it is important to note that once a complaint is lodged, police may proceed to a prosecution. Parents will not be able to retract their complaint at a later stage.

### **Sending home**

A student should not be sent home because of a lack of resources to deal with their special needs, or for trivial reasons such as incorrect uniform. Schools are not permitted to send a student home, even if it is only for a day or for a shorter period of time, unless the principal uses the formal stand down or suspension process, done in accordance with the Education Act.

This process is explained in Chapter 13.

### **Punishment or treatment which is cruel or degrades students**

This is against the Bill of Rights. Examples include a teacher making disparaging comments about a student in

front of the class, or making someone stand or hold their arms above their head for a long period. Asking a student to make a public apology in front of the whole school may be included in this category.

### **In-school suspension**

Some schools use this approach for students who are not actually sent home but who are asked to remain in school to do work around the school for a day or two, instead of attending class. Arguably, this type of 'suspension' is not acceptable, because a student who is attending school is entitled to take part in educational activities.

Nonetheless, in-school suspensions are a lawful disciplinary measure if the student has been officially suspended, and is then asked to return to school to participate in counselling or an educational programme to help deal with their behaviour. On a parent's request, a principal may also allow a suspended student to return to school to sit exams.

### **Section 27 for discipline**

It is illegal for a principal to use section 27 of the Education Act to send a student home for misbehaving. Students who misbehave can only be formally removed from school if the principal imposes a stand-down or suspension under section 14(1) of the Education Act.

### **General**

While schools have a right to discipline a student who has breached a school rule, if you do not agree with a school's disciplinary method, you should suggest an alternative type of discipline that is more appropriate for your child.

If you are unhappy with any punishment given to your child, consult your school.

If you are then not happy with the response from the school, you could contact an agency who can help you such as:

- the Office of the Children's Commissioner
- your local community law centre
- your local Citizens Advice Bureau
- the Parents Legal Information Line for School Issues (PLINFO) 0800 499 488
- or a specialist advocacy service such as IHC or CCS.

See Useful Contacts.

# 6. School Fees

## **My child attends a state school. Do I have to pay fees?**

No. The Education Act 1989 guarantees free enrolment and free education to every New Zealand citizen or permanent resident, from their fifth birthday until the first of January following their 19th birthday. The right to free enrolment and free education means that the school may not make payment of a fee a prerequisite for enrolment or attendance.

A board of trustees must not charge fees to cover the cost of either tuition or materials for the core curriculum. (See below for more detail).

## **Can state schools charge any sort of compulsory payment?**

No, only optional activity fees. Schools can request voluntary donations, but parents cannot be forced to pay them (for more detail, see below).

Schools can also charge activity fees (or fees for optional goods and services). Schools must clearly identify – in their prospectus and notices to parents – that all charges for optional goods or services are just that: optional. Unless a parent agrees to their child receiving such optional goods and services, they cannot be charged for them. See below.

## **What is the ‘school donation’ and do I have to pay it?**

Most schools ask parents to pay a specific sum of money towards running the school and providing additional services for students. This is normally called a ‘school donation’, and is a way schools ask parents to contribute to the school by topping up government funding. Schools should make it clear to parents that this donation is voluntary and that parents cannot be forced to pay it. Schools may suggest an amount for the annual donation, but can’t penalise parents (or their children) for choosing not to pay the suggested amount. In particular, schools cannot demand payment of the donation to confirm a child’s enrolment at the school.

Unfortunately, some schools use the term ‘fee’ or even ‘levy’ to describe this donation, which implies that payment of the sum is compulsory. This is incorrect.

Payment of donations should be receipted as such and qualify for income tax rebates. A board does not have to pay GST on voluntary contributions and GST should not be included in any amount which qualifies as a donation.

Parents may not be levied to pay for things like heat, light and water charges, for which schools are resourced through their operations grant.

## **What is an ‘activity fee’ and do I have to pay it?**

‘Activity fee’ means different things at different schools. Some schools describe the school donation as an ‘activity fee’. Some schools describe as ‘activity fees’ payments for activities that are outside the core curriculum, such as school camps, concerts by visiting artists, or non-compulsory class trips. Some schools use the term ‘activity fee’ to describe payments associated with the cost of materials in particular subjects, such as stationary or even sports equipment.

Schools can ask parents to pay for materials, activities and events that enhance but are not essential to teaching the core curriculum. Examples might be where a student has chosen to take home an art item, or chosen to participate in an optional sporting activity. Schools may also ask for advance payment for optional activities during the year, but can’t insist on this.

It would be misleading for a school to ask for an activity fee for something which is part of the core curriculum.

The school must inform parents in advance of any activity fees, and parents must be given the opportunity to agree to pay the charges.

Boards are not permitted to add compulsory or blanket charges on their enrolment form. However, parents who sign their child up for an optional service or agree to buy goods through the school can be charged accordingly.

If you can’t afford an activity fee, you should contact the school principal. In some cases, you may be entitled to financial support or, for example, an advance on your benefit from Work and Income.

## **Can I be charged for ‘course materials’?**

Parents should not be charged for the cost of any tuition or materials used in the delivery of the core curriculum, unless there is a very clear take-home component. In subjects with a practical component, such as clothing and workshop technology, schools may charge for materials where the end product belongs to the student and may, if paid for, be taken home.

At the beginning of the year, parents should be made aware that charges for materials are a feature of courses in practical subjects.

If you are uncertain or disagree about whether an activity is part of the core curriculum, you can ask the Ministry of Education to contact the principal to talk about it.

## **My child attends an integrated school. Do I have to pay fees?**

Integrated schools can charge an 'attendance due' which is a compulsory fee, but this must not be greater than the amount agreed to by the Minister of Education (published in the *New Zealand Gazette*). These dues should also be clearly set out in any prospectus or enrolment information. Revenue from attendance dues can be used only to improve school buildings and facilities or to pay for debts or mortgages that the school has on the land or buildings of the school. Schools are not allowed to charge interest on unpaid dues.



## **I can't afford to let my children attend a school trip and they've been told they will have to sit in a class with younger children. It doesn't seem fair.**

Even if the school trip is part of the curriculum, schools can still charge parents for reasonable travel costs connected with the activity, for example fieldwork in biology. For these kinds of activities, schools must make every effort to minimise costs, by holding the activity as close to the school as possible. Where parents are unable or unwilling to pay for a trip, schools should try to provide the student with an alternative experience or insight into the curriculum (for example, a video).

Note that it is your right as a parent to be told when fieldwork will be an integral part of the course.

It is also reasonable for schools to ask parents to contribute towards the cost of a school camp or a fun trip (for example, to the botanical gardens), which is part of the broader school programme. Such non-compulsory outings are in addition to the basic delivery of the curriculum.

If such trips are held during school time and parents are unable to afford the associated costs, the school can't send the student home. The school has a duty to provide activities and supervision for your child; this may involve your child being placed in a different class while their class is on the trip.

## **We didn't get a copy of the school magazine because we did not pay the donation.**

Some items, including school magazines, may be funded entirely through donations and not through the Ministry of Education. Schools may therefore have a right to withhold these items.

## **Can the school refuse to issue my child with a student ID card if we don't pay the donation?**

It depends. Some schools have a policy of funding student ID cards entirely from school donations, in which case they could refuse to issue an ID card if the donation is not paid. Nevertheless, refusing to issue a student with an ID card could have serious consequences for the student. The student might be unable to access the school library or get a student pass for public transport. This could result in unfair discrimination against a student, which the school should consider before refusing to issue a card.

It may be possible to work out a compromise. For example, a parent may be unable to pay the total suggested 'donation' but may be able to pay for an ID card alone.

## **Can a school refuse to give my son his leaving certificate or school report because we haven't paid all of his 'fees'?**

Yes. Schools may refuse to release your child's leaving certificate if there is money owed on your child's account (but not for unpaid donations). School leaving certificates are different from school reports. They are administrative in nature and record information such as whether or not the student has returned all borrowed school items, has any outstanding amount owed on their account and has been taken off the school roll. If there is a disagreement, parents should first speak with the principal, then the Ministry of Education.

Parents, however, are entitled to be informed about their child's achievement in school. This may be in the form of a school report.

Some schools attempt to withhold school reports to 'encourage' parents to pay the school donation. The National Administration Guidelines make it clear that for students in years 1-8, the school must provide a written report on the student's progress and achievement in relation to National Standards, at least twice a year.

Note that students (under the Privacy Act 1993) and parents (under the Official Information Act 1982) can also

make specific requests for all other information, including non-educational information, held at school about the student.

### **I was shocked to get a letter from a debt collection agency. Can a board do this?**

If a board of trustees believes that money is owing to the school, it can take steps to recover that money.

Parents should first identify if the unpaid debt is a school donation or an actual debt. A board has no right to employ a debt collection agency to recover a school donation, which parents cannot be compelled to pay, as it is voluntary. However, it can do this for an actual charge which has not been paid, for example a debt incurred for lost or damaged library books, or unpaid charges for extra-curricular activities which a parent had agreed to pay.

If you disagree with the debt, it is important to write to the debt collection agency (and the school), and inform them of this as soon as possible.

Parents are entitled to ask for a breakdown of costs from the school to identify the items that they must pay for, including:

- school stationery
- transport costs that you have been informed about and agreed to
- items of clothing distributed through the school, such as sunhats
- voluntary activities that you have agreed to, such as a non-compulsory school camp.

A school can employ a debt collection agency to recover payment for these items.

A board, in attempting to recover costs, must not publicly harass a student or deny them information or privileges available to other students. The school can stop the student from participating in an optional activity you haven't paid for.

If you don't agree with the amount of the debt, tell the debt collection agency that you are disputing the amount. Then discuss the matter with the board of trustees. If you cannot reach agreement, seek help from YouthLaw or your nearest Community Law Centre.

# 7. Uniform and Appearance

Most New Zealand secondary schools, and some primary or intermediate schools, have rules requiring that students wear the school uniform.

## **If the school has a uniform, does my child have to wear it?**

Section 72 of the Education Act 1989 gives a board of trustees powers to make 'any by-laws the board thinks necessary or desirable for the control and management of the school'. Such by-laws must be consistent with the general law of New Zealand and the school's charter. A school uniform rule is legally enforceable unless it unreasonably infringes the New Zealand Bill of Rights Act 1990.

## **Can my child be punished for not wearing a uniform?**

This would depend on the circumstances. Children should not be punished if their parents or caregivers cannot afford to buy a uniform. Parents should approach the school, which may have second-hand uniforms that can be purchased cheaply. Parents who are on a low income or benefit may be able to obtain financial assistance from the Department of Work and Income. Parents may be able to get an advance payment to purchase their child's uniform and other equipment for school.

However, if a student refuses to wear a uniform, the school could:

- warn a student of the consequences
- give detention or extra duties
- stand-down or suspend a student for continual disobedience, if he or she has had a number of warnings.

## **Can my child be sent home for not wearing the correct uniform?**

No, a student can only be sent home if they have been formally suspended or stood-down. A stand-down or suspension takes effect the following day; students should remain on school premises until the end of the day on which they have been stood-down or suspended.

## **My son's school sports uniform gets filthy when he wears it to rugby on Saturdays. Can the school insist he wears it?**

Yes. If the school has a uniform policy, a school can demand that students wear uniform during school hours and on school trips or sport events. The school could insist that only those in uniform are eligible to play on the team.

## **If school uniforms must be worn, can any cultural or religious concerns be taken into account?**

Yes. The Human Rights Act 1993 and the Bill of Rights outlaw discrimination on the grounds of race, gender, national or ethnic origin.

Schools can ask that students provide a genuine reason for wanting to wear items of cultural and religious significance. The Human Rights Commission has upheld the right of Māori students to wear taonga at school, despite uniform codes which ban jewellery.

In 1991, the Human Rights Commission considered a case brought by two female students who claimed their uniform skirt disadvantaged them because it restricted their movements. The commission agreed that the uniform did discriminate against them based on their gender. While this does not mean that boys and girls are required to have the same dress code, it does require that school rules do not disadvantage a particular group. In this case, the school changed its uniform rule to allow female students to wear 'culottes' (shorts that look like skirts).

## **My son has been ordered to cut his hair. Can the school demand this?**

The Court of Appeal, in *Edwards v Onehunga High School Board* (1974), upheld the school's right to enforce rules regarding hair. Nevertheless, there are exceptions for students who can show that they have a genuine reason for keeping their hair long. For example, hair length has religious significance for Sikhs and cultural significance for Rastafarians.

A student's personal preference would not suffice as an acceptable reason.

## **My daughter is not allowed to wear her nose stud. What about freedom of expression?**

Section 14 of the New Zealand Bill of Rights Act states:

Everyone has the right to freedom of expression including the freedom to seek, receive and impart information and opinions of any kind in any form.

Courts have held that this includes conduct as well as speech. It can be argued that students' clothing and appearance is a way of expressing themselves as individuals. However, schools may be able to impose restrictions if they can show that such limitations on freedom of expression are reasonable and justified.

While schools have the right to make rules, you and your child should ask the school why a rule exists. Is it, for example, for safety reasons? Then you should consider:

- How important is this issue to you?
- Why is it important? Are religious or cultural values involved?
- What are the possible consequences of pursuing the issue?
- Is the issue of such importance that it is worth risking the possibility of disruption to your child's education?

Sometimes schools and families can become entrenched in their respective positions about what constitutes a 'right' and what breaches that right. There are no easy answers. Use the above checklist as a guide to consider the importance of the issue. If, after careful consideration, you feel the matter should be pursued, and you and the school are unable to reach agreement, contact one of the agencies listed at the back of this booklet. See Useful Contacts.



# 8. Truancy

Parents are legally required (sections 20 and 24 of the Education Act 1989) to enrol their children (aged between six and 16 inclusive) at a registered school. Parents must ensure their child attends every day the school is open unless the child has a genuine reason, such as being sick.

Boards of trustees are legally required (section 25) to take all reasonable steps to ensure students enrolled in its school attend whenever it is open.

Principals are required to keep accurate admission and daily attendance registers for all students.

Under section 22, students who have reached 15 years may be able to get an exemption from attending, if the Ministry of Education is satisfied that this would be sensible, considering the student's conduct and educational problems, or the lack of benefit they are likely to get from school.

## What is truancy?

Students who are enrolled in school must attend on any day that it is open. If they fail to do so and have not communicated a reasonable excuse to the school, such as being sick, that is called truancy.

Under the Education Act 1989, a student is considered to have attended school if the school was open for four or more hours in a day, and the student attended for four or more hours on that day.

## What can happen if your school-aged child is not enrolled in school?

Non-enrolment is not truancy. However, this is unlawful and is in breach of section 24 of the Education Act. A parent who fails or refuses to ensure that their child is enrolled at a registered school is liable to a fine of up to \$3,000, upon conviction.

## Can my child attend school on a part-time basis?

No, this is unlawful. Between the ages of 6 and 16, students must attend school regularly. If your child is sick or has a good reason to be away from school, you will need to write to the school with reasons for your child's absence. If your child is over the age of 16, arrangements can be made with the school for part-time attendance, although this is unusual.

## Can my child attend school for half a day?

No. Enrolled students must attend school during school hours. Students must be at school for at least four hours a day, but only with the principal's permission can a student leave school early. For example, students with a disability who do not feel able to attend a full school day may request to attend for the minimum four hours.

## Can my child be disciplined for not attending school?

You and your child could both be disciplined!

Schools differ in their methods of discipline. Some schools may have your child do something like write lines or do a detention.

If a student is absent on a continuing basis and without a reasonable excuse, the principal could suspend your child under section 14 of the Education Act, arguing that such truancy constitutes continual disobedience, which is a dangerous or harmful example to other students. However, the school should investigate and assess the situation. It is the responsibility of the board of trustees to ensure that non-attendance is looked into and the necessary resources allocated to help remedy the situation. A meeting with parents may be a good way to get to the issues underlying persistent truancy.

Steps taken by the school should include:

- assessing the situation at a meeting of senior staff and/or board of trustees, according to the school policy
- ensuring that the family is advised of the truancy, both in writing and orally and in a manner they can understand
- convening a family meeting to explore the situation
- referring matters such as learning difficulties, abuse and neglect or home problems to the appropriate agency.

## What happens when a student stays away from school?

The student may be contacted by the Non-Enrolment Truancy service (NETS), and if Child, Youth and Family is informed, the student may be required to attend a Family Group Conference. Also, under the Education (School Attendance) Regulations 1951, when when a student is absent for 20 or more school days in a row, without explaining that the absence is temporary, the principal can record the fact that the student has left the school and is no longer on the school roll. If a student is under 16, the child will have to re-enrol at that school or another school.

### **Can my child take days off to attend a funeral or for some other good reason?**

Yes, but only with the principal's permission. Under section 27(1) of the Education Act, the principal may allow a student to be absent for a maximum of five school days on any occasion. Requesting time off school for a holiday is generally not an acceptable reason. Students who are absent without the principal's permission may be deemed truant.

### **What can happen to you if your child is truant?**

Under section 29 of the Education Act, in cases of persistent truancy, parents can be prosecuted. You could be liable for a fine of up to \$30 for every school day your child has played truant. If this is the first time you have been prosecuted for your child's irregular attendance, the fine can't exceed \$300. For a subsequent prosecution, the fine can't exceed \$3,000. This fine can also apply if your child is enrolled at Correspondence School and does not do the work for the course.

If you do not enrol your child (aged between six and 16) at a school, you could be liable for a fine of up to \$1,000.

If your child is truant from school, the school or the police may refer your child to Child, Youth and Family as a child or young person in need of care and protection.

If this happens, it is likely that Child, Youth and Family will convene a Family Group Conference (FGC) which will look at the issues of concern. Parents and other family members at the FGC can talk about why their child is not going to school and can suggest solutions. A plan of action should be developed at the FGC and support for the student and the family should be put in place.

Child, Youth and Family and the Ministry of Education have an agreed protocol for truancy and non-enrolment of children in schools.

Truancy can only be referred as a care or protection concern when:

- the child or young person has failed to attend school without a reasonable excuse, and
- required interventions have failed to ensure a return to school, and
- the absences have been:
  - continuous for 15 school days, or
  - one or more days every week or patterns of several days absence which persist for a school term.

### **My child is sometimes truant – but not that often. What help is available?**

Your child could be referred for an assessment, for example to Special Education, Ministry of Education (GSE), who work with students who have a diverse range of needs. They can also refer you on to other appropriate agencies.

### **What is the role of the 'attendance officer'?**

Schools may employ attendance officers to ensure students attend. The police or an attendance officer, on producing evidence of their position such as a badge, may detain students who are found to be truant. Students can be asked to provide their name and address, the name and address of their school (if any) and the reason for their absence from school. Attendance officers, if unsatisfied with the student's explanation of their absence, can take the student home or to the school they think the student is enrolled at.

An attendance officer cannot enter a student's home without consent, but a police officer can if they have a warrant.

### **Does a parent have any rights regarding truancy?**

You have a right to ask for help and to receive support. You could start by contacting one of the following people and telling them of your concern:

- school attendance officer
- school guidance counsellor
- class dean
- principal
- your district truancy service, who will assist in locating your child, will facilitate their return to school and will report their reason for non-attendance. You can contact your district truancy service through your school or the Ministry of Education.

You also have the right to request an attendance report from your child's school. However, students have the right to inform the school that they do not consent to the disclosure of their attendance record to certain people. A common example is estranged parents disputing day-to-day care and contact with their children in the Family Court. In considering third party requests for the disclosure of a student's information, schools will be required to balance the privacy rights of the student against public interest with respect to the principal's obligation under section 77 of the Education Act to let parents know of matters that, in the principal's opinion, are affecting the child's progress at school.



# 9. Bullying in Schools



## What is bullying?

Bullying is behaviour that makes the person being bullied feel afraid or uncomfortable. Bullying tactics range from physical attacks to verbal or emotional assaults, such as gossip or suggestive comments, name calling, humiliation or shaming, or exclusion from groups and games. Bullying is in essence a deliberate misuse of power – where the bully systematically and often repeatedly coerces or abuses a victim. Bullying can occur among students or it can involve teachers.

With the advent of text messaging, the internet and social networking sites, the nature of bullying in the school environment has become more insidious and sophisticated. Cyberbullying can occur through the creation of false online profiles and the posting of malicious information or embarrassing pictures or videos. While the use of such technology may be initiated outside schools, flow-on effects may lead to serious problems within school grounds.

## What should I do if my child is being bullied at school?

You should contact the school and talk to your child's teacher or the principal. It may be useful to ask the principal the following questions:

- Does the school have a 'confidential disclosure system' so that both bullies and victims can talk about bullying safely?
- Does the school have a policy for responding to school bullying and violence? What procedures are in place for dealing with bullying and who should bullying be reported to?
- Is the school aware of its obligation to provide a safe environment for students?

- Can the local police be approached to help the school develop an anti-bullying policy? See [www.nobully.org.nz](http://www.nobully.org.nz).
- If the school has a policy but it does not appear to be working in practice, would a meeting with the principal and the chairperson of the board of trustees help?

## WHAT ARE THE SCHOOL'S OBLIGATIONS?

### *Policy and Guidelines*

Responsibility for the care of students rests with the board of trustees of state and integrated schools (and with the governing bodies of private schools). This includes providing a safe, 'bullying-free' learning environment.

Schools are not only morally obliged to reduce bullying, boards of trustees are also required by the National Administration Guidelines (NAG 5) to 'provide a safe physical and emotional environment for students'.

As well as having an anti-bullying policy and other policies to minimise bullying and ensure a safe environment for students, schools should have a process of self-review to identify and address risk factors.

### *Health and Safety in Employment Act 1992*

Schools have legal obligations to take all practicable steps to ensure that no harm occurs to people at school, including those who are not employees. This includes students.

'Harm' means illness, injury, or both, including 'physical or mental harm' (section 2 of the Act). Boards of trustees and governing committees (for example, of school boarding hostels) must also take all practicable steps to prevent hazards harming people in the vicinity of the school (section 16). 'Hazards' include a person's behaviour, where it may cause harm. A school that permits bullying to occur, for example by the inaction of teachers, where students suffer harm, could be in breach of its duty and face prosecution under the Act.

Where there is long-term systematic bullying, as some children with disabilities experience, the school may also be held responsible under this Act.

### *Duty of care*

Schools owe a duty of care to the students they accept for enrolment. If a student suffers harm while in the care of the school, the school may have breached a duty of care to the student.

Civil claims for negligence (or breach of duty of care) are possible in New Zealand, but ACC will limit claims for physical injuries. Physical injuries, or psychological injuries received in relation to a physical injury, are likely to be covered by ACC, so no court action could be taken in relation to these injuries. Parents may wish to speak to a lawyer about what options may be available.

### **Ethical**

A Code of Ethics established by the New Zealand Teachers Council places an ethical obligation on registered teachers to 'promote the physical, emotional, social, intellectual and spiritual wellbeing of learners'. The code may be used as a basis to challenge the ethical behaviour of a teacher and could provide grounds for a complaint if a teacher's practice falls short of these standards. See [www.teacherscouncil.govt.nz/ethics](http://www.teacherscouncil.govt.nz/ethics).

### **What are students' rights and what can they expect?**

The Office of the Children's Commissioner has made recommendations about how schools should respond to reports of bullying. Parents and students should expect:

- to be heard and responded to sensitively, and not to be dismissed out of hand
- to be told that the report will be investigated and that there will be a response
- to receive feedback on the situation and to have the incident responded to in an appropriate way
- to be protected from negative consequences of their reporting
- that the school will intervene and support victims and respond to bullies. See [www.occ.org.nz](http://www.occ.org.nz).

New Zealand has ratified the UN Convention on the Rights of the Child. Article 19 states that, 'Young people have the right to protection from all forms of abuse (such as bullying and harassment).'

### **What further action can be taken if the school's response is unsatisfactory?**

If parents are not happy about the way a complaint has been dealt with by the principal, a written complaint can be made to the board of trustees. Parents can ask to attend the meeting at which the complaint will be addressed. To speak at the meeting, parents need permission from the chairperson. It may help to take along a support person who is used to dealing with these sorts of complaints. (See the Support Agencies listed at the end of this chapter.)

If parents are unhappy with the way the board of trustees dealt with the complaint, they can complain to the Education Review Office, the Ministry of Education or the Office of the Children's Commissioner (see Useful Contacts).

### **Can I lodge a complaint with the police?**

Yes, in some circumstances. All forms of bullying should be reported to the school. However, complaints of physical violence against your child can also be made to the police. In considering prosecution, the police will take into account your evidence and other relevant factors, such as the age of the perpetrator and the severity of the act. If the police find that the behaviour is a cause for concern, children aged 10–14 can be asked to attend a Family Group Conference with their families. Young people over 14 years of age may be brought before the Youth Court, while those who have turned 17 may face a criminal charge in the District Court. It is important for parents to note that once a complaint has been lodged with the police, the police may decide to press charges and you will not have the opportunity to retract your statement.

### **When does bullying become a criminal offence?**

Under section 196 of the Crimes Act 1961, it is a crime to intentionally apply force to another, or to threaten to do so if the person making the threat causes the victim to believe on reasonable grounds that they have the ability to carry out that threat. Text messages which make physical threats would amount to a breach of the law.

Section 21 of the Summary Offences Act 1981 creates the offence of intimidation. This includes threats to injure a person or to damage their property where there is intent to frighten or intimidate.

Harassment can also be an offence. According to the Harassment Act 1997, harassment is a pattern of behaviour directed against another person, which includes doing a 'specified act' to that person at least twice during a 12-month period. Examples of 'specified acts' include making contact with the victim (regardless of the means of communication), following or confronting the victim, or acting in any other way that would cause a reasonable person in the shoes of the victim to fear for their safety.

For the behaviour to be considered 'criminal', the harasser must intend to cause the victim to fear for his or her safety. However, if the harasser is unaware that the victim feels distressed or harassed, the behaviour could still be considered as 'civil harassment', and the victim could apply to the Family Court for a restraining order to stop the harassment. Note that a restraining order under the Harassment Act can only be made against someone aged 17 or older.

### **Text and cyberbullying remedies**

Cyberbullying means using a mobile phone, the internet or other technology (like a digital camera) to bully another person, by causing them hurt or embarrassment.

For most social networking sites and all New Zealand mobile phone providers, bullying is a breach of the terms of use. If your child has been cyberbullied, you could assist your child to lodge a complaint with the bully's mobile phone or social networking site provider. Being excluded from the site, or being deprived of mobile access, is likely to be a serious disruption to the bully. A warning from the provider could therefore be a powerful deterrent.

See [www.netsafe.org.nz](http://www.netsafe.org.nz) for information on ways to report abuse to social networking site providers, and for comprehensive resources to help establish and maintain cybersafety for schools (such as the NetSafe Kit for Schools).

If your child has been cyberbullied, you should do the following:

- Ensure that all evidence of bullying messages and images are saved. Text messages can be saved on a mobile phone and screen shots of bullying can be taken on websites or online chats. These can be useful if you report the bullying to the school or the police.
- If the cyberbullying involves physical threats, and you are concerned about your child's safety, contact the police.

## Support agencies

- Community Law Centres, including YouthLaw, are a good source of free legal advice.
- 0800 No Bully (0800 66 28 55) is a free, anonymous 24-hour information line giving advice about taking action to stop bullying. See [www.nobully.org.nz](http://www.nobully.org.nz).
- Kidsline (0800 53 47 54): Telephone support for 9–13 year olds provided by senior students, weekdays 4–6pm.
- Youthline (0800 37 66 33): Telephone counselling for young people daily, 8pm–midnight.
- What's Up (0800 942 8787): Telephone counselling services for 5–18 year olds daily, noon–midnight.
- [www.cyberbullying.org.nz](http://www.cyberbullying.org.nz) has information for parents, teachers and young people.
- Also see Useful Contacts.

For more information on bullying, and programmes to address bullying in schools, check out [www.police.govt.nz/service/yes/nobully/](http://www.police.govt.nz/service/yes/nobully/).

# 10. School Searches

## **Do school staff have the right to search students or their bags?**

No, generally, teachers do not have the right to search children or their bags. Section 21 of the New Zealand Bill of Rights Act 1990 protects all citizens (not just adults) against unreasonable searches. Students can reasonably expect that the content of their bags is private.

However, a teacher could search students and their property legally if:

- The student consents. Each case should be considered on the individual circumstances. A child who is too frightened to object cannot be held to have consented. The child's age will be relevant as to whether they are able to give informed consent. If the student is under 16 and lacks the maturity to decide, the student's parents should be consulted. But if the student is old enough and mature enough to make an informed decision, the school must generally obtain the student's consent before any search can be carried out. Check the school's policy, as it may provide for parents to be present during a search. Also note that you and your child may have given prior consent to a search. For example, you may have agreed that your child's bags can be checked for drugs or alcohol as a condition of going on a school sports trip.
- There is a good reason which justifies a search. For example, if the teacher has a good reason to suspect that a student is in possession of something that may cause harm to other students, such as a weapon or drugs. The school should call the police to carry out such a search. Nevertheless, schools could argue that they are obliged to protect all students from harm, and may therefore be entitled to search students for dangerous items. However, this does not entitle schools to carry out overly intrusive (unreasonable) searches, such as strip searches.

The manner of each search must be proportionate to the reason for the search and the seriousness of the problem. It is very important to note that only the police have prescribed legal powers to search people without consent. Schools have no explicit legal authority to search any person without consent.

## **My child's school policy states that children and their property can be searched by school staff. Is this reasonable?**

Probably not. The school may argue that by enrolling your child, you and your child have agreed to abide by the policy. However, schools can only implement policies that are not contrary to any laws of New Zealand.

While it is common for large stores to display signs telling customers that their bags may be searched, the situation cannot really be compared to schools. Customers are free to choose where they will buy their goods. Education is compulsory, and students, particularly in rural areas and also as a result of zoning, do not always have the freedom to choose which school they will attend. Therefore, a general search policy could well be considered unreasonable, although a specific search policy in relation to an immediate danger may not.

## **Can the school strip search my child?**

Schools should not carry out strip searches. A strip search of a student would not generally be considered 'reasonable'. Unless there was concealment of a dangerous weapon or an imminent risk to life, strip searches would probably be regarded as too intrusive.

It may, however, be reasonable to ask a student to turn out their pockets or remove an outer garment if the teacher believed the student was concealing a dangerous or harmful item. It is difficult to see how stolen property could be considered harmful or dangerous, but drugs or weapons could be.

Searches should always have limits placed on them, and be proportionate to the reason for the search and the seriousness of the problem. Because this area of law has not really been tested in New Zealand courts, we would recommend that you seek legal advice about your child's particular circumstances. It is worth noting that documented cases of schools carrying out strip searches of students have been condemned by both the Children's Commissioner and the Human Rights Commission.

## **During my daughter's gym class, an expensive pair of shoes went missing. The entire class had to empty their bags. Was this reasonable?**

It depends on the circumstances, but generally schools should not carry out 'dragnet searches' – where an entire class is searched.

If shoes are stolen, it is probably acceptable for teachers to look through the rows of shoes in the changing room to see if they can spot the stolen pair. But a search into bags is a different story. To decide if the search is reasonable, a number of factors should be considered, including:

- the need for the search
- the degree of invasion of privacy
- the effect of the search on the students.

Each case needs to be considered on the circumstances at

the time – a distinction needs to be made between searches for stolen property and those made for safety. Searches for safety reasons are more likely to be reasonable. For example, a search may be justified if a teacher receives a credible bomb threat. Searches of all students for drugs on a regular basis would not be reasonable.

Schools' duties are primarily in relation to education. It would not be reasonable for a school to conduct searches to detect criminal activity unrelated to school. Searching bags for items suspected to have been stolen outside school is likely outside the school's powers. If you are concerned:

- talk it over with the dean or principal
- ask for a copy of the school's policy regarding searches
- contact your nearest Community Law Centre or your own lawyer.

### **Can a school search a student's locker?**

The law is not clear on this. In some circumstances, yes, a school can search a student's locker. If no payment has been made for the use of the locker, then the locker is school property and arguably the school may maintain some rights over it, including the right to look inside. However, students can still expect a reasonable degree of privacy with regard to their locker's contents, and a search should not be carried out when there is no good reason to think a search is needed.

If the locker is rented, or a monetary deposit for its use has been made, a student can expect to control who can access the locker, and can expect a reasonable degree of privacy with regard to the locker's contents. The school should not conduct a search unless it has good reason to believe the contents could contain something that is harmful or dangerous to other students (such as weapons or drugs). In any case, the general principles of searches (as discussed above) would apply and the purpose of the search and grounds for it should be reasonable in the circumstances.

### **If a young person is accused of possessing an unlawful item, can they be detained by teachers until police arrive?**

Yes, school staff are entitled to keep students confined to an area such as a classroom while they wait for police to arrive. However, the student should be given something to work on while waiting. They should also have access to toilets, and to food at mealtimes.

If the police have reasonable grounds to believe drugs are involved, they can search the student, their bag or locker without consent. You should tell your child to state that they do not consent to the search, but not to resist such a police search. If they feel it has been carried out

roughly, or without good cause, they should complain to the Independent Police Conduct Authority, which investigates complaints against the police.

### **Can the school call in drug sniffing dogs to do a general search for drugs?**

Yes. Drug sniffing dogs generally begin by sniffing the air, which probably cannot be seen as an 'unreasonable search' or an invasion of anyone's privacy. However, it is still a way of revealing contents and may be a form of a search, even if it is less intrusive type and schools aren't singling out particular students. Schools should only bring in sniffing dogs if there is suspicion of drugs at school, rather than for general random searches.

If a dog targets a particular bag or locker, then the school may have grounds to search the property of that individual because the trained dog has provided reasonable cause to suspect the student is in possession of drugs.



### **Can a school carry out drug testing of students?**

Yes, in certain circumstances. Situations where schools are most likely to request drug testing involve participation in sports teams; a belief held on reasonable grounds that a student has consumed drugs on school premises; or as a condition of re-entry to school after a student has been suspended for drug use.

#### *Sports teams*

Random drug-testing as a condition of joining a sports team may be reasonable, as the student can choose whether or not to participate. Belonging to a sports team is generally an extra-curricular activity and is not compulsory.

### *Belief that student has consumed drugs on school premises*

A school has no legal authority to compel students to submit to drug testing. Schools may ask students to agree to testing, but students can refuse.

Students are sometimes interviewed about suspected drug use at school and asked to submit to a drug test. These drug tests can confirm drug taking, but they cannot show whether the drugs were taken during school hours or outside of school hours. Many drug and alcohol counsellors question both the accuracy and the value of these tests.

Schools which request drug testing should have clearly written policies defining how and when requests can be made. As a minimum, the student is entitled to be told:

- the grounds on which the school is making the request
- the student's right to refuse the request
- the possible consequences of the refusal (although schools would probably not be justified in punishing a student for refusing to agree to a test).

Note that drug testing is an extreme step and risks being illegal and an infringement of students' rights under the Bill

of Rights, the Privacy Act 1993 and the UN Convention on the Rights of the Child.

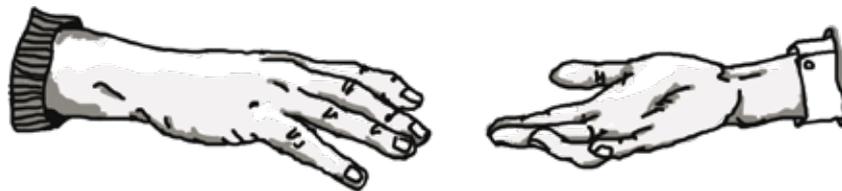
To discuss a school's drug testing or its drug testing policies, you may wish to speak with a lawyer at YouthLaw.

### *Condition of re-entry after suspension for drug use*

If the board of trustees has found that the initial suspension for drug use was justified, and has imposed drug testing as a condition of returning to school, then this may not be unreasonable. Conditions imposed on students after suspension must be reasonable and aimed at facilitating the student's return to school. Boards could argue that evidence of drug-taking could hinder a student's successful return to school. However, as traces of cannabis can remain in urine for some considerable period, it would probably not be reasonable for a board to demand a 'clear' test as a condition of return.

Parents should seek legal advice if they have concerns about the legality or reasonableness of a drug testing condition.

# 11. Students with Disabilities



New Zealand aims to operate an inclusive education system. However, some students are denied access from part or all of the school curriculum because they have a disability of some kind. Examples of these situations include:

- children with behavioural difficulties not being allowed to go on school camp
- parents being asked to keep 'difficult' children home during Education Review Office (ERO) visits
- children with high physical and intellectual needs not being encouraged or allowed to join school outings because of the many resources they require
- a child with diverse needs facing a board of trustees disciplinary hearing for behaviour which is a recognised symptom of his or her medical condition.

Many parents complain that they are being pressured to 'voluntarily withdraw' their child, supposedly because another school may better fulfil the child's needs. Parents are made to feel that their child is responsible for the fact that their classmates' needs are not being met. (See Chapter 14 for more information on 'voluntary withdrawals' or 'kiwi suspensions'.)

It is important to note that section 8 of the Education Act 1989 states that 'people who have special educational needs (whether because of disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not'.

All students, no matter what behavioural or other difficulties they have, are entitled to an education.

Note: In late 2010, the Ministry of Education allocated an additional \$69 million for a four-year plan to achieve a fully inclusive education system: 'Success for All – Every School, Every Child'. Key changes will ensure that schools are made more accountable: they will be audited for how well they cater for students with diverse needs. Other changes include better coordination among agencies, more funding for Ongoing and Reviewable Resourcing Schemes (ORRS), and a requirement that all schools demonstrate inclusive practices by 2014.

For more information, see [www.minedu.govt.nz](http://www.minedu.govt.nz).

## **My child's needs are not being met at school. What can I do to address this?**

If you are concerned about your child's learning, talk to your child's teacher or the principal. It is important that your child's needs are assessed, so support can be provided and the most suitable programme can be developed. An Individual Education Programme (IEP), or an individualised education plan, is a programme developed for students with special education needs. It can be developed at a meeting between you, your child, your child's teacher and specialists as appropriate. Such plans should be reviewed at least twice a year, in a meeting with you and the support team that developed the plan.

Schools are obliged to ensure the needs of all students are met, and a range of support is available to them. All schools receive a grant, the Special Education Grant (SEG) to assist students with moderate behavioural and learning needs. Schools can also call on specially trained teachers, school-based resource teachers of learning and behaviour (RTLBs), who support and work within schools to assist staff, parents and community members to meet the needs of students with moderate learning and/or behavioural difficulties. For more detailed information, see the Ministry of Education's resource, Meeting Special Education Needs at School, online at [www.minedu.govt.nz](http://www.minedu.govt.nz). Click on Special Education.

If problems arise, consider taking your case to the principal and then the board of trustees. Talk to someone in Special Education, Ministry of Education (GSE). GSE has a national, regional and district structure that provides special education services to children and young people with high and very high educational, social, behavioural and communication needs.

## **Who qualifies for dedicated funding?**

Students with special needs – who may have a variety of physical, sensory, learning or behavioural difficulties – are eligible for services and support through the Ministry of Education's schemes.

Funding for individual students with high or very high special education needs is provided through the Ongoing and Reviewable Resourcing Schemes (ORRS). This funding is available for a small group of children (about one per cent of the school population) with severe difficulties and education needs. The 'Success for All' plan provides more money for this area, meaning more children will be eligible for ORRS funding. For students with speech-language difficulties and severe behavioural difficulties, funding may be available through Special Education, Ministry of Education (GSE).

### **Should a parent be told their child can only attend school for shorter periods because of funding shortfalls?**

No, this is not acceptable. It is a breach of section 8 of the Education Act (described in the introduction to this chapter). Parents should enlist the services of staff from the Ministry of Education's special education area to ensure that their child is appropriately provided for. Parents may also contact the Office of the Children's Commissioner, which can help with information and advocacy.

### **Should parents be expected to top up teacher aide salaries?**

No. Parents are not required to contribute to staff salaries. As discussed earlier in this chapter, a range of funding is available. School principals and boards of trustees should abide by Ministry of Education policy and guidelines.

### **Acts and policies about students with diverse and special needs**

As well as the **Education Act**, there are other acts and policies that set out the right to an education for students with disabilities:

**The New Zealand Bill of Rights Act 1990** states that everyone has the right to be free from discrimination, including on the grounds of disability.

**The Health and Disability Commissioner Act 1994** sets out health services consumer rights in a special code (the Code of Health & Disability Services Consumers' Rights). The act covers any organisation which provides a health service to the public, whether that service is paid for or not. Services provided in schools, such as a school nurse or physiotherapist, are covered by this act and must be provided at an appropriate standard.

**The Human Rights Act 1993:** State and integrated schools are governed by Part IA of the Human Rights Act, which prohibits discrimination on various grounds, including disability. Disability (as defined in section 21 of the Human Rights Act 1993) can mean:

- physical illness

- psychiatric illness
- physical disability or impairment
- intellectual or psychological disability or impairment
- any other loss or abnormality of psychological, physiological, or anatomical structure or function
- reliance on a wheelchair or guide dog
- organisms in the body capable of causing illness, for example, HIV.

**The UN Convention on the Rights of the Child** requires the government to recognise the special needs of mentally and physically disabled children, and to ensure that disabled children have effective access to education (Article 23).

**The UN Convention on the Rights of Persons with Disabilities** recognises that disabled people have the right to an education, without discrimination and with equal opportunities (Article 24).

**The New Zealand Disability Strategy (NZDS)** is a government initiative designed to fully include people with disabilities into New Zealand society. Objectives include encouraging and educating society to understand, respect and support disabled people; to provide the best education to people with disabilities; and to ensure that all children can lead full and active lives. Specific actions include making sure that no child is denied access to their local school because of their impairment; that teachers understand the learning needs of all children; that there is equitable access to the resources available; and that schools promote effective inclusive educational settings and are responsive to the needs of students with disabilities. More information can be found at [www.odi.govt.nz](http://www.odi.govt.nz).

### **My child has Attention Deficit Disorder (ADD), and has been suspended for 'continual disobedience'. I believe his behaviour is a symptom of the disorder rather than disobedience.**

The Education Act recognises continual disobedience as grounds for suspension. Continual disobedience is when a student regularly and deliberately disregards school rules. There should be an element of deliberate non-cooperation or defiance.

Behavioural problems caused by recognised medical conditions would not usually be regarded as deliberate. Before a decision is made to suspend a child for being continually disobedient, the school should be able to show that it has made every reasonable effort to find ways to address the student's behaviour.

Schools cannot:

- refuse to enrol a student because of disability
- give a student with a disability less favourable terms of admission than those for other students
- give a student with disabilities less benefits or services

than those provided for other students

- suspend or expel a student because of disability.

### **My child has an intellectual disability. Her class is going on camp, but I've been told that it is impractical for her to go. Is this fair?**

No. The school camp is generally regarded as part of the school curriculum. It is unlawful, without reasonable justification, to deny a student with disabilities the same benefits provided to other students.

Schools can access extra staff and funding for children with high or very high needs. Parents should argue that this extra funding could assist a child to go on camp.

As a parent, consider these questions:

- What (in terms of extra assistance or resources) does my child need to go on camp?
- How can that be provided?
- Is it reasonable to expect the school to provide this extra assistance?
- Can I help to get this extra assistance (for example, can I offer to parent-help for some of the time)?
- Who can help me to get extra assistance? (IHC, for example, provides services to people with intellectual disabilities and their families.)

### **How far does the school have to go to accommodate my child?**

Section 57 of the Human Rights Act 1993 prohibits schools from refusing to enrol disabled students or providing them with less favourable conditions or benefits than for other students. Nevertheless, schools are only obliged to make reasonable attempts to accommodate students.

Schools are not required to provide special services or facilities when it's very difficult to do so. For instance, a school would not be expected to provide accessible toilet facilities for a child using a wheelchair at a school camp. While the school wouldn't be expected to modify the toilet facilities, they could employ someone to assist the child with toileting.

Schools are also not obliged to include students if this would cause an unreasonable risk to the student or others. However, all students should be included so far as it is safe to do so.

Parents or caregivers should encourage discussion with the school to facilitate their child's education, especially when caregivers can be found and/or services can be arranged. If you feel your child is facing discrimination on the grounds of his or her needs, you can discuss the matter with someone at the Human Rights Commission who will assist you to lay a complaint if necessary. You could also contact YouthLaw

or the Office of the Children's Commissioner.

### **What are my child's options other than mainstream schooling?**

#### **Enrolment in a special school**

A special school provides specialist education or support for students with specific physical, behavioural, sensory or learning needs. This can include satellite classes and special units. Parents with children under the age of 21 years may enrol their child in special education at a particular state school, special school, special class or special clinic.

#### **Te Kura: The Correspondence School**

This is a distance learning school where students who have become disengaged from school can work from home. Te Kura enables students whose location, itinerancy, health, educational needs or personal circumstances prevent them from attending a reasonably convenient school. There are two types of enrolment through Te Kura:

- Full Enrolment: This option allows a student to study until the age of 19, but they must be off the roll of any other school. Students must be fully enrolled with Te Kura. More information is available at [www.correspondence.school.nz](http://www.correspondence.school.nz).
- Dual enrolment: In some circumstances, a student can be enrolled in a mainstream school and Te Kura at the same time. This may mean that the student studies one or two courses with Te Kura but does most of their learning at a regular school, regional health school, activity centre or alternative education provider. This is also an option for students who are unable to attend school for psychological and/or social reasons. Support letters are required from the school principal and the Ministry of Education's special education area to show that the student has met the eligibility criteria for dual enrolment. Dual students must be enrolled by the host school.

#### **Regional Health School**

Regional Health Schools provide intensive support for students with high health needs (for example, chronic or psychiatric illness). See [www.minedu.govt.nz](http://www.minedu.govt.nz).

#### **High and Complex Needs Unit**

Special funding is available to develop and manage inter-agency plans, where students are a risk to themselves or others, have complex needs that cannot be met by local services, and when intensive interventions are necessary. See [www.hcn.govt.nz](http://www.hcn.govt.nz).

### **Alternative education**

Students aged 13-15 with behavioural difficulties, or who are alienated or disengaged from school, and who have been absent for two terms or more, may be able to enrol in an Alternative Education programme, an Alternative Education Centre or an Activity Centre.

Alternative Education Centres are funded by the Ministry of Education and are linked to a particular school. The alternative education student remains on the school roll, while being taught in small groups in a different setting. That setting might be off campus (through a community partner) or within the existing school environment. In either setting, the school maintains oversight and is responsible for the student.

Advantages of working with students in the existing school environment include students having access to all school resources, and experiencing smoother transitions back into mainstream schooling, if this is in the student's best interests.

Activity Centres provide alternatives for students exhibiting 'at risk' behaviour. There are 14 Activity Centres in New Zealand. They are places where students can have 'time out' and then return to regular secondary schooling. They are also an alternative for those who aren't coping with a regular school.

In late 2010, the government announced increased funding for Alternative Education and proposed changes to ensure that students are able to transition back into mainstream education, or on to a Youth Training Programme or employment.

Contact your local Ministry of Education office to discuss other available options (see Useful Contacts).

### **Ministry of Education**

The Ministry is responsible for developing education policies, working with schools on national education programmes and providing specialist services, including those which address the diverse needs of students.

The Ministry has a range of staff, based in offices around the country, who support children and young people, and their families, whānau, schools and early childhood centres.

### **Special Education Offices**

In the Ministry's Special Education national, district and local offices, you'll find a range of specialists, such as:

- speech language therapists
- special education advisers
- advisers on Deaf children
- occupational therapists
- physiotherapists
- registered psychologists
- kaitakawaenga
- early intervention teachers
- behaviour, communication and other education support workers.

Specialist teams focus on early intervention, and provide services for students with ongoing resourcing needs, high communication needs, or severe behavioural difficulties.

The contact details for Special Education District Offices are in the back of this booklet under Useful Contacts. The special education information line is 0800 622 222.

# 12. Interviewing students over criminal matters

## What rights does a student have when being questioned by the police?

Under the New Zealand Bill of Rights Act 1990, anyone being questioned by the police has rights:

- the right to remain silent
- the right to a lawyer
- the right to be told what their rights are.

Young people under 17 also have additional rights under the Children, Young Persons and their Families Act 1989 (CYPF Act):

- a child (10 to under 14 years) or young person (14 to under 17) who wishes to make a statement to the police has the right to nominate an adult *of their choice* as a support person
- the student must be informed of their right to consult a lawyer, in a way which they clearly understand. This right is in addition to the right to a nominated adult. A young person can have both a nominated adult and a lawyer. It is a good idea for the nominated adult to proactively encourage the young person to get legal advice at the earliest opportunity, and to ensure that a young person who wants legal advice gets it. It is unlikely that the young person will know a lawyer, so they should be provided with names of lawyers who can be consulted by phone or in person. The questioning police officer should have access to such a list.

It makes no difference whether the police are questioning the student at school or out of school; the same rights apply.

## Who can act as a young person's nominated adult?

A young person can choose any adult to support them if they are being interviewed by the police. That person might be:

- a parent or guardian
- a teacher (it is important to ensure that the teacher isn't the school's usual disciplinarian, such as the deputy principal or dean, unless the young person specifically requests them)
- an adult family/whānau member
- any other adult chosen by the child or young person
- a person nominated by the police if the child or young person refuses or fails to nominate someone. However, this person cannot be a member of the police force.

## What if the student nominates someone unsuitable?

Any adult the child or young person nominates must be allowed to support them, unless:

- the police believe the adult nominated may attempt to pervert the course of justice
- or the adult can't be located
- or the adult will not be available within a reasonable period of time.

## What is the role of the nominated adult?

Section 222(4) of the CYPF Act says that the nominated person has these duties:

- to take reasonable steps to ensure the young person understands the matters explained to them by the police officer (including their rights)
- to support the young person before and during any questioning and during any statement which the young person agrees to make.

This suggests that the role of the nominated adult is to counsel and advise the young person, rather than merely to observe. The nominated adult should meet privately with the young person before the police interview starts, to:

- gain the young person's confidence
- understand the young person's level and style of communication
- ensure the young person understands his or her rights and what is going to happen during the interview
- learn what the young person wishes to say during the police interview.

During the police interview, the nominated adult should provide support and ensure the young person understands the questions, is able to answer them as he or she wishes and is understood correctly.

In *R v Webb* (1988), the High Court said this about the role of the nominated adult:

...because of the vulnerability of the young person, fairness requires that [the young person has] someone they know with them during questioning. The independent person is to ensure that the young person is not disadvantaged. Monitoring or acting as a general watchdog on the police is subsidiary and incidental.

## Does the school need to inform me if my child is being questioned by the police at school?

It is unclear whether schools are obliged to inform parents that questioning is taking (or has taken) place at school. However, it is important to remember that section 77(b) of the Education Act 1989 places an obligation on schools to inform parents of matters which, in the principal's opinion, are affecting students' progress or harming their relationship with other students.

Note: The law is clear where questioning is at a police station. Section 229 of the CYPF Act states that the police must inform parents or guardians if a young person is being questioned at a police station, although the young person may nominate someone else as a support person.



## What if my child says, 'I don't want my parents to be contacted'?

If the young person is under 17, the police must inform the parents or guardian. If the student is 17 or over, the police have no such obligation. Whether or not the school contacts the parents will be a matter of school policy, bearing in mind section 77(b) of the Education Act (explained above).

## What is the school's role if the police are questioning my child at school?

The school's role is not set out clearly in legislation. If a teacher attends the interview as a young person's nominated adult supporter under the CYPF Act, they have the 'nominated adult' obligations set out above. If the teacher is not the student's nominated adult (or the student is 17 or over so does not have the right to a nominated adult), the teacher has no automatic right to be there and can be there only if police and the student both consent.

For young people, particularly those 17 and over, the consequences of admitting guilt, or a subsequent conviction, can be very serious. It is therefore sensible for schools to impress on students their right to consult a lawyer, and to assist them to take advantage of this right. Teachers should also be aware of the young person's right to silence, and should try to ensure that the student is not pressured to respond.

## What about students' rights when school staff interview them about a crime?

Young people's rights in this situation are not covered by legislation, as they are when being interviewed by police.

Generally, a school's duties relate to education and safety within the school. It would be outside the scope of a school's role to question students about matters occurring outside of school, unless the matter directly affects the school or the student's education.

However, if there is good reason for school staff to interview students about criminal activity happening at school, the principles of natural justice and the UN Convention on the Rights of the Child apply, in addition to the CYPF Act, the Education Act and school policies.

Principles of natural justice require that the school should:

- act in good faith, without bias
- give each person the opportunity to state their case
- give people adequate notice of an accusation and adequate time to prepare a defence.

Article 40 of the UN Convention on Rights of the Child gives children additional rights:

- to be presumed innocent until proven guilty
- to have legal or other appropriate assistance, as well as legal guardians
- not to be compelled to give testimony or to confess guilt
- to have privacy fully respected at all stages of the interview.

Although students do not have any specific statutory right to have a parent or supportive adult present during an interview by school staff, it is important that schools give students all the rights they have under the law:

- students should be informed exactly what they are being questioned about

- students should be asked if they would like to nominate their parent/guardian or another adult to be present during the interview. If they do not want this, either the guidance counsellor or another teacher could be suggested. If the young person does not want any other adult present, the school should consider very carefully whether or not the interview should proceed.

It is important to note that overbearing behaviour by a teacher undertaking an investigation would likely compromise the fairness of the process. Evidence which is not obtained fairly might not be able to be used in court.

### **Can a student be required to sign a ‘statement’ or ‘confession’?**

A student cannot be made to sign a statement, and any request by the school should be carefully considered.

Sometimes schools ask a young person to sign a statement which may implicate them, or another young person, in an offence. Questioning of students should not involve written statements or confessions. If, however, the school does want to use this approach, they should exercise the utmost caution. Schools and parents should consider:

- the purpose of the document and why the student is being asked to sign it
- whether the document is to be used in evidence.

It is unlikely that such a document could be used as evidence in a court, unless all the legal safeguards contained in the CYPF Act had been followed.

If the school intends to use the document in another forum, such as a board of trustees disciplinary hearing, it will be important that the principles of natural justice and the UN Convention on the Rights of the Child have been applied.

Any staff member asking a young person to sign a statement should:

- explain that the student does not have to sign
- explain where the statement may be used
- suggest that the student may like to seek legal advice before signing.

When dealing with suspected criminal offences, schools should liaise with the police.

Parents should feel free to discuss any concerns with the staff involved, the principal and the police.

### **What policy should schools have about students questioned by police at school?**

If the school has a policy it should cover:

- contacting parents or guardians when a student is under 17
- contacting parents or guardians when a student is 17 or over
- student rights under the CYPF Act (for those under 17), to have someone other than a parent (for example, a teacher) present as a nominated adult
- providing a school representative to observe an interview when the student is 17 or over.

The policy should be written clearly, and should be supplied to all students, parents and caregivers.

It would also be sensible for the school to discuss the policy with the police to ensure police support and cooperation.

### **What if Child, Youth and Family wants to interview my child at school?**

Child, Youth and Family may interview children at school without parents or guardians present. Children can request another adult to be present during the interview.

# 13. Stand-downs, Suspensions and Expulsions



## How can a student be prevented from attending school?

A student can be prevented from attending a state or integrated school on the following grounds:

- health grounds
- stand-down
- suspension
- exclusion
- expulsion.

'Voluntary withdrawals', 'kiwi suspensions', or the principal's use of section 27 of the Education Act 1989 to prevent a student from attending school, are all illegal (see Chapter 14).

Note that different laws apply to private schools and to boarding hostels.

## HEALTH GROUNDS

A student can be 'precluded' (kept away) from school by the principal, under section 19 of the Education Act, if the student:

- is suspected of having a communicable disease (within the meaning of the Health Act 1956), or
- is not clean enough.

The principal should inform:

- the student's parents
- the board of trustees
- and, if a student is suspected to have a communicable disease, the Medical Officer.

The board is required to look into the matter. The student may have to produce a medical certificate to get back into school.

## What are the school's obligations when dealing with stand-downs, suspensions, exclusions or expulsions?

According to section 13 of the Education Act, schools should:

- Provide a range of responses for cases of varying degrees of seriousness
- Minimise the disruption to a student's attendance and facilitate their return to school when appropriate
- Ensure that individual cases are dealt with according to the principles of natural justice.

When dealing with cases of serious misbehaviour, or behaviour which poses serious safety risks, schools must be fair and flexible. They must practice:

- **Fairness:** Schools must take into account a student's knowledge, abilities and culture, and must keep the student informed about what is happening and what is at stake.
- **Flexibility:** Schools should consider a student's circumstances, weigh up all the factors and consider all options before making a decision. In the High Court case of *D v M and Board of Trustees of Auckland Grammar School* (1998), Justice Smellie stated that the board's failure to consider the possibility of lifting a suspension, subject to conditions, meant that the school failed to treat the student fairly.
- **Natural justice:** See Chapter 17 for more information about the principles of natural justice. Natural justice involves providing the student and their family with adequate notice of a situation that affects them, involves allowing students the opportunity to be heard and to respond to allegations, and also involves making decisions without pre-determination or bias.

## STAND-DOWNS

A stand-down is the short-term, formal removal of a student from school for a specified period (up to 10 days). Only the principal or acting principal can stand-down a student. A student can't be stood-down by other teachers, deputy principals or deans.

Stand-downs are intended to allow schools, students and their families time to evaluate the problems that have occurred and to work out how to stop them happening again.

A student should only be stood-down for continual disobedience or gross misconduct. The behaviour must be a harmful or dangerous example to others. A student can also be stood-down if their behaviour is likely to cause serious harm to him or herself or other students.

A student can be stood-down more than once, as long as the stand-downs:

- do not total more than five days in a school term and
- do not total more than 10 days in a school year (the day that the student was stood-down, and any non-school days, are not counted).

### When can a student be sent home?

Although the stand-down only takes effect the day after the decision is made, the principal may send the student home for the remainder of the day as soon as the decision is made. If the student remains at school until the end of the school day, the student must be supervised. Principals are required to consider the student's age and their parents' circumstances when making this decision.

The principal must immediately inform a parent of the stand-down, the length of the stand-down, and the reasons for it. Parents must be provided with information sheets on stand-downs and suspensions.

### Stand-down meeting

If your child is stood-down, the principal may call a stand-down meeting, or you can request one. If you do request a stand-down meeting, the principal must arrange one as soon as is practicable. The purpose of the meeting is to discuss the stand-down and share information about what led to the situation and what steps can be taken to address your child's behaviour at school. The principal may also discuss expectations of your child when they return to school.

Before the stand-down expires and for any reason, the principal can shorten the stand-down period and allow your child to return to school. At the meeting or after, you can provide reasons why the stand-down should be lifted or shortened in your child's particular circumstances.

### Are there any reasons my child could attend school if he or she is stood-down?

Yes, you can request that your child be permitted to attend school, for example to sit exams, to fulfill a course requirement, or because your child needs to be in school to receive guidance and counselling. If the principal considers the request reasonable, and believes that it is appropriate for your child's educational programme, they can allow your child to attend for a particular period. Once permission is granted, your child must attend school, or else they will be truanting.

There may be other circumstances in which your child could be allowed on school premises. Talk to the principal about this, they must consider any reasonable request.

## SUSPENSIONS

Suspension is the formal removal of a student from school. It is initiated by the principal (or acting principal), but it is the board of trustees which holds a suspension meeting and decides what to do about the student (see 'Suspension Process' below). The board may lift the suspension, extend it with conditions aimed at facilitating the return of the student, or they may exclude or expel the student.

## EXCLUSIONS

Exclusion is the formal removal of a student who is younger than 16 from school, with the requirement that the student enrol elsewhere. A board may only exclude a student if the circumstances justify the most serious response. The principal must try to arrange for the student to attend a new school. If after 10 days the principal is unable to find a new school, the principal is required to inform the Ministry of Education, which can then help.

## EXPULSIONS

Expulsion is the formal removal of a student aged 16 or over from school. An expelled student may seek enrolment in another school. The principal and the Ministry of Education do not have to help an expelled student find a new school.

### Does the student have rights while he or she has been stood-down or suspended?

The student remains on the school roll. The principal must take all reasonable steps to ensure that the student receives guidance and counselling.

If a student has been suspended, the principal must try and ensure that an appropriate education programme is provided to the student, to facilitate their return to school and to minimise educational disadvantages.

## **My child has been suspended and is due before the board at a suspension meeting.**

### **What are the consequences of withdrawing my child from school prior to the meeting?**

Parents should not be hasty in withdrawing their child from school to avoid facing exclusion or expulsion, as this can leave their child worse off. Voluntary withdrawal may appear to be advantageous if, for example, the meeting will inevitably lead to exclusion. However, voluntary withdrawal may mean that:

- The principal is no longer obliged to inform the Ministry of Education about what has happened
- The student receives no assistance to find a new school
- Support may not be provided for the student in the future
- Other schools are likely to know about the circumstances surrounding the withdrawal and may refuse to enrol the student (although this is often not legal).

### **Can the board consider other alternatives to stand-down, suspension, exclusion or expulsion?**

Yes. Stand-downs, suspensions, exclusions and expulsions are for only the most serious breaches of school rules.

The Education Act requires that schools provide a range of responses for cases of varying degrees of seriousness, minimise the disruption to a student's attendance, and where appropriate facilitate the return of the student to school. Schools have an obligation to provide full educational opportunities to their students.

At the board of trustees meeting, parents should be prepared to put forward appropriate alternative measures for the board to consider, for example:

- in-school punishments such as detention or daily reports
- counselling courses, such as stop-smoking or anger management sessions
- education courses on drugs or alcohol
- a plan which requires the student to use their skill set to assist teachers, for example helping coach a junior sports team or assisting an art teacher after school.

The board should only exclude or expel a student in circumstances that justify the most serious response.

### **When can a principal stand-down or suspend a student?**

A principal can stand-down or suspend a student whose behaviour fits into one of the following three categories:

- Gross misconduct which is harmful or dangerous to other students
- Continual disobedience which is harmful or dangerous to other students

- Behaviour risking serious harm if the student is not suspended.

A principal must choose either to stand-down or suspend a student, not both. The principal must choose and follow through with the appropriate legal process. In the High Court case of *D v Havill and Board of Trustees of Western Springs College* (2009), Justice Andrews held that a principal must identify, address and apply the legal criteria of a stand down or a suspension. Failing to do so is a breach of natural justice, which means the decision invalid. A student could not be prevented from attending school if the principal's decision was invalid.

Note that in *J v Board of Trustees of Lynfield College* (2007), it was found that a principal must also consider a student's personal circumstances when deciding if there is 'gross misconduct', and if there is, whether suspension is called for.

### **What is 'gross misconduct' or 'continual disobedience'?**

'Gross misconduct' is serious misbehaviour.

It must be 'striking and reprehensible to a high degree', not just trivial behaviour which children or teenagers could be expected to engage in every now and then. The student must be significantly blameworthy and the misconduct serious enough to justify removing the student from school, even though removal might be detrimental to their education.

Whether an incident is gross misconduct will always depend on the particular situation. All factors must be weighed, and school policies must not automatically label a particular action or behaviour as gross misconduct.

The best known court decision about 'gross misconduct' is Justice McGechan's High Court's decision in *M & R v Syms and the Board of Trustees of Palmerston North Boys' High School* (1990). This was the first case to discuss the suspension and expulsion procedures under the Education Act. The case involved students on a school ski trip consuming alcohol. Two students (M and R) were suspended for gross misconduct. The board expelled one student (M, who was 16 or older) and extended the suspension for an unspecified period for the other student (R, who was under 16).

The judge said that the Education Act allowed sufficient flexibility to meet differing needs and situations. Whether an act amounted to 'gross misconduct' would depend on all the circumstances at the time. For example, for consuming alcohol to amount to 'gross misconduct', certain questions should be considered:

- Who had obtained the alcohol?
- How much was consumed?
- Was the student intoxicated?

The judge said that ‘the behaviour must be striking and reprehensible to a high degree and sufficiently serious to warrant removal of the child, notwithstanding the risk of individual damage’.

The judge also said that the question which needed to be asked is, ‘if the student is not suspended will other students be seriously harmed?’ In other words, a principal, and ultimately the board, should only use the power to suspend, exclude or expel when there do not seem to be any practical means to address the student’s behaviour within the school. The judge also stated that ‘no fixed rule should be applied and no inevitable [pre-determined] conclusion reached’.

The judge went on to say that the Education Act gives principals a discretion which should not be restricted by self-imposed rules that permit no exceptions. Exceptions must always be possible. There must be room to cater for students’ individual needs and problems. For example:

- a child who steals might be from a disadvantaged background and hungry
- a child who has recently suffered a trauma may require some leniency
- a child who behaved destructively might require help rather than punishment.

The judge concluded by saying, ‘Results must not be fixed: they must instead be fair.’

Later cases have also supported this approach: the personal circumstances of a student and the context of the incident should be taken into account, in assessing whether the behaviour is ‘gross misconduct’, and in assessing whether, in the circumstances, the behaviour warrants suspension.

‘**Continual disobedience**’ occurs when the student regularly or deliberately disregards rules or refuses to do what he or she is told. It is not continual disobedience if students just respond slowly or don’t do what they are told. There must be an element of deliberate non-cooperation or defiance, which happens more than once. In *J v Board of Trustees of Lynfield College* (2007), Justice Keane said that continual disobedience involves a pattern of entrenched misbehaviour.

Gross misconduct or continual disobedience are not by themselves sufficient grounds for suspension or stand-down. The behaviour must also be a harmful or dangerous example to other students. The principal may consider, for instance:

- Is the continual disobedience something that, if not punished by suspension, would undermine discipline and safety standards?
- Is it dangerous behaviour that, if not dealt with by suspension, would be likely to cause harm to other students?

The Court of Appeal in *Bovaird and the Board of Trustees of Lyndfield College v J* (2008) ruled that a board must explain how the student’s behaviour amounted to gross misconduct or continual disobedience, and was likely to cause serious harm to other students, and they must explain how they came to their decision. The board should keep a sufficient record of matters discussed and their conclusions.

## SUSPENSION PROCESS

### Steps in a suspension

When a principal decides to suspend a student, the board of trustees must meet and make a decision on the suspension within seven school days or 10 calendar days of the suspension (if the suspension is given just before the end of term). See Step Three below.

A school must follow the rules of natural justice. This basically means that the school must act fairly at all times, must listen to and consider what the student has to say, and must not rely on anything irrelevant to the case at hand. The school must not prejudice the outcome. If the board is going to draw inferences from a student’s silence, they should say this to the student and invite the student to comment, without pressuring them to provide answers or explanation.

### Step One: Principal’s Decision

The principal must determine whether a suspension is warranted on either of these grounds:

- Gross misconduct which is harmful or dangerous to other students
- Continual disobedience which is harmful or dangerous to other students
- Behaviour risking serious harm if the student is not suspended.

A principal’s failure to identify, address and apply these criteria will mean that the suspension is invalid and the student can’t be prevented from attending school.

The principal should attempt to understand the context by considering relevant information the school has and that a parent can give. It is not a legal requirement to involve parents before a suspension, although it may be good idea, particularly if involving parents won’t compromise the effectiveness and promptness of the investigation. If the principal must make a prompt decision based on incomplete information, the information must still be sufficiently reliable to meet one of the above grounds. It is the role of the board to review the principal’s decision at the suspension meeting.

## Step Two: Informing Parents, Board, Ministry

The principal must immediately inform the parents, the board of trustees and the Ministry of Education:

- that the principal has decided to suspend the student
- and what the principal's reasoning was (explaining whether the behaviour was 'gross misconduct' or 'continual disobedience' and how this was a harmful or dangerous example, or a serious risk to student safety).

Note that as suspended students remain on the school roll, the Education Act provides that the principal must take all reasonable, practicable steps to provide guidance and counselling, to minimise disruption to suspended students' education, and to facilitate their return to school where appropriate.

## Step Three: Suspension Meeting Deadline

The student remains suspended until the board of trustees holds a suspension meeting. The suspension meeting must be held within seven school days of the suspension, or within 10 calendar days if the suspension takes place within seven school days before the end of term. The day on which the student has been suspended is not counted.

For example, if a student is told on a Tuesday afternoon that they are suspended, the first day of the seven would be the Wednesday, even if a letter formally notifying the student and their family of the suspension does not arrive for another few days. The seven-day (or 10-day) rule is absolute. A suspension meeting cannot be delayed, even by agreement. It may proceed without the family present (as long as the family had 48 hours' notice), as the board is legally obliged to hold the suspension meeting and make a final decision by the applicable date. If the board does not hold a meeting and make a decision within the time frame, the student can return to school – the suspension will cease to have effect.

## Step Four: Notification of Meeting

As soon as practicable, the board must let parents know in writing the time and the place of the meeting. The board has a duty to ensure that the information reaches the student and their parents at least 48 hours before the suspension meeting. This 48-hour period may only be reduced with agreement from all parties.

The information provided must be as complete as possible, including:

- information about the suspension meeting procedure
- a copy of the principal's report to the board giving the reasons for the suspension
- any other material about the suspension to be presented at the meeting
- the options available to the board, and possible outcomes of the suspension.

Principles of natural justice require that a hearing be fair (see Chapter 17). If it comes to your attention that a board member has a potential bias (for example, they're related to someone involved in the incident), promptly contact the chairperson before the meeting to inform them of the 'conflict of interest' and suggest that person not participate in the meeting.

## Step Five: Suspension Meeting

The board holds a suspension meeting. The suspension meeting proceeds when enough trustees attend and a quorum is established. This means that at least half the trustees, excluding the principal, must be there. As most state school boards have seven to eight trustees, quorum is usually established with four to five members. Integrated schools more commonly have 11 to 12 trustees, requiring a quorum of six to seven members.

### Who can attend the suspension meeting?

The suspension meeting is an independent review of the principal's decision to suspend. The principal does not have a role as a decision member on the board, but can attend.

Parents can attend the meetings with their child (the suspended student) and are entitled to take a person/people to support or represent them, such as church elders, lawyers, kaumatua, youth workers, advocates or whānau members. Representative(s) can support the suspended student and help them to put their view to the board.

### What is the process during the meeting?

The board will decide the format of the meeting and there are no formal rules governing this. Generally, however, the principal will first read out their report for the board to consider.

If the principal (or others) raise any new matters which the parents or student have not heard before, parents can ask for the meeting to be adjourned (put off to a later date) so they can consider the new information (and possibly get legal advice). If this is the case, parents should get back to the board as soon as possible, as the board must make their decision within the seven-day (or 10-day) period.

The Education Act does not give the principal the authority to recommend what the board should do. If parents find a recommendation in the copy of the principal's report they are sent prior to the meeting, they should contact the principal and ask that the recommendation be deleted. Otherwise, parents can raise it at the suspension meeting – reminding the board of their duties.

Next, the parents, student or representative can put forward their version of facts and any reasons why the suspended student should be allowed to stay in school. Parents should also bring evidence from witnesses or

character references for the student (such as from a guidance counsellor, teacher aide or coach). It is recommended that parents provide written copies of the student's report or testimonials prior to the meeting; alternatively, copies should be made and distributed at the meeting. With the chairperson's permission, witnesses may attend and present their version of events orally.

When preparing for the meeting, bear in mind that board members are parents too, and they will be concerned for the safety and discipline of their own children at school. The board will want to hear the student acknowledge wrongdoing, demonstrate a willingness to change and list the steps that will be taken to prevent a repeat of the incident.

The student (or their representative) should also be prepared to present any mitigating factors to the board. It is important for the student to consider the circumstances of their misbehaviour and, if appropriate, to emphasise to the board that the behaviour was out of character. Evidence of proactive attempts to change future behaviour is helpful here.

The student must be prepared to show the board that they have a strong desire to remain in school. This is a good time to put forward any alternative ideas for discipline.

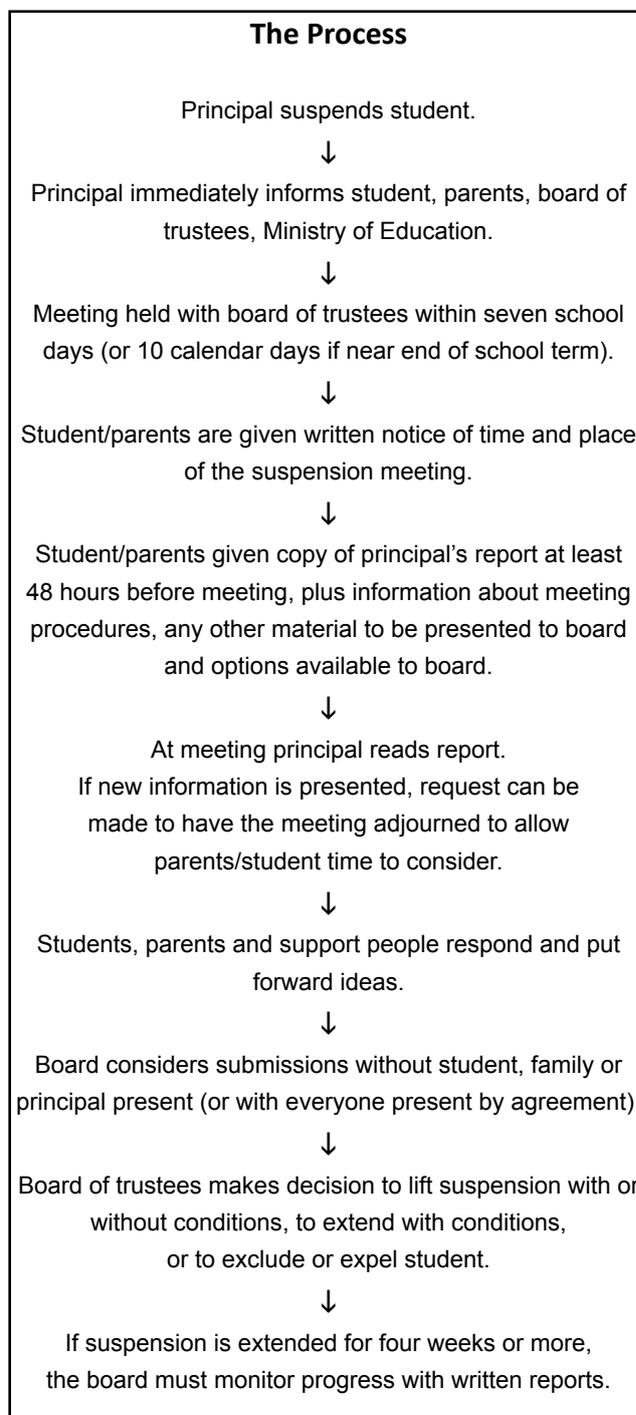
### Step Six: Board Decision Process

Having heard the submissions and read any materials presented by the principal, student, parents and representatives, the board may ask all parties to leave the room so they can discuss the situation and come to a decision. If the parents are asked to leave the room while the board deliberates, the principal must leave too. However, the board can ask everyone to stay in an effort to reach agreement on what the decision should be.

### Step Seven: Board Decision Options

The board of trustees can make a decision to:

- Lift the suspension without conditions. The student must return to school and attend full time. The formal disciplinary process ends and the board is no longer involved.
- Lift the suspension with conditions. The student must attend school full time but will be required to comply with ongoing reasonable conditions. (For example, if suspended for bullying behaviour, conditions may include a behaviour management course and counselling sessions.) If the student does not comply, the student can't automatically be removed from school. The principal may request that the board hold a reconsideration meeting (following the same procedure as the first). The student has the right to continue attending school until the board meets and reaches a new decision. If another distinct and sufficiently serious incident occurs, the principal also has the option of imposing a whole new suspension rather than calling



a reconsideration meeting (see Step Eight). This would require the principal to follow through with a separate suspension process, from the beginning.

- Extend the suspension for a reasonable period, with conditions. The student must not attend school (unless allowed to by the principal) and must comply with conditions. Any conditions must be reasonable and must be aimed at facilitating the student's return to the school. Once the conditions are met or the extended suspension expires (whichever occurs first), the student can return to school. While the student is out of school on an extended suspension, the principal must provide appropriate guidance and counselling to the student. If the suspension is extended for four weeks or more, the

board must monitor the student's progress with written reports. Parents must receive copies of any such reports. The principal must also try to ensure that the student has appropriate school work to do at home and that any educational disadvantages are minimised.

- Exclude (a student under 16). If the student is excluded, the principal must, within 10 school days, try to arrange for them to be enrolled in another reasonably convenient school. If the principal is unable to do so, they must inform the Ministry of Education.
- Expel (a student 16 or over). The principal and Ministry of Education do not have to help an expelled student find a new school.

In making its decisions and setting any conditions, the board must attempt to minimise disruption to a student's education. Following its decision, the board must write to the parents and the Ministry of Education communicating the decision and the reasons for it.

### **Step Eight: Reconsideration at Principal's Request**

If a student fails to comply with the conditions the board has set, the principal can ask the board to reconsider its decision. While this reconsideration meeting is not a new suspension hearing, it will follow the same process, starting the board having to notify parents of the meeting 48 hours prior.

### **Can my child attend school for any reason if she or he is suspended?**

Yes, the same circumstances apply as in a stand-down (see above).

### **IMPORTANT**

The legislation that applies to stand-downs, suspensions and exclusions is aimed at minimising disruption to students' education and facilitating return to school. It also aims to provide a range of responses for cases of varying degrees of seriousness, and to ensure individual cases are dealt with in accordance with the principles of natural justice.

The legislation is accompanied by regulations called the Education (Stand Down, Suspension, Exclusion & Expulsion) Rules 1999. These rules regulate the procedure to be followed by boards, principals, parents and students.

The rules are guided by these principles:

- the need for every participant to understand the processes
- the need for every participant to treat every other participant with respect, which includes recognising and respecting New Zealand's cultural diversity
- the need to recognise the unique position of Māori
- the need for every participant to be guided by the charter of the student's school

- the need for every participant to recognise that the board has a responsibility to maintain a safe and effective learning environment at the school.

See [www.minedu.govt.nz/goto/sdsrules](http://www.minedu.govt.nz/goto/sdsrules)

### **How can I help a student prepare for the hearing?**

Good preparation is key. Students, parents and representatives should plan what they are going to say beforehand. This includes:

- preparing for any questions the board will ask
- preparing to present mitigating factors, and if appropriate to show that the misbehaviour was out of character (exploring the reasons behind the sudden deterioration of behaviour, providing proof of relevant medical or psychiatric evaluations if necessary)
- preparing to show that the student has a strong desire to remain in school and is prepared to acknowledge wrongdoing, to convey a willingness to change and to take proactive steps to prevent the same thing from happening again
- preparing the student to provide both a verbal and a written apology to the board
- preparing the student to accept reasonable conditions to ensure future good behaviour.

Suggestions should not be put to the board unless the student is willing to agree to them. A student is far more likely to present a good case to the board if they genuinely want to return to school. Accordingly, parents should take the time to talk to their child and discuss whether he or she actually wishes to return to school and why or why not.

It is recommended that the student is present at the meeting, as most boards like to meet the student involved and hear their side of the story. If the student is unable to attend the meeting, a letter from them to the board could be read out by parents at the meeting.

### **What sort of questions will the board ask?**

At a suspension meeting, the board of trustees is likely to ask students the following questions:

- Does the student admit what he or she has done?
  - What actually happened?
  - What does the school say happened?
  - Does the student agree with what the school has said?
- Can the student explain his or her behaviour?
- What effects does the student think his or her behaviour has had on others?
  - What does the student think have been the consequences of his or her behaviour?
  - Does the student agree that the behaviour was unacceptable?
- Why does the student wish to come back to school?
- How would the student change their behaviour if they were allowed to return to school?



- Why should the board reinstate the student?
  - Why should the board believe the things the student has to say?
  - What guarantee does the board have that the student will change his or her behaviour?
- Is the student sorry for what he or she has done?

Parents should ensure that students are thoroughly prepared to answer each of these questions before the board hearing. A good way to prepare is to role play the suspension hearing with the student. This does not mean giving the students the answers or putting words into their mouths. It means getting them to think about how they will respond to questions.

When students do not agree with the principal's report and any other information the board is looking at, it is important for students and their families to put forward their version of the facts, and reasons as to why there is disagreement. This can make a difference to the board in deciding whether a student remains in school.

### **What are the legal remedies if a student or parent feels the suspension, exclusion or expulsion was unfair?**

If you do not accept that the suspension, exclusion or expulsion is reasonable in the circumstances, you have a number of options:

- Ask the board to reconsider the decision. Parents must be clear about why they believe the meeting was not conducted in a fair manner. To request a reconsideration meeting, parents should write a 'request for reconsideration letter' to the chairperson, care of the school (see Sample Letters).
- If your child is under 16, you can discuss the matter with your local Ministry of Education office. If you are able to put forward a strong case, you can ask the Ministry of Education to exercise their authority under section 16 of the Education Act to lift the penalty and direct the school to take your child back.
- Contact the Parents Legal Information Line for School Issues (PLINFO), YouthLaw or your local community law centre for advice and support (See Useful Contacts).
- Complain to the Ombudsman about administrative acts or omissions of the school. If the board has declined your request for a reconsideration meeting, you can

complain to the Ombudsman. This is free and can be done by phone or in writing. The Ombudsman cannot overturn the board's decision but can investigate your complaint and if your complaint is found to be justified (for example, there has been some breach of process), the Ombudsman can recommend that the board reconsiders the decision. However, the Ombudsman's investigation can take several months and the student may need to attend another school in the meantime.

- Challenge the decision through the courts. This is done through the High Court, so the student will need a lawyer. Note that as Parliament has assigned decision-making authority to school boards, the Court must generally defer to the board's decision and is unlikely to traverse the facts in detail or substitute their view for that of the board's, unless there has been some clear legal error. The court will focus on whether the legal rules have been applied correctly. Again, this will take a long time and will be costly, as legal aid is not available for cases involving schools.
- Complain to the Human Rights Commission if the suspension or exclusion was a result of discrimination.
- Complain to the Education Review Office (ERO) about the way that the school runs its disciplinary system. The ERO reviews schools on average once every three years, and may do so more frequently where the performance of a school is poor and there are risks to the education and safety of the students. ERO reports are available to the public, so other parents can examine your input when choosing a school for their child.

The reality is that with the exception of asking the board to review the decision, it can take months or even years to get a result. Your child may well be settled at another school, or even have completed their education, before the final outcome is known.

It is therefore extremely important that the suspension process is carried out in a fair and legally correct way. If you have concerns about the way in which any part of the process was undertaken, then relaying your concerns to the board of trustees directly and asking them to reconsider the matter should bring about the fastest resolution.

### **What are a student's rights after suspension?**

As in a stand-down, a student has rights to guidance and counselling.

If the suspension is extended with conditions imposed, the Education Act further provides that the principal must provide an appropriate educational programme, which facilitates the student's return to school.

### **What are a student's rights after exclusion or expulsion?**

The Education Act provides that a school may refuse to enrol a student who has been excluded or expelled from another school. It can therefore be extremely difficult to enrol a child in another school after he or she has been excluded or expelled.

However, the law provides that the Ministry of Education may direct a school to enrol an excluded student.

For more information, also see [www.youthlaw.co.nz](http://www.youthlaw.co.nz).

### **There was another student involved in the incident, but only my child has been suspended, why?**

It is the principal's decision to suspend a student and this decision should be made by considering all the evidence and the circumstances. Two students may have committed the same actions, but the principal has the discretion to weigh the relevant factors for each student; it may be fair to treat each student differently.

If your child is to appear before the board but the other student has been reinstated at school, you can raise this at the suspension meeting. Be prepared with reasons as to why your child should receive similar treatment and be reinstated, and include your suggestions for alternative measures for the board to consider.

### **Will my child still remain on the school roll after a suspension?**

Yes, your child remains on the school roll and may only be removed once they are enrolled at another school, or are excluded or expelled, or are granted an exemption from enrolment, or are over 16 and leave school altogether.

### **Can I prevent the school from passing on information about the suspension/exclusion to other schools?**

No. Schools record details of suspensions and exclusions on the student's file, which can be passed on if a student transfers to another school. Under Principle 7 of the Privacy Act 1993, your child does, however, have the right to

request that incorrect information be corrected. If your child disputes the school's version of events, they should write a statement of correction. See Chapter 15.

### **What if my child is excluded and the only other school available is not in our zone?**

The Ministry of Education can endorse a principal's arrangement for the child to attend a school outside the zone.

### **My child is under 16 and has been excluded. What are her options?**

The first option for excluded students should be finding another school. As stated above, the principal must help to find another school, and then responsibility shifts to the Ministry to arrange education for your child. Note that while the Ministry has the authority to direct the excluding school to re-enrol a student, to direct another state school to enrol the child, or to direct you to enrol your child at a correspondence school, these powers are seldom utilised. See Chapter 11 for other options.

### **What if my child has special needs?**

Students with special needs have the same right to an education as every other student. The Human Rights Act 1993 not only prohibits schools from actively discriminating against students with disabilities (such as refusing to enrol them), it also bans conduct which makes it harder for students with disabilities to take part.

It may be unlawful discrimination if a special needs student is suspended for behaviour they could not really help and which was the result of their disability. Even if the suspension is justified, it could still be unlawful discrimination if the school has 'set the student up to fail', by not putting in place an appropriate behavioural plan.

The question to ask is whether the school has done everything reasonable to meet your child's needs, while balancing the school's obligation to maintain a safe environment for your child and other students. See Chapter 11, and for further advice see Useful Contacts.

### **Can schools discipline students for something that happens outside school time?**

See Chapters 4 and 12.



## 14. 'Kiwi Suspensions'

### What does the term 'kiwi suspension' mean?

Any illegal suspension, exclusion or expulsion from school is sometimes referred to as a kiwi suspension.

Students can only be sent home if they are stood-down or suspended by the principal under section 14(1) of the Education Act 1989, or when there are grounds under the Health Act 1956 to prevent a student from attending school.

It is unlawful for a principal to use section 27 of the Education Act to stand-down a student for misbehaving.

Further, the Education Rules 1999 say that students cannot be sent home or out of school for disciplinary reasons, except in accordance with the Education Act.

See Chapter 13 to understand what a 'legal' suspension would look like.

There are generally two types of kiwi suspension:

- Being sent home from school for disciplinary reasons, without going through the process required by the Education Act. Examples include a student with dreadlocks being sent home and told not to come back 'until you've cut them off', or a student being sent home for not wearing the correct uniform, or when parents of special needs children are told to keep their children home if the teacher aide is away from school.
- Voluntary withdrawal at the school's request. Sometimes principals try to get rid of students they believe are difficult or uncooperative by telling parents to withdraw their child 'before she's excluded or expelled'. Sometimes this is put to parents as being in the best interests of the student – a chance to 'put their past

behind them and make a fresh start in a new school'. Sometimes the option is presented as, 'We don't seem to be meeting Sam's needs. We feel he may be able to better reach his potential at Neighbourhood High.' Schools may try to deal with 'problem students' in this way if they know that the child could not be suspended legally, or that the board would be unlikely to exclude or expel the student. 'Voluntary withdrawals' are especially common for students with behavioural difficulties.

Parents should not feel obliged to withdraw their child from school in any of these circumstances. It is your child's right to be supported by the school if there are problems. Further, section 77 of the Education Act provides that the principal must take all reasonable steps to ensure that students get good guidance and counselling.

### What should I do if my child is offered a 'kiwi suspension'?

You should be aware that:

- The principal cannot exclude or expel your child. Your child cannot be thrown out of school by the principal.
- The decision is one for the board of trustees, through the suspension process (see Chapter 13). Removing a child from school by way of a 'kiwi suspension' is unlawful.

If you think your child has gone through a 'kiwi suspension' you should contact one of the following: PLINFO, YouthLaw, your local community law centre or Ministry of Education Office. See Useful contacts.

# 15. Students and the Privacy Act 1993

## When should a parent be informed about a problem with a student?

As soon as possible. If the problem is minor (for example, being late once or talking in class) you may not be contacted, but if the problem keeps recurring you should be notified.

If a school principal believes that there are matters:

- preventing or slowing a student's progress through school, or
- harming a student's relationships with teachers or other students,

then section 77(b) of the Education Act 1989 requires the principal to take all reasonable steps to inform parents.

## The Privacy Act 1993

The Privacy Act aims to promote and protect individual privacy by giving individuals some control over their personal information. The 12 principles at the heart of the act regulate the collection, storage, use and disclosure of personal information, and give people the right to access and correct their personal information.

Schools, including boards of trustees, are bound by the act and must comply with the Information Privacy Principles. Each school must appoint a privacy officer.

Here are some commonly asked questions about how the Privacy Act applies to schools:

## What information can schools collect?

Principle 1 says that schools may only collect information which is necessary for a school-related purpose. Information a school might need includes:

- academic records
- name and contact details of parents or guardians
- family circumstances that might affect a student's progress, for example, a recent separation or bereavement.

Schools have a responsibility under Principle 3 to inform the person they are collecting the information from of certain matters, including:

- the fact the information is being collected
- the purpose for which the information is being collected
- who will see the information
- where the information will be kept
- whether the person is required by law to supply the information

- the consequences of not supplying the information
- the person's right to access and correct the information.

These things should be told to parents before the information is given or as soon as possible afterwards. The school does not have to explain this again if you have recently given similar information.

## Example of information collection

A student enrolment form asks parents or caregivers to specify their occupation. The school wants this information so it can approach parents with appropriate skills to help out with fundraising or working bees, but this is not immediately obvious to the person completing the form. The school has an obligation under Principle 3 to explain why the information is being collected.

However, the Privacy Act allows for exceptional situations when schools do not have to follow the above guidelines, for example, if the information is collected for statistical or research purposes and will not be used in a way that will identify the individual concerned.

## What obligations do schools have to protect student information?

Principle 5 obliges schools to take reasonable safeguards to protect personal information against:

- loss
- unauthorised access, use, modification or disclosure
- other misuse.

For instance, a teacher should not leave your child's private information lying unattended on a desk where other school staff or students may see it.

## What happens to information about a student who has left the school?

Principle 9 says that personal information should not be kept for longer than is required. Schools should not keep information they no longer need about students. There are, however, legitimate reasons for holding on to some information. Under the Public Records Act 2005, state schools must retain some school records for archival purposes. Apart from keeping records as required by law, schools might want to retain information in order to provide references and maintain an alumni record. A school can do this as long as the former student knows and consents.

## **When a student transfers to a new school, what information is the school allowed to pass on?**

Schools are required to collect enrolment information and to pass it on to a school a student transfers to. This includes a student's academic record. However, schools should consider the information they need to forward on, and should not transfer everything in the student's record. For example, it may not be appropriate to forward information about the student's family circumstances or religious beliefs, without the student's prior permission.

## **Can a school give information about a student to agencies like the police or Child, Youth and Family?**

Yes, if required by law. Generally, schools need a student's permission to give this information to another agency or person, unless the law requires them to do so regardless.

Under the Children, Young Persons and their Families Act 1989, schools must release information about care and protection matters, if a request is made by a Care and Protection Coordinator from Child, Youth and Family.

Under section 16 of the Children, Young Persons and Their Families Act, anyone who in good faith reports an actual or possible case of child abuse (of someone under 17), to either the police or a social worker from Child Youth and Family, is absolutely protected against a privacy complaint.

Courts also have the power to order schools to release information. Usually this is done with a search warrant, which authorises the police to obtain goods or documents from the school.

## **Can the school refuse to provide a student access to their own information?**

Yes, if other legislation gives schools the power to do so or if section 29 of the Privacy Act applies. The Privacy Act sets out when a school can use to refuse to disclose information: if a student is under 16, and they consider that disclosing the information would contrary to the student's interests; or if an express or implied promise has been made to the person who supplied the information, that the information or the identity of the informant or both would be held in confidence. Schools should provide reasons when refusing a request.

Where appropriate, schools may also provide limited disclosure (where certain parts of the information are deleted before a copy is provided). Alternatively, schools school can provide a summary of the information. If information has been wrongly withheld, complaints should be first made to the school, then the Privacy Commissioner.

## **What about disclosing information to other third parties?**

Schools must look after information and not pass it on to anyone outside the school, unless required to do so under law. Principle 11 of the Privacy Act limits circumstances in which personal information can be disclosed. Schools may release information to a third party if they have reasonable grounds to believe one of the Principle 11 exceptions apply.

These exceptions include:

- if disclosure is one of the purposes for which the information was obtained (for example, passing on a student's academic record to their new school)
- when disclosure is necessary for the maintenance of the law
- when disclosure may prevent or reduce a threat to a child's health or life or the health or safety of others
- when another law authorises or requires the disclosure of information, it will override the Privacy Act.

## **Example of disclosure**

A student is caught smoking marijuana at school. The school contacts the police and gives the student's name and address and details of the incident. The student complains their privacy has been breached. The school argues, however, that disclosing the information was necessary to maintain the law about the misuse of drugs.

While Principle 11 may allow a school to disclose certain information, there is no obligation to disclose. So the school will have to show that there are reasonable grounds to believe that an exception under Principle 11 applies.

## **Should I request information from the school under the Privacy Act or the Official Information Act?**

If you want information about your child (or about school policies or facilities), you should request this under the Official Information Act 1982 (OIA).

Under the Privacy Act, only the students themselves have a right to all information on their school records and may request such information.

The OIA will be particularly appropriate for parents who do not have guardianship status under the Care of Children Act 2004. Schools must provide the information, unless a ground for refusal under the act applies.

Some points to note:

- Under the OIA, it is presumed that schools must make information available.
- However, the OIA allows schools to withhold information if there are good reasons for doing so. (Examples of good reasons include protecting the privacy of a student who has disclosed information in confidence to their school counsellor, or where disclosing information to parents may have a serious impact on a student.)

Schools should obtain a student's consent before releasing information to their parents.

- Schools must also consider whether there is a strong public interest in making the information available, which outweighs the student's interest. For example, if the media asks a school to explain a particular incident to the public, by providing information about particular students, the school would need to take care around releasing such information.
- If a school refuses or fails to disclose information sought in an OIA request, the matter can be investigated by the Office of the Ombudsmen.

### **Do schools need a student's consent to send school reports to parents/caregivers?**

No. Under the National Administration Guidelines (NAGs), schools must report on a student's progress and achievements to students and their parents. For students enrolled in years 1–8, schools must also provide a written report on the student's progress and achievement in relation to the National Standards, at least twice a year.



### **Who must the school provide school reports to?**

Schools may provide the report to both parents. However, schools generally provide reports to the primary caregiver.

A student can request that their school does not disclose information about them to one of their parents. The school will need to consider the student's rights against the principal's obligations, under section 77(b) of the Education Act, that parents be advised of matters that, 'in the principal's opinion, are preventing or slowing the student's progress through the school or are harming the student's relationships with teachers or other students'. Once the principal has formed such an opinion, reasonable steps must be taken to inform the student's parents. It would be a good idea to ask the school for a copy of their policy on this.

### **Can one parent prevent the school from disclosing information about their child to the other parent?**

No (except with a court order). If a school principal believes there are matters slowing the student's progress or harming their relationships, they must take reasonable steps to inform the student's parents. The Education Act defines a 'parent' as a student's mother, father or guardian, and parents who are separated are still joint guardians who have equal rights under the law. Both a mother and father are entitled to the same information about their child, unless it isn't reasonable to provide the information to both parents, for example if one of the parents lives overseas and can't be contacted.

It is important to note that where parents are in serious conflict and there are safety concerns or court orders, it is the parents' responsibility to promptly inform the school, by providing:

- a copy of a Protection Order under the Domestic Violence Act 1995
- a copy of a Restraining Order under the Harassment Act 1997
- evidence to show that the student or a family member is in a witness protection programme under the Evidence Act 1958.

### **Can a student stop the school from passing their school records on to their non-custodial parent?**

A student can make a request, but schools will not always have to comply.

Where there is not a written parenting agreement or a court order, a student may request that the school not disclose information about them to their non-custodial parent. The school's response would depend on the particular circumstances of each case, including the parent's

guardianship rights, the student's age and maturity, whether there was a public interest in releasing the information, and the Education Act section 77(b) obligations mentioned above.

The Ombudsman has provided directions on whether a parent who is not the primary caregiver (who doesn't have day-to-day care) may access their child's school reports. The Ombudsman's findings are not binding, but do provide a useful guide on how to balance a parent's guardianship interest and the privacy interest of the child.

Where a student is mature enough and decides that he or she does not wish a non-custodial parent to have access to his or her school reports, a school may decide to withhold those reports.

Nevertheless, in one 2002 Ombudsman decision, a non-custodial parent requested information regarding the lead-up to their child's suspension from the school, but the student had already asked the school not to disclose this information. The Ombudsman decided that, because the non-custodial parent was still a guardian with contact rights, there was a public interest in releasing information to them, as the events leading up to the child's suspension were 'matters' which brought section 77(b) of the Education Act into play.

### **Can inaccurate information on my child's records be corrected?**

Yes. Principle 7 says that the individual concerned (in this case the student) can request that incorrect information be corrected. Students should write a statement correcting any inaccuracies. While the school is not obliged to make corrections, the student can ask the school to attach their statement to their file, so that both the school's information and their statement will always be read together.

Under Principle 8, schools must take all reasonable steps to ensure that all information is accurate and up-to-date.

### **Do parents have rights to access health information held by the school, about their child?**

It depends. If the school is providing health services (for example, through a school nurse), parents generally have rights to their child's health information, if their child is under

the age of 16. Occasionally, if the school is satisfied that disclosing information is not in the student's interest and is more likely to harm the student, the school does not have to release the information. For example, if disclosure might breach the student's trust and result in them being unwilling to access confidential counselling, sexual health services, or other health facilities, non-disclosure may be justified. Best practice requires that wherever possible schools encourage students to share the information themselves with caring adults.

### **Do I have the right to access information about my child held by the school counsellor?**

No. School counsellors have no legal obligation to inform parents that a student is receiving counselling; neither do they have to pass on any information received during counselling. As well as being subject to the Privacy Act, school counsellors who are members of the New Zealand Association of Counsellors are also subject to their professional standards. The association's Code of Professional Ethics makes it clear that all communication between a counsellor and client will be treated as confidential, unless it is the counsellor's professional opinion that there is a clear and imminent danger to the client or others. This means that information shared during counselling cannot be passed on without the student's permission. Only in limited circumstances can school counsellors notify the police or a social worker with Child, Youth and Family, for example, if a student is under 17 and the counsellor believes the student has been abused or is at risk of abuse.

### **What should I do if I have a complaint about privacy?**

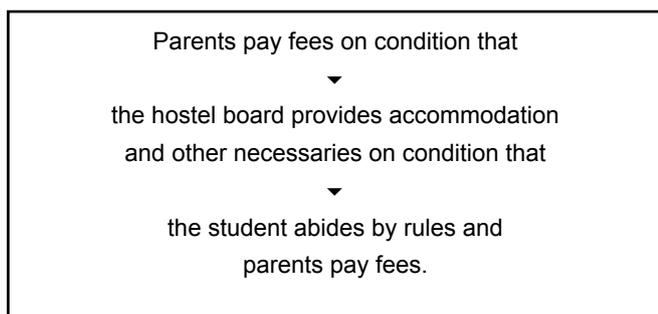
Firstly, you and your child should contact the school and speak with the school's privacy officer about your concern. You and your child should tell the school what you would like done to help put the matter right (for example, an apology, or requesting the correction of inaccurate information on your child's school file).

If you are not satisfied with the school's response you can then complain to the Privacy Commissioner. The Privacy Commissioner may investigate the complaint. This service is free, but may take several months.

For contact details see Useful Contacts.

# 16. School Hostels

Boarding hostels are generally run by independent governing boards, even if the hostel is attached to a state or integrated school. The relationship between parents, students and the hostel board is a contractual one. For example, parents agree to pay the hostel board, the hostel agrees to provide food, support and a safe environment for the student, and the student agrees to abide by the hostel rules and regulations.



## What policies must a hostel have in place?

The Education (Hostels) Regulations 2005 say that hostels must have a number of policies in place, and copies must be given to parents and boarders who request them.

Policies should ensure that boarders:

- are supported in a positive learning environment
- are given the opportunity to develop positively within reasonable boundaries
- feel secure and valued
- have ready access to people they can trust and confide in, and are supported in raising issues that concern them
- have ready access to, and some choice about, health and other personal services they may require.

Policies must include the protection of the boarders from ill-treatment, and should ensure that boarders are treated with dignity and respect. Boarders being given direction and guidance must not be 'subjected to any form of discrimination (including favouritism or antipathy), physical ill-treatment, solitary confinement, or deprivation of food, drink, warmth, shelter, privacy or protection'.

Parents must be able to access or have contact with their child whenever the boarder is present at the hostel and there is no good reason to deny that contact or access. For example, parents can be denied access if a court order prevents contact or if the parent's behaviour is likely to be disruptive to the operation of the hostel.

## What regulations govern school hostels?

The Education (Hostels) Regulations 2005 apply to school hostels under the Education Act 1989. These regulations set out:

- a licensing system for hostels
- requirements for hostel premises, facilities and management practice
- direct intervention options where serious safety concerns in a hostel are identified.

A boarder or boarder's parent may complain to the owner of a hostel about a breach of these regulations.

These regulations also identify and address inadequate standards of student behaviour. However, the disciplinary procedures of boarding hostels are a matter of contract. If a boarder or parent feels the expulsion of a boarder was unfair, the hostel policy may outline an appeal procedure.

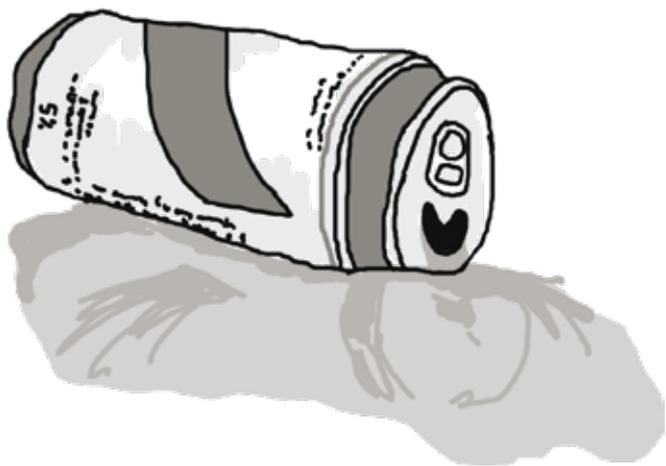
A student's relationship with the hostel is separate from their relationship with the school: the hostel and the school are different institutions. Terminating the boarding contract does not mean that a student has been suspended or expelled from 'the school', although a boarder who has been suspended from the hostel may need to find alternative accommodation.

It is important to remember that hostel rules and school rules are not necessarily the same thing, and a breach of a hostel rule should not automatically result in a sanction by the school.

## What can I do if the hostel is breaching the regulations?

Boarders and their parents can complain to the owner of the hostel, either orally or in writing. The complaint must be documented, and the owner must give the person who complains a copy of all relevant information. If the complaint will take longer than 20 days to investigate, the owner must inform the complainant within 10 days. A decision about whether the complaint is justified must be made as soon as practicable.

The owner must ensure compliance with the minimum standards in the regulations and with their own code of practice. Failure to do so can result in a fine of up to \$10,000.



**My daughter, with a group of students, drank alcohol at her hostel. She has been expelled from both the hostel and the school. Is this legal?**

**What can the hostel do?**

The hostel should have provided you and your student with a list of rules. Is consumption of alcohol a breach of the rules? If so, good practice requires that the hostel:

- interview each student involved the incident
- ask for their response
- consider their response without any preconceived ideas of guilt
- reach a decision which is based on the facts and on the evidence.

If the hostel rules clearly state that consuming alcohol may result in terminating the boarding contract, and hostel board members give the student a fair hearing, the board may be justified in terminating their contract with the student.

**What can the school do?**

The principal will need to consider if a school rule has been breached. If the school rules state that no alcohol is permitted on school premises, is the hostel considered to be part of the school premises?

If a school rule has been broken, the principal will need to decide what action to take. If the principal suspends the student under section 14 of the Education Act, the student will need to appear before a disciplinary hearing with the school board of trustees (see Chapter 13).

A student cannot be automatically expelled from school because he or she has been expelled from the hostel. Unfortunately, being expelled from the hostel often means that the student is unable to find suitable accommodation and is thus unable to attend the school.

# 17. Principles of Natural Justice

Section 27(1) of the New Zealand Bill of Rights Act 1990 gives everyone the right to natural justice. Natural justice requires all people or organisations performing a public judicial function – such as teachers, principals and school boards of trustees – to observe certain principles of fairness.

## What are the principles of natural justice in relation to student discipline in schools?

Natural justice is a general legal concept, not specifically set out in legislation. In relation to schools, it means that students must be treated fairly, and decisions that affect their rights (such as a suspension) should be made using fair procedures. The principles of natural justice have also been incorporated into specific rules in the Education Act 1989 and the Education (Stand-Down, Suspension, Exclusion & Expulsion) Rules 1999. Here are some of the principles that apply to a suspension hearing.

### ***A person may not be both the judge and the prosecutor***

- At a student's board of trustees suspension meeting, a principal cannot take part in the decision about whether to lift or extend a suspension, because they are the person who initiated the suspension. Although the principal is a member of the board, the principal should not remain with the board when they are making their decision. The principal should leave the board meeting at the same time as the student, parents and other support people. This ensures the board can make an independent decision, in fairness to the student (and also to the school).
- Generally, if the board of trustees wishes to call the principal back into the meeting to clarify any points, the student, family or representative should also be present and should be given an opportunity to ask questions of the principal once the points have been clarified. If new information is raised, the student and family may request that the meeting be adjourned.
- Any teacher, parent or pupil directly involved in the incident that led to the suspension should not be involved in any decision regarding the incident.



### ***A person's defence (reasons and/or explanation) must always be fairly heard***

This means that:

- the student and their parents must be informed of the grounds for suspension
- they must be given adequate time to prepare a response (a defence)
- they must be given the opportunity to present their side of the story.

Families should get a copy of the principal's report in enough time to prepare a defence before a board of trustees hearing. The Education Rules state that this must be at least 48 hours before the hearing. This allows the student to understand the case against them, know the evidence, learn about their rights and prepare a response.

Parents should use this time to seek advice and to help the student prepare a defence, which could either be in writing or spoken.

If you and your child agree that there was misconduct, it is important that you put forward mitigating factors (facts which place the conduct in context). It is also important to provide evidence of other circumstances in your child's life, such as a bereavement or a family break-up, that might have caused their behaviour.

This is also the time for you to suggest alternative disciplinary measures that are more proportionate to the misconduct, telling the board that suspension or exclusion is not an appropriate punishment and that your child's case does not justify such a serious response.

***A decision must be made in good faith, without bias or prejudice***

The decision makers (for example, the board of trustees at a suspension meeting) must:

- listen to both sides
- have open minds with no pre-conceived decisions
- not follow an inflexible rule or policy
- take into account relevant factors only (this means they must ignore any irrelevant material that was brought to the meeting)
- reach a decision that is reasonable and based on the facts of the matter.

## **UN Convention on the Rights of the Child**

Article 40 of the UN Convention on the Rights of the Child gives additional rights when children below the age of 18 are facing charges. Although these rights strictly apply to situations where children have allegedly broken the criminal law, they can also be applied to other situations which could have serious or long-term effects on a child's future. Arguably, the decision to exclude or expel a student has serious long-term effects. Students may end up remaining out of school indefinitely, as it can be very difficult for parents to find a new school.

The UN Convention on the Rights of the Child provides these additional rights:

- to be presumed innocent until proven guilty
- to have legal or other appropriate assistance in the preparation and presentation of a defence
- not to be compelled to give a testimony or to confess guilt
- to have one's privacy fully respected at all stages of the hearing (see Chapter 12).

For further information, see Chapter 1.

# 18. Private schools

Private schools are subject to a different regulatory system from state and integrated schools, which are largely governed by the Education Act 1989. Most of the content of *Schools and the Right to Discipline* does not apply to private schools.

## Enrolment

Enrolment at a private school is contractual, as with a school hostel. When enrolling, parents and students are making an agreement with the school: parents will pay fees and students will abide by the school rules, and in return the school will provide the student with an education.

In the event of a dispute or a breach of the contract, parents and schools can use the court system. The Disputes Tribunal provides a means of settling disputes for small claims up to \$15,000 (or \$20,000 if both the parents and the school agree).

Breaches of school rules will be dealt with according to the school's disciplinary procedure.

## School suspensions

Private schools are not bound by the government's regime for suspensions. While private schools do not technically "stand down" or "exclude" a student, they can in effect suspend a student. If a student has been suspended or expelled from a private school, section 35AA of the Education Act 1989 provides that the principal must immediately notify the Ministry of Education. Unless the student is reinstated

at the school within a reasonable time or enrolled at another school, the Ministry of Education 'must' (for students under 16) and 'may' (for those over 16) arrange for the student to be enrolled in another school. The Ministry of Education must make reasonable attempts to consult the student, the student's parents, the school and, where necessary, other organisations relevant to the student's education and welfare.

## The role of other agencies

Private schools are subject to ongoing reviews by the Education Review Office (ERO). These reviews occur every three years. The ERO ensures that the private school has suitable premises, staffing, equipment and curriculum, and that tuition is of a standard no lower than that provided in state schools.

Private schools are not required to teach the same curriculum as state schools. They can devise their own curriculum and can assess by different standards, although both the curriculum and these standards will be reviewed by the ERO. If offering national qualifications (i.e. NCEA), the school will be subject to the standards of the New Zealand Qualifications Authority (NZQA).

Although not subject to most of the Education Act, private schools must still abide by New Zealand law, including contract law, the Privacy Act 1993, the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.

# 19: Restorative Practice: A Paradigm Shift

'In recent years, there has been a growing interest in developing practices based on restorative justice to respond to the behaviour problems and underachievement of students in schools... [Schools are] developing more effective responses to truancy, improving relations between schools and communities, reducing suspensions and developing better ways of engaging the most alienated students in the classroom. New Zealand appears to be entering a new period of educational reform and innovation.' Sean Buckley and Gabrielle Maxwell, *Respectful Schools: Restorative Practices in Education*, 2007

## Restorative Practice in a nutshell

Restorative justice, and its associated practices, originated in the criminal justice system. In the school context, a restorative approach is an alternative way of managing school relationships. One of its primary aims is to reduce the number of stand-downs, suspensions and expulsions in schools. It involves a paradigm shift, encouraging communities to recognise that children belong in school, and that student disaffection, under-achievement, non-attendance and exclusion are problems that the school community shares, and can therefore address together.

This chapter outlines the basic ideas behind restorative justice approaches in a school environment.

## What is a restorative approach?

Restorative practices focus on repairing harm and restoring relationships. A key restorative principle is that the whole school community develops the rules together and is involved in finding ways forward when these rules are broken. Restorative practice is not simply a response to extreme behaviour, but is used in staff rooms, classrooms and playgrounds every day.

Many issues can be dealt with restoratively, including conflict where there is no 'guilty party' or when both sides are blaming the other. Restorative processes (chats, hui, conferences) are used not only in cases of offending behaviour, but also with young people who are at risk of exclusion (or who have been excluded) as a way of addressing the relationship issues and residual tensions.

## What are the key differences between traditional school approaches to discipline and restorative justice approaches?

Many parents express frustration at the way some schools are quick to use traditional school discipline processes involving stand-downs, suspensions and expulsions. These measures can be disruptive, and students who are suspended, excluded or expelled also often face re-

enrolment difficulties, making continued engagement with the education system extremely difficult.

For many students, negative experiences with school authority will shape their expectations, and their behaviour, for their remaining years of education. Some students will carry these experiences into life after school as well.

Traditional approaches to school discipline, which are generally punitive, ask:

- What happened?
- Who is to blame?
- What is the punishment going to be?

That traditional approach is based on the assumption that punishment will and can change behaviour and act as a deterrent. It does not take into account the needs of those who have been harmed by the wrongdoing, or the benefit of repairing relationships between people who are still likely to see each other regularly at school.

In contrast, a restorative approach asks:

- What's happened?
- Who has been affected?
- How can we involve everyone who has been affected in finding a way forward?
- How can everyone do things differently in the future?

The idea behind this approach is that people need to take responsibility for the impact of their behaviour on other people. Often, the consequence of harmful, upsetting, disruptive or destructive behaviour is disconnection and damaged relationships.

Connectedness, on the other hand, is important to young people, and can be a major factor in preventing destructive and anti-social behaviour.

## Example: St Thomas of Canterbury School's restorative justice programme

St Thomas of Canterbury School launched their restorative justice programme in 2003. Since then, the number of suspensions and expulsions at the school has been significantly reduced. In 2010, no student was stood-down, suspended or expelled.

## Example of a restorative model for behaviour / relationship management\*

\*This is only one example of a restorative justice hierarchy of issues. Other schools will have developed models that are most appropriate to their students, staff and community.



### Board of Trustees Conference

Facilitated by Deputy Principal  
(Affected parties, BOT representative, Principal)



### Community Group Conference

(Affected parties in the community, Deputy Principal, Principal, Police if appropriate)  
Used for continued offences or unsafe / antisocial behaviour



### Family Conference

(Senior Dean, Affected Teachers, Students, Counsellors, Family members)  
Used for repeated withdrawals within a term



### Small Group Conference / Classroom Conferencing

(Teacher, Student, Counsellors)  
Used for a student withdrawal from class, after a restorative chat has occurred and disruptive behaviour continues.



### Restorative Chat in restorative room

If it is inappropriate to facilitate a restorative chat in class or outside the room, the student can be referred to the restorative room, where it is the subject teacher's responsibility to facilitate a restorative chat.



### Restorative Chat in class or just outside it

In class or outside of room  
(Students, Teachers)  
Used for persistent disruptive behaviour, lateness, lack of equipment, incorrect uniform, incomplete homework.  
Student are asked to wait outside classroom for five minutes or spoken to at end of lesson.



### Peer Mediation

Facilitated by trained student mediators

The school's restorative justice model defines a clear hierarchy of levels of misconduct (see the table to the left). Different staff are involved depending on the seriousness and frequency of the offence. Most behaviour incidents are dealt with in class. The 'restorative room' provides a space where restorative conversations take place.

## What is a Restorative Conference?

A restorative conference is similar to the conferences used in New Zealand's youth justice system. A conference involves the offender, the victim, school staff, whānau, community members if appropriate and, if necessary, the police. The purpose of the conference is to establish what harm was caused, why the harm was done, the wider emotional context, what is needed to put things right, and how the situation can be avoided in the future.

The conference allows everyone involved to meet, and to gain a better understanding of the impact of the incident, the reasons for it and the preferred outcomes.

## Is it easy for schools to implement restorative justice?

Not necessarily. Schools may find that implementing restorative justice takes considerable resources – probably more than would be spent on the process leading to suspension or expulsion. Schools will need to engage in a whole-school cultural change, which will involve ongoing staff training and regular evaluation. But schools who have done it suggest that this change is worth the effort.



Restorative justice fosters a culture of respect, takes a lot of stress out of the day-to-day school environment, and encourages high levels of student engagement.

### **My child is the victim of bullying. If he has to face his bully, won't he just get bullied more?**

No, not if the process is followed properly. Restorative approaches can make a victim's needs a focus of the solution. This can be empowering for victims. Instead of forcing distressed people to re-live the trauma, restorative practice can give them the opportunity to express their anger and have their questions answered, so they can move on.

When young people are asked what they need when they have been harmed, their answers tend to be similar:

- someone to listen to my story
- time to calm down
- a chance to ask – why me? what did I do to deserve that?
- the person concerned to understand and acknowledge the impact their behaviour has had on me
- a sincere, spontaneous apology
- things put right, if possible
- reassurance it won't happen again.

Restorative approaches can meet those needs, if it is well-managed and well-resourced.

### **My child often gets into trouble but her teachers never listen to her side of the story. How would a restorative justice approach help my child?**

When a young person behaves in a way that is challenging for a teacher, it's likely that both student and teacher will feel some kind of grievance. Unless both feel heard and understood, it's possible that the relationship between teacher and student will be damaged, affecting the way they work together in the future.

When young people who have caused harm to someone else, whether on purpose or accidentally, are asked what

they themselves need, answers usually include:

- time to think
- someone to listen to my story
- a chance to explain to myself and to the other person why I did it
- an opportunity to apologise
- a chance to make amends
- reassurance that the matter is dealt with and I can move on
- hope that there is no resentment left.

More traditional, punitive, approaches to wrongdoing rarely provide the kind of environment conducive to meeting these kinds of needs.

### **Are restorative approaches a soft option?**

In some ways, yes. In other, significant, ways, no. Offenders may receive a 'lighter sentence', but restorative approaches are often more challenging, because the process requires that they are held to account in front of people who matter to them. Participants are required to face up to their shortcomings. If restorative practice enables a school community to intervene at a turning point in a student's life, where they might otherwise face suspension or exclusion, it is worth the effort.

### **Find out more:**

Office of the Children's Commissioner

- [www.occ.org.nz/publications](http://www.occ.org.nz/publications)

Restorative Schools

- [www.restorativeschools.org.nz/resources](http://www.restorativeschools.org.nz/resources)

Restorative Justice in New Zealand

- [www.restorativejustice.org.nz](http://www.restorativejustice.org.nz)
- [www.restorativejusticeaotearoa.org.nz](http://www.restorativejusticeaotearoa.org.nz)

Te Kotahitanga

- [www.tekotahitanga.tki.org.nz](http://www.tekotahitanga.tki.org.nz)

Student Engagement Initiative (SEI) and Suspension Reduction Initiative (SRI)

- [www.tki.org.nz](http://www.tki.org.nz)

# 20. How to Complain



Think about what has happened. Decide what the problem is and what you would like done about it. It may be helpful to discuss it with someone else.

- Contact the appropriate staff member.
- If you are not satisfied with the response, discuss the matter with the principal.
- If you are not satisfied, ask for a copy of the school policy for receiving, investigating and resolving complaints. Check if the procedure has been followed in your circumstances.
  - Write to the chairperson of the board of trustees.
  - If you are still unhappy, contact another organisation who may be able to help you. See Useful Contacts.
  - The YouthLaw website [www.youthlaw.co.nz](http://www.youthlaw.co.nz) has useful information on making complaints to (and about) schools.

## If the problem is:

## Contact

Serious complaints about a registered teacher's behaviour relating to misconduct, incompetence or fitness to teach

New Zealand Teachers Council

Information directly concerning teaching, safety of equipment, school buildings

Ministry of Education or Education Review Office

Legal issues affecting children and young people aged 25 and under

YouthLaw

Education law issues (primary or secondary; state or integrated schools)

Parents Legal Information Line for School Issues or YouthLaw

General issues concerning the welfare of children and young people

Office of the Children's Commissioner

Board of Trustees' decisions

Office of the Ombudsmen

Official information complaints

Office of the Ombudsmen

Privacy complaints and breaches

Privacy Commissioner

Physical or sexual harm at school

New Zealand Police

Safety or protection of children

Child, Youth and Family

Counsellor issues

New Zealand Association of Counsellors

Discrimination

Human Rights Commissioner

# Sample letters

## Letter to principal requesting reasons for suspension and copy of principal's report

**ALWAYS KEEP A COPY OF EACH LETTER FOR YOURSELF!**

[Your name, address and telephone number]

[Date]

The Principal

[Address]

Dear Sir/Madam,

My [son/daughter, their name,] has been suspended from your school. I would be grateful if you would:

- let me know the reasons for the suspension (in writing)
- send me a full copy of your report about the suspension to the Board of Trustees as soon as possible (and at least 48 hours before the meeting). Please include any statements by other teachers, or any other material about the suspension, which will be presented to the board.
- Please also send:
  - (a) a copy of the school charter
  - (b) a copy of any written school rules
  - (c) a copy of any relevant policy documents adopted by the Board of Trustees

This is an urgent request under sections 14(1) and 18(2) of the Education Act 1989 and also section 12 of the Official Information Act 1982.

Yours faithfully,

[Your signature]

[Your name]

Copy to: Chairperson, Board of Trustees

**NOTE: Also send a copy (of your letter to the principal) to the chairperson of the board of trustees**

**Letter to Board of Trustees  
requesting reconsideration of  
decision or rehearing**

**ALWAYS KEEP A  
COPY OF EACH LETTER  
FOR YOURSELF!**

[Your name, address and telephone number]

[Date]

Chairperson, Board of Trustees

[Address]

Dear Sir/Madam,

On [date] we attended a Board of Trustees disciplinary hearing with our [son/daughter, their name]. We do not consider the hearing was conducted in a fair manner for the following reasons:

- [state reasons]

Because we consider the meeting to have been procedurally unfair, we realise we could ask the Ombudsman to consider our case.

However we believe, if possible, the school should be given a chance to remedy the situation. Consequently, we would ask that:

- the suspension be lifted and [name] be reinstated at [name of school];  
or
- the board convene another hearing so that these concerns can be fully discussed.

We realise the board is under no legal obligation to review the decision, but when considering all options this would seem the most advantageous for all concerned.

We would be grateful if you could convey your decision to us within the next five days.

Yours faithfully,

[Your signature]

[Your name]

## Letter to The Ombudsman

**ALWAYS KEEP A  
COPY OF EACH LETTER  
FOR YOURSELF!**

[Your name, address and telephone number]

[Date]

Office of the Ombudsmen

[Address: See Useful Contacts]

Dear Ombudsman,

My [son/daughter, their name] was [excluded/expelled] from [name of school] on [date].

[I/We] do not believe we were given a fair hearing at the Board of Trustees meeting for the following reasons:

- [state reasons]

Therefore [I/we] do not believe the [exclusion/expulsion] was justified and would ask you to investigate the matter.

[I/We] can be contacted at the above address or at [phone number] during the day.

Yours faithfully,

[Your signature]

[Your name]

**NOTE: Also send a copy (of your letter to the principal) to the chairperson of the board of trustees**

# Definitions

## **Board of Trustees**

The governing body of a school, made up of members of the school community, normally parents. Members are elected and are responsible for everything the school does. Boards establish a charter, which sets out the aims and objectives of the school, and employ the staff, including the principal.

## **By-laws**

The school rules made by boards of trustees.

## **CCS Disability Action**

A provider of information, advocacy and support for people with disabilities and their parents.

## **Child, Youth & Family (CYF)**

CYF is a service of the Ministry of Social Development. Its activities are guided by the Children Young Persons & their Families Act 1989. CYF works with families to protect children, manage young offenders and help families with their child rearing role.

## **Caregiver**

The adult with responsibility for looking after a child or young person – not necessarily the legal guardian.

## **Children's Commissioner**

A person appointed by the governor general to investigate and monitor policies and practice relating to children and young people.

## **Composite Schools**

Schools offering education to students at both the primary and secondary levels.

## **Co-opt**

To add a member to an existing group of people (for example, to add an extra member to the board of trustees).

## **Corporal punishment**

Physical punishment. It is illegal for a teacher to use physical force to discipline a child.

## **Curriculum**

Each school's programme of teaching and learning.

## **Education Review Office (ERO)**

The government department responsible for inspecting schools and publishing reports on the quality of education in all New Zealand schools and early childhood centres, including private schools, kura kaupapa Māori (Māori language immersion schools), special schools and kōhanga reo (Māori language early childhood education centres).

## **Exclusion**

The formal and permanent removal of a student aged under 16 from a school.

## **Expulsion**

The formal and permanent removal of a student aged 16 or over from a school.

## **Guardian**

Someone with all the rights and responsibilities of a parent, including to be involved in important decisions about a child's upbringing (for example, decisions about education). Parents are guardians in almost every case.

## **Independent Police Conduct Authority (IPCA)**

An independent body that considers and investigates complaints against New Zealand Police and oversees their conduct.

## **Integrated school**

A former private school that has joined the state system and is now funded by the government. Integrated schools teach the New Zealand curriculum but keep their own special character (usually a philosophical or religious belief).

## **IHC**

A charitable organisation supporting people with intellectual disabilities and their families/whānau.

## **National Administration Guidelines (NAGs)**

Statements addressed to boards of trustees about school operation requirements. NAGs are a component of the National Education Guidelines.

## **National Education Guidelines (NEGs)**

Statements for education in New Zealand, made up of four components: National Education Goals, Foundation Curriculum Policy Statements, the National Curriculum Statements and National Administration Guidelines.

**Ombudsman**

An ombudsman is an independent person appointed by the Governor General to investigate complaints from individuals about actions and decisions of central and local government departments and organisations. These include schools.

**Parents Legal Information Line for School Issues (PLINFO)**

A nationwide, free phone service providing information to parents, caregivers and guardians about parents' and children's legal rights and obligations in the school system: 0800 499 488.

**Principal**

Chief Executive of the school, responsible for ensuring that teachers are doing their job well and that the children are safe and able to learn.

**Principles of natural justice**

A set of rules and procedures to be followed when dealing with the rights of individuals. Natural justice requires that boards of trustees, principals and staff members be fair when making decisions under the Education Act.

**Privacy Commissioner**

A person appointed by the Governor General to educate people about the provisions of the Privacy Act 1993 and to investigate complaints about possible breaches of the Privacy Act.

**Private Schools**

Private schools do not have to teach the New Zealand Curriculum but must follow a learning programme of at least the same quality. Private schools charge fees but also receive some funding from the government.

**Proprietor**

This term is used in integrated schools and means the person or body of people who have the primary responsibility for determining and supervising the special character of the school.

**Restorative Justice Approach**

A restorative justice approach aims to repair the harm caused by unjust behaviour. It describes a response to conflict that emphasises dialogue and the agreement of parties through inclusive and cooperative processes.

**Special Education, Ministry of Education (GSE)**

Specialists employed by the Ministry of Education. They work in teams which focus on early intervention, services for students with ongoing resourcing needs, severe behaviour difficulties and those with a high need for communication support.

**Stand-down**

Formal removal of a student from school for a specified period. A stand-down can total no more than five days in any term, or 10 days in a school year. Following a stand-down, a student returns automatically to school.

**State school**

A school that is required to follow the New Zealand curriculum and is funded by government. In most contexts in this book, this includes integrated schools.

**Suspension**

The formal removal of a student from school until the board of trustees decides the outcome at a suspension meeting.

**Young person/student**

These terms have been used loosely to describe someone attending school.

**YouthLaw**

A national community law centre with special expertise in legal matters affecting children and young people.

# References

We found the following sources very useful when preparing this resource:

- YouthLaw website: [www.youthlaw.co.nz](http://www.youthlaw.co.nz)
- Privacy Commission website: [www.privacy.org.nz](http://www.privacy.org.nz)
- Youth Law Project (Inc.), "School Expulsions: An Adviser's Guide," 1993
- Paul Rishworth, Patrick Walsh, John Hannan, "Recent Developments in School Law," New Zealand Law Society Seminar, October 2001
- John Hannan, Paul Rishworth, Patrick Walsh, "Education Law: Continuing challenges," New Zealand Law Society Seminar, May 2004
- John Hannan, Paul Rishworth, Patrick Walsh, "Education Law," New Zealand Law Society Seminar, May-June 2006
- John Hannan, Paul Rishworth, Patrick Walsh, "Education Law Update," New Zealand Law Society Seminar, September 2008
- Ministry of Education, "Guidelines for principals and boards of trustees on stand-downs, suspensions, exclusions and expulsions. Part I: Legal options and duties," December 2009
- Ministry of Education, "Good Practice: Guidelines for principals and boards of trustees for managing behaviour that may not lead to stand-downs, suspensions, exclusions and expulsions. Part II," December 2009
- Sean Buckley and Gabrielle Maxwell, "Respectful Schools. Restorative Practices in Education: A Summary Report," Office of the Children's Commissioner and The Institute of Policy Studies, Wellington 2007



# Useful Contacts

## **Advocacy Centre IHC National Office**

PO Box 4155  
Wellington 6140  
Tel: (04) 472 2247  
Free Phone: 0800 442 442  
[www.ihc.org.nz](http://www.ihc.org.nz)

## **Education Review Office**

PO Box 27002  
Wellington 6011  
  
Auckland: (09) 377 1331  
Hamilton: (07) 838 1898  
Napier: (06) 835 8143  
Whanganui: (06) 345 4091  
Wellington: (04) 381 6800  
Christchurch: (03) 365 5860  
Dunedin: (03) 479 2619  
[www.ero.govt.nz](http://www.ero.govt.nz)

## **Human Rights Commission**

PO Box 12411  
Wellington 6144  
Tel: (04) 473 9981  
Infoline: 0800 496 877  
[www.hrc.co.nz](http://www.hrc.co.nz)

## **New Zealand Association of Counsellors**

PO Box 165  
Hamilton 3240  
Tel: (07) 834 0220  
[www.nzac.org.nz](http://www.nzac.org.nz)

## **New Zealand Teachers Council**

PO Box 5326  
Wellington 6145  
Tel: (04) 471 0852  
[www.teacherscouncil.govt.nz](http://www.teacherscouncil.govt.nz)

## **Office of the Children's Commissioner**

Level 6, Public Trust Building  
117-125 Lambton Quay  
PO Box 5610  
Wellington 6145  
Tel: (04) 471 1410  
Free Phone: 0800 224 453  
[www.occ.org.nz](http://www.occ.org.nz)

## **Office of the Ombudsmen**

Level 14, 70 The Terrace, Wellington  
PO Box 10152  
Wellington 6143  
Tel: (04) 473 9533

55-65 Shortland Street, Auckland  
PO Box 1960  
Auckland 1140  
Tel: (09) 379 6102

Level 6, 764 Columbo St, Christchurch  
PO Box 13482  
Christchurch 8141  
Tel: (03) 366 8556

Complaints Free Phone: 0800 802 602  
[www.ombudsmen.parliament.nz](http://www.ombudsmen.parliament.nz)

## **Parents Legal Information Line for School Issues (PLINFO)**

PO Box 24005  
Wellington 6142  
Free Phone: 0800 499 488  
[www.communitylaw.org.nz](http://www.communitylaw.org.nz)

## **Privacy Commissioner**

Level 4, Gen-i Tower, 109-111 Featherston Street  
PO Box 10094  
Wellington 6143  
Tel: (04) 474-7590

Level 3, WHK Tower, 51-53 Shortland Street  
Auckland 1140  
Tel: (09) 302 8680

Enquiries line: 0800 803 909  
[www.privacy.org.nz](http://www.privacy.org.nz)

## **YouthLaw**

Level 1, 219 Federal Street, Auckland CBD  
PO Box 7657  
Auckland 1141  
Tel: (09) 309 6967 (Collect calls accepted from  
under 25s anywhere in NZ)  
[www.youthlaw.co.nz](http://www.youthlaw.co.nz)



# Ministry of Education

www.minedu.govt.nz

## National Office: Wellington

45-47 Pipitea Street  
PO Box 1666  
Thorndon, Wellington 6140  
Tel: (04) 463 8000  
Fax: (04) 463 8001  
E-mail: enquiries.national@minedu.govt.nz

## Regional Offices:

### Whangarei

The Money Factory  
10 Awaroa River Road, Onerahi 1  
PO Box 911, Whangarei 0140  
Tel: (09) 436 8900  
Fax: (09) 436 8901  
E-mail: enquiries.whangarei@minedu.govt.nz

### Auckland

12-18 Normanby Road  
Mt Eden, Auckland  
Private Bag 92644  
Symonds Street, Auckland 1150  
Tel: (09) 632 9400  
Fax: (09) 632 9401  
E-mail: enquiries.auckland@minedu.govt.nz

### Hamilton

Level 2, 150 London Street  
Private Bag 3011, Hamilton 3240  
Tel: (07) 858 7130  
Fax: (07) 858 7131  
E-mail: enquiries.hamilton@minedu.govt.nz

### Rotorua

Level 4, 1144 Pukaki Street  
PO Box 1749, Rotorua 3040  
Tel: (07) 349 7399  
Fax: (07) 349 7398  
E-mail: enquiries.rotorua@minedu.govt.nz

### Napier

8A Lever Street  
Ahuriri, Napier  
PO Box 147, Napier 4140  
Tel: (06) 833 6730  
Fax: (06) 833 6731  
E-mail: enquiries.napier@minedu.govt.nz

## Lower Hutt

19 Market Grove  
PO Box 30177  
Lower Hutt 5040  
Tel: (04) 463 8699  
Fax: (04) 463 8698  
E-mail: enquiries.lowerhutt@minedu.govt.nz

## Whanganui

93 Ingestre Street  
Private Bag 3012  
Whanganui 4540  
Tel: (06) 349 6300  
Fax: (06) 349 6301  
E-mail:enquiries.whanganui@minedu.govt.nz

## Nelson

19 Haven Road  
Nelson 7010  
Tel: (03) 546 3470  
Fax: (03) 539 1501  
E-mail: enquiries.nelson@minedu.govt.nz

## Christchurch

39 Princess Street, Addington  
PO Box 2522  
Christchurch 8041  
Tel: (03) 378 7300  
Fax: (03) 378 7308  
E-mail: enquiries.christchurch@minedu.govt.nz

## Dunedin

414 Moray Place  
Private Bag 1971, Dunedin 9054  
Tel: (03) 471 5200  
Fax: (03) 471 5201  
E-mail: enquiries.dunedin@minedu.govt.nz

## Invercargill

190 Forth Street  
PO Box 887  
Invercargill 9840  
Tel: (03) 211 8000  
Fax: (03) 211 8001  
E-mail: enquiries.invercargill@minedu.govt.nz



# Special Education Offices

Special Education Information Line: 0800 622 222

**National Office: (04) 463 8000**

## District Offices

## Local Centres

### Northern Region

Tai Tokerau (Whangarei)	(09) 436 8900	Kaikohe, Kaitaia
Northwest Auckland (North Shore)	(09) 487 1100	West Auckland
Manukau (Otahuhu)	(09) 270 4489	–
Auckland City (Mt. Eden)	(09) 632 9400	–

### Central North Region

Waikato (Hamilton)	(07) 850 8880	Thames, Taumarunui, Tokoroa
Bay of Plenty East (Tauranga)	(07) 571 7800	Whakatane
Bay of Plenty West (Rotorua)	(07) 348 5145	Taupo
Gisborne (Gisborne)	(06) 868 0120	–
Hawke's Bay (Napier)	(06) 833 6730	–

### Central South Region

Taranaki (New Plymouth)	(06) 758 7858	Hawera
Central North Island (Palmerston North)	(06) 357 9245	Palmerston North, Whanganui, Horowhenua/Kapiti
Greater Wellington (Lower Hutt)	(04) 439 4600	Masterton, Wellington, Porirua

### Southern Region

Marlborough/Nelson/West Coast (Nelson)	(03) 546 3470	Blenheim, Greymouth, Westport, Motueka
Canterbury (Christchurch)	(03) 378 7300	Timaru, Rangiora, Ashburton
Otago (Dunedin)	(03) 471 5200	Balclutha, Southern Lakes, Oamaru
Southland (Invercargill)	(03) 218 2442	–

For contact details of your local centre, call the District Office in your area, or visit the Ministry of Education website: [www.minedu.govt.nz](http://www.minedu.govt.nz).



# Community Law Centres

www.communitylaw.org.nz

## One Double Five Community Law Centre

155 Kamo Rd  
Kensington, Whangarei 0112  
Tel: (09) 437 0185  
Email: 155law@whare.org.nz

## Waitakere Community Law Service

### Te Korowai Ture o Waitakere

1A Trading Place  
PO Box 121104  
Henderson, Waitakere City 0650  
Tel: (09) 835 2130  
Email: info@waitakerelaw.org.nz

## YouthLaw Tino Rangatiratanga Taitamariki

Level 1, 219 Federal St  
PO Box 7657, Wellesley St, Auckland 1141  
Tel: (09) 309 6967 (Collect calls accepted from under 25s anywhere in NZ)  
Email: info@youthlaw.co.nz  
www.youthlaw.co.nz

## Grey Lynn Neighbourhood Law Office

449 Richmond Rd  
PO Box 78-045  
Grey Lynn, Auckland 1245  
Tel: (09) 378 6085  
Fax: (09) 378 7796  
Email: glno@xtra.co.nz

## Mangere Community Law Centre

Unit 9 / Shop 27, Mangere Town Centre  
PO Box 43-201, Mangere  
Manukau City 2153  
Tel: (09) 275 4310  
Fax: (09) 275 4693  
Email: mclc@xtra.co.nz

## Auckland Disability Law

c/o Mangere Community Law Centre  
Unit 9 / Shop 27, Mangere Town Centre  
PO Box 43201, Mangere  
Manukau City 2153  
Tel: (09) 275 4310  
Fax: (09) 275 4693  
Email: info@adl.org.nz

## Otara Community Law Centre

121 Bairds Rd  
PO Box 61112  
Otara, Manukau City 2159  
Tel: (09) 274 4966  
Email: reception@otaralaw.org.nz

## Manukau Counties Community Law Centre

Level 1, 6 Osterley Way  
PO Box 76551  
Manukau City 2024  
Tel: (09) 262 2007  
Email: reception@ntklaw.org.nz

## Hamilton District Community Law Centre

Level 2, 109 Anglesea Street  
PO Box 1319, Hamilton 3240  
Tel: (07) 839 0770  
Email: admin@hamiltonclc.org.nz

## Baywide Community Law Service

63 Willow Street  
PO Box 13395, Tauranga 3141  
Tel: (07) 571 6812  
Email: baywidecls@xtra.co.nz

## Rotorua District Community Law Centre

1276 Pukuatua Street  
PO Box 879, Rotorua 3040  
Tel: (07) 348 8060  
Email: reception@rdclc.co.nz

## Tairāwhiti Community Law Centre

11 Derby Street  
PO Box 1053, Gisborne 4040  
Tel: (06) 868 3392  
Email: info@tairawhiticlc.co.nz

## Hawkes Bay Community Law Centre: Hastings Ture Amo Kura O Heretaunga

204 Karamu Rd  
PO Box 789, Hastings 4156  
Tel: (06) 878 4868  
Email: hblaw@hblaw.org.nz

### **Hawkes Bay Community Law Centre: Napier**

#### **Ture Amo Kura O Heretaunga**

Cnr Station and Hastings Street  
PO Box 1150, Napier 4143  
Tel: (06) 833 6540  
Email: hblaw@hblaw.org.nz

### **Taranaki Community Law Trust**

65 Devon Street West  
PO Box 216, New Plymouth 4340  
Freephone: 0800 LAWTRUST (0800 529 878)  
Tel: (06) 759 1492  
Email: tcls@xtra.co.nz

### **Community Legal Advice Whanganui**

72A Guyton St  
PO Box 351, Whanganui 4540  
Tel: (06) 348 8288  
Email: claw@claw.co.nz

### **Manawatu Community Law Centre**

Level 2, 12 The Square  
PO Box 2088, Palmerston North 4440  
Tel: (06) 356 7974  
Email: mancomlaw@xtra.co.nz

### **Wairarapa Community Law Centre**

Departmental Building, Chapel St  
PO Box 271, Masterton 5840  
Tel: (06) 377 4134  
Email: wclc@contact.net.nz

### **Community Law Horowhenua**

28 Queen St  
PO Box 36, Levin 5510  
Tel: (06) 368-3554  
Email: comlaw.horowhenua@xtra.co.nz

### **Whitireia Community Law Centre**

Level 3, Pember House  
Hagley St, Porirua 5022  
Tel: (04) 237 6811  
Email: info.whitireia@communitylaw.org.nz

### **Wellington Community Law Centre**

Level 2, 84 Willis St  
PO Box 24005, Wellington 6142  
Tel: (04) 499 2928  
Email: info@wclc.org.nz

### **Hutt Valley Community Law Centre**

59 Queens Drive  
Po Box 31501, Lower Hutt 5040  
Tel: (04) 568 8964  
Email: centre@huttlaw.org.nz

### **Community Law Marlborough**

Level 3, 1-17 Market St North  
PO Box 584, Blenheim 7240  
Freephone: 0800 266 529  
Tel: (03) 577 9919  
Email: reception@commlawmarlb.org.nz

### **Nelson Bays Community Law Service**

Level 2, 241 Hardy St  
Aon House Building  
PO Box 1110, Nelson 7040  
Freephone: 0800 246 146  
Tel: (03) 548 1288  
Email: admin@nelsoncommunitylaw.org.nz

### **Community Law Canterbury**

281 Madras St  
PO Box 2912, Christchurch 8140  
Tel: (03) 366 6870  
Email: staff@canlaw.org.nz  
www.canlaw.org.nz

### **Dunedin Community Law Centre**

52 Filleul St  
Dunedin 9016  
Tel: (03) 474 1922  
Email: reception@dclc.org.nz  
www.dclc.org.nz

### **Ngai Tahu Māori Law Centre**

Level 1, 258 Stuart St  
PO Box 633, Dunedin 9054  
Freephone: 0800 626 745  
Tel: (03) 477 0855  
Email: info@ngaitahulaw.org.nz  
www.ngaitahulaw.org.nz

### **Southland Community Law Centre**

5 Tay Street  
PO Box 552, Invercargill 9840  
Tel: (03) 214 3180  
Email: enq@comlawsth.co.nz



## OTHER RESOURCES PUBLISHED BY THE WELLINGTON COMMUNITY LAW CENTRE



### LEGAL INFORMATION FOR PREGNANT TEENAGERS

This booklet, although written for pregnant teenagers and their family and whānau, also provides legal information for all pregnant women and their families. Although there are no laws which say when someone can and can't become pregnant, there will be times throughout a woman's pregnancy when she will have to make 'legal decisions'.

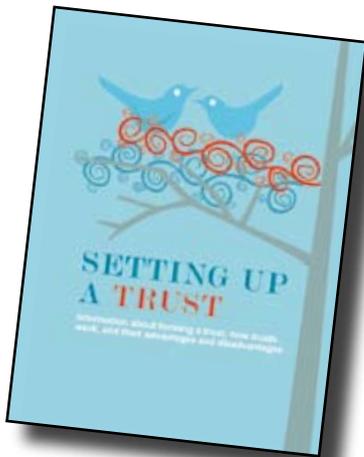
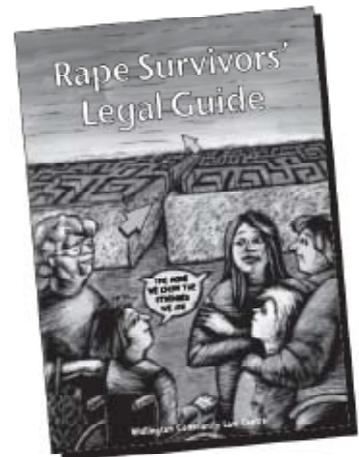
48 pages

### RAPE SURVIVORS' LEGAL GUIDE

The *Rape Survivors' Legal Guide* is a comprehensive, plain language resource for rape survivors, which provides answers to common questions about the court process for a rape trial, and addresses other legal issues for rape survivors.

This 2011 edition has been substantially revised and updated.

48 pages



### SETTING UP A TRUST

*Setting up a Trust* provides useful legal information about setting up a trust, how trusts work, and their advantages and disadvantages. The booklet covers costs; using lawyers; types of trusts; how a trust works; what can go wrong; and things to think about.

12 pages

Orders to:

Wellington Community Law Centre

PO Box 24005, Wellington 6142

Tel (04) 499-2928 Email: [info@wclc.org.nz](mailto:info@wclc.org.nz)

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**CHECK OUT:  
[www.communitylaw.org.nz](http://www.communitylaw.org.nz)**

## LEGAL REFERENCE MANUAL

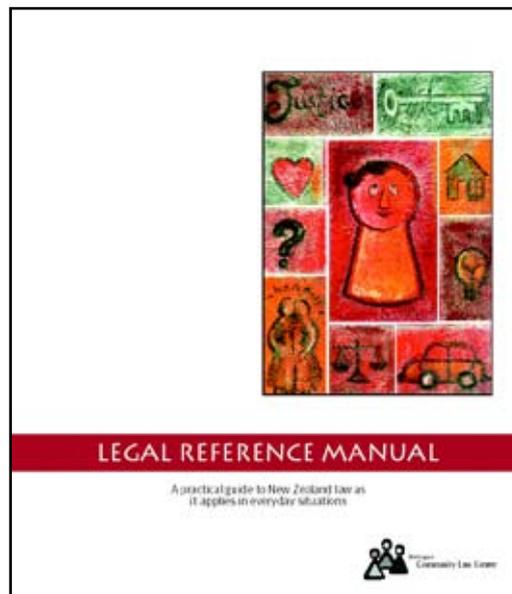
### A practical guide to New Zealand law as it applies in everyday situations

The *Legal Reference Manual* is a comprehensive A4 loose-leaf binder that sets out legal information in an easily accessible format. The *Legal Reference Manual* deals with various aspects of community and personal life and tries to provide answers to common legal questions.

The *Legal Reference Manual* contains information on a wide range of legal subjects. Topics include the New Zealand legal system, legal aid, criminal proceedings, police powers, court fines, domestic violence, harassment, consumer, tenancy, neighbour disputes, accident compensation, privacy and wills. This extensively updated and revised edition also features new sections on civil and human rights, and health and disability law, along with expanded sections on family law, employment law and the legal issues impacting on young people.

The *Legal Reference Manual* is an essential resource for anyone involved in the delivery of legal information. The Manual has been written for use by lawyers, community workers and advocates in helping people to access and understand the law as it applies to a range of everyday situations. It is also a valuable guide for community groups and individuals wishing to learn about their legal rights and options.

The *Legal Reference Manual* aims to make the law more accessible and to equip people with knowledge to address some of their own legal problems.



## MENTAL HEALTH AND THE LAW

### A Legal Resource for People who Experience Mental Illness

People who experience mental illness often feel disempowered and disenfranchised by the legal processes that surround mental illness.

*Mental Health & the Law* provides clear and easy to understand information about the laws that can affect someone who experiences mental illness. Topics covered include: Mental Health (CAT) Act 1992; Discrimination; Protecting your privacy; Rights when receiving health services; Custody and care and protection issues; Employment; and Accommodation.

This book is written for people who experience mental illness and focuses on their legal rights and how to exercise those rights. It is nevertheless a popular text book, and is useful for friends, family, whānau and organisations supporting people who experience mental illness.

254 pages

Orders to:

Wellington Community Law Centre  
PO Box 24005, Wellington 6142  
Tel (04) 499-2928 Email: [info@wclc.org.nz](mailto:info@wclc.org.nz)

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**CHECK OUT:**  
[www.communitylaw.org.nz](http://www.communitylaw.org.nz)

# PROBLEMS AT SCHOOL?

Uncertain of your rights as a parent,  
caregiver or student?

**Call the Parents Legal Information Line for School Issues  
(PLINFO): 0800 499 488**

PLINFO is a nationwide, freephone helpline for parents, caregivers and students seeking information and assistance on issues about children and young people at school:

- Fees
- Enrolments and zoning
- School rules
- Bullying
- Uniforms
- Truancy
- Students with disabilities
- Stand downs
- Suspension, Exclusion, Expulsion
- Privacy

Legally trained volunteers are available by phone to discuss problems and:

- Give legal information about your rights and obligations, and your child's rights
- Explore ways of resolving disputes
- Assist by contacting the school on your behalf
- Connect you with local advocacy services
- Send you *Schools and the Right to Discipline*

## PLINFO: 0800 499 488

## EASY: Education & Advocacy Support for Youth Workers

A project of YouthLaw Tino Rangatiratanga Taitamariki

EASY is an online advocacy training project for youth workers. EASY aims to build community-level capacity for helping young people with legal issues. EASY offers:

- Practical & accessible training in legal advocacy
- E-learning sessions that youth workers can work through at their own pace at their own place;
- A library of useful legal and advocacy related resources, to which youth workers may add further documents;
- A discussion forum for youth workers to ask questions, share experiences, support each other, discuss issues and develop best practice models;
- The ability to access legal advice from community law centres for individual advocacy cases.

Find out more at [www.easy.org.nz](http://www.easy.org.nz)

Contact: [jeanie@youthlaw.co.nz](mailto:jeanie@youthlaw.co.nz)