

Suspensions and expulsions: legal and procedural requirements

Access to education shapes the life chances of children and young people in a fundamental way. For this reason, a proposal to exclude a student, through suspension or expulsion, is a serious step, warranted only by very serious misbehaviour.

10.1 The legal context

The entitlement to education is protected in a range of constitutional and legal provisions and in human rights Conventions. These legal protections for the individual student's right to education mean that decisions to suspend or expel a student are open to appeal and may be subject to judicial review by the High Court.

Schools are required, under section 23(2) of the *Education (Welfare) Act 2000*, to include their procedures for suspension and expulsion in their code of behaviour.

10.2 The responsibility of the Board of Management

The Board of Management should:

- ensure that the school has a policy on, and procedures for, the use of suspension and expulsion that are in line with these Guidelines and with any additional requirements set down by the Patron
- ensure that all students and parents are advised about, and aware of, the school's policy for suspension and expulsion
- ensure that fair procedures are used for suspension and expulsion and that all staff are aware of those procedures
- take special care to ensure that the fair procedures are accessible to people with disabilities or those from different language or cultural backgrounds
- ensure that the Board of Management and the Principal are equipped for their roles in relation to the use of suspension and expulsion.

Time and timeliness

The Board of Management and Principal have a duty to ensure that there are no undue delays in an investigation and in making decisions about the imposition of suspension or expulsion.

Confidentiality

Great care should be taken to ensure that all matters to do with an investigation of alleged misbehaviour are dealt with in confidence.

10.3 Fair procedures based on the principles of natural justice

Schools are required by law to follow fair procedures when proposing to suspend or expel a student. The requirement for fair procedures derives from the Constitution of Ireland, international Conventions and case law.

Fair procedures have two essential parts:

- **the right to be heard**
- **the right to impartiality.**

The **right to be heard** means:

- the right to know that the alleged misbehaviour is being investigated
- the right to know the details of the allegations being made and any other information that will be taken into account
- the right to know how the issue will be decided
- the right to respond to the allegations
- where the possible sanction is of a serious nature, the right to be heard by the decision-making body
- where the possible sanction is of a serious nature, the right to ask questions of the other party or witnesses where there is a dispute about the facts.

The **right to impartiality** means:

- the right to an absence of bias in the decision-maker
- the right to impartiality in the investigation and the decision-making.

Freedom from bias entails ensuring that a person with an interest in the matter is not involved in the investigation or decision-making. If a person has pre-conceived opinions, a vested interest or personal involvement in the matter, they should not attempt to settle that matter.

An impartial process is one that allows a decision to be made based on an unbiased evaluation of information and evidence. Generally, impartiality requires that the investigation is separated from the process of making a decision so that the decision-maker comes to the task with an open mind.

10.4 Applying fair procedures in school

In a school, fair procedures apply to:

- the **investigation** of alleged misbehaviour that may lead to suspension or expulsion and
- the process of **decision-making** as to (a) whether the student did engage in the misbehaviour and (b) what sanction to impose.

The way in which fair procedures are applied will take account of the seriousness of the alleged misbehaviour and will have regard to what is reasonable in the context of a particular school.

The **principles** of fair procedures always apply, but the degree of formality required in implementing fair procedures will depend on the gravity of the alleged misbehaviour and on the seriousness of the possible

sanction. The level of formality required, for example for a suspension of fewer than three days, would be less than that required in the case of a longer suspension or in circumstances that might lead to an expulsion.

Even informal processes, however, must be fair and be seen to be fair. The principles of ensuring *the right to be heard* and *the right to impartiality* apply in all cases.

The **right to be heard** means that a student and their parents are fully informed about an allegation and the processes that will be used to investigate and decide the matter; and that they must be given an opportunity to respond to an allegation **before** a decision is made and before a serious sanction is imposed.

Absence of bias in the decision-maker would mean, for example that if the child of the Principal was accused of misconduct that might warrant suspension or expulsion, the Principal would not be involved in the decision. Similarly, if the child of a member of the Board of Management was accused of misconduct, that parent would absent themselves from the Board for any consideration of the matter by the Board.

The principle of **impartiality in decision-making** means it is preferable that, where possible, the Principal arranges for another member or members of staff to conduct the investigation and to present a full report on the facts of the case and any other relevant information to the Principal. The Principal is then free to take a view about whether the student did engage in the behaviour and about the sanction, based on the report of the investigation.

Where circumstances require the Principal to conduct the investigation as well as making a finding and proposing the sanction, he or she must not only act fairly but be seen to act fairly. It is incumbent upon the Principal to review the investigation to ensure that it has been fully and fairly conducted. It should be evident to the student, parents, staff and other students that the Principal, as decision-maker, is basing their decision, in an objective way, on the findings of the investigation.

The person alleging the misbehaviour, or who is a victim, or a witness should not usually conduct the investigation.

Thoughtful application of professional judgement and knowledge of the requirements of fair procedures will generally guide decision-making about suspension and expulsion. However, in circumstances of particular complexity, school authorities may need to seek legal advice to support their decision-making.

10.5 Students aged eighteen years or more

The provisions of the Guidelines relating to parents apply to the student, where the student has reached eighteen years (*Age of Majority Act 1985*). Occasions may therefore arise when an adult student requests the school to restrict or limit communication with their parents or to limit parental involvement in matters relating to their education. In such circumstances, schools are advised, particularly in relation to suspension and expulsion matters, to inform the parents of the student about the change in practice and the reasons.

10.6 Involving the Gardaí

Where allegations of criminal behaviour are made about a student, these will usually be referred to the Gardaí who have responsibility for investigating criminal matters. The Juvenile Liaison Officer can be a significant source of support and advice for the school and the student.

Suspension

For the purpose of these Guidelines, suspension is defined as:

requiring the student to absent himself/herself from the school for a specified, limited period of school days.

During the period of a suspension, the student retains their place in the school.

As part of the code of behaviour, the Board of Management should ensure that the school has a policy on, and procedures for, the use of suspension which are in line with these Guidelines and with any additional requirements set down by the Patron.

11.1 Authority to suspend

The Board of Management of a recognised school has the authority to suspend a student. Where this authority is delegated to the Principal, the delegation should be done formally and in writing.

The authority delegated to the Principal in respect of suspension should state any limits on that authority, and specify how the Principal is accountable to the Board of Management for his or her use of that authority. The delegation of authority should reflect the provisions of these Guidelines, any relevant legal requirements and Articles of Management, where appropriate.

Schools and colleges established or maintained by a VEC

In the case of schools and colleges established or maintained by a VEC, the VEC holds the authority to suspend a student. That authority may be devolved under section 31 of the *Vocational Education (Amendment) Act 2001* by the VEC to the Board of Management of a school. The VEC should ensure that the scope of the authority given is in line with the provisions of these Guidelines, Articles of Management or Model Agreement and any relevant legal requirements.

Where a Board of Management proposes to delegate this authority to the Principal, the Board should make a formal delegation arrangement taking due account of the provisions of the *Vocational Education (Amendment) Act 2001*.

11.2 The grounds for suspension

Suspension should be a proportionate response to the behaviour that is causing concern.

Suspension should be a proportionate response to the behaviour that is causing concern. Normally, other interventions will have been tried before suspension, and school staff will have reviewed the reasons why these have not worked. The decision to suspend a student requires serious grounds such as that:

- the student's behaviour has had a seriously detrimental effect on the education of other students
- the student's continued presence in the school at this time constitutes a threat to safety
- the student is responsible for serious damage to property.

A single incident of serious misconduct may be grounds for suspension.

11.3 Determining the appropriateness of suspending a student

Where the purpose of a proposed suspension is clearly identified, and that purpose cannot be achieved in any other way, suspension can have value.

Suspensions can provide a respite for staff and the student, give the student time to reflect on the link between their action and its consequences and give staff time to plan ways of helping the student to change unacceptable behaviour.

However, suspension can be counter-productive if used without a clear rationale or without measuring its impact and value. School management should consider the risk of any unwanted outcomes from suspension, such as an increased sense of alienation from school that could lead to a cycle of behavioural and academic problems.

Factors to consider before suspending a student

The nature and seriousness of the behaviour

- What is the precise description of the behaviour?
- How persistent has the unacceptable behaviour been?
- Has the problem behaviour escalated, in spite of the interventions tried?

The context of the behaviour

- What are the circumstances of the incidents of serious misbehaviour (e.g. in class, in a particular teacher's class, in the yard, in a group)?
- What factors may have triggered incidents of serious misbehaviour (e.g. bullying, cultural or family factors)?
- What is the age, stage of development and cognitive ability of the student?
- Are there any factors that may be associated with the behaviour (e.g. particular home circumstances, special educational needs)?

The impact of the behaviour

- How are other students and staff affected by the student's behaviour?
- What is the impact of the behaviour on the teaching and learning of the class?
- Does the behaviour have a particular or greater impact on some students or teachers?
- Does the student understand the impact of their behaviour on others?

The interventions tried to date

- What interventions have been tried? Over what period?
- How have the interventions been recorded and monitored?
- What has been the result of those interventions?
- Have the parents been involved in finding a solution to the problem behaviour?
- Has the intervention of NEPS or other psychological assessment or counselling been sought, where appropriate?
- Are any other interventions such as peer mediation, restorative justice approaches or family conferencing available?
- Is the student or parent involved with any support service and has this agency or support service been asked for help in solving this problem?
- Has any other agency been asked for assistance (e.g. Child Guidance Clinic, Child and Adolescent services)?

Whether suspension is a proportionate response

- Does the student's behaviour warrant suspension?
- Is the standard being applied to judging the behaviour the same as the standard applied to the behaviour of any other student?

The possible impact of suspension

- Will suspension allow additional or alternative interventions to be made?
- Will suspension help the student to change the inappropriate behaviour?
- How will suspension help teachers or other students affected by the behaviour?
- Will suspension exacerbate any educational vulnerability of the student?

Suspension as part of a behaviour management plan

Suspension should be part of an agreed plan to address the student's behaviour. The suspension should:

- enable the school to set behavioural goals with the student and their parents
- give school staff an opportunity to plan other interventions
- impress on a student and their parents the seriousness of the behaviour.

11.4 Forms of suspension

Immediate suspension

In exceptional circumstances, the Principal may consider an immediate suspension to be necessary where the continued presence of the student in the school at the time would represent a serious threat to the safety of students or staff of the school, or any other person. Fair procedures must still be applied.

Suspension during a State examination

This sanction should normally be approved by the Board of Management and should only be used where there is:

- a threat to good order in the conduct of the examination
- a threat to the safety of other students and personnel
- a threat to the right of other students to do their examination in a calm atmosphere.

The sanction should be a proportionate response to the behaviour. For example, it would rarely be appropriate for a first offence, unless there is a threat to the good order of the conduct of the examination.

This sanction should be treated like any other suspension, and the principles and fair procedures governing suspensions should be applied.

The DES *Best Practice Guidelines concerning Certificate Examinations* offer guidance to schools.

'Automatic' suspension

A Board of Management may decide, as part of the school's policy on sanctions, and following the consultation process with the Principal, parents, teachers and students, that particular named behaviours incur suspension as a sanction. However, a general decision to impose suspension for named behaviours does not remove the duty to follow due process and fair procedures in each case.

Inappropriate use of suspension

Students should not usually be suspended for:

- poor academic performance
- poor attendance or lateness
- minor breaches of the code of behaviour.

However, any behaviour that is persistently disruptive to learning or potentially dangerous can be a serious matter. Behaviour must be examined in context to understand both the behaviour itself and the response or sanction that is most appropriate.

Rolling suspension

A student should not be suspended again shortly after they return to school unless:

- they engage in serious misbehaviour that warrants suspension and
- fair procedures are observed in full and
- the standard applied to judging the behaviour is the same as the standard applied to the behaviour of any other student.

Informal or unacknowledged suspension

Exclusion of a student for part of the school day, as a sanction, or asking parents to keep a child from school, as a sanction, is a suspension. Any exclusion imposed by the school is a suspension, and should follow the Guidelines relating to suspension.

Open-ended suspension

Students should not be suspended for an indefinite period. Any such suspension would be regarded as a de-facto expulsion and would be treated as such under section 29 of the *Education Act 1998*.

11.5 Procedures in respect of suspension

Schools are required by law to follow fair procedures when proposing to suspend a student (see **10.3** and **10.4** for more detail). Where a preliminary assessment of the facts confirms serious misbehaviour that could warrant suspension, the school should observe the following procedures:

- inform the student and their parents about the complaint
- give parents and student an opportunity to respond.

Inform the student and parents

Let the student and their parents know about the complaint, how it will be investigated, and that it could result in suspension.

Parents may be informed by phone or in writing, depending on the seriousness of the matter. Informing parents in writing has the benefit of ensuring that there is a formal and permanent record of having let

parents know. It also ensures that parents are clear about what their son or daughter is alleged to have done. It serves the important function of underlining to parents the seriousness with which the school views the alleged misbehaviour.

Give an opportunity to respond

Parents and student should be given an opportunity to respond before a decision is made and before any sanction is imposed.

A meeting with the student and their parents provides an opportunity for them to give their side of the story and to ask questions about the evidence of serious misbehaviour, especially where there is a dispute about the facts. It may also be an opportunity for parents to make their case for lessening the sanction, and for the school to explore with parents how best to address the student's behaviour. If a student and their parents fail to attend a meeting, the Principal should write advising of the gravity of the matter, the importance of attending a re-scheduled meeting and, failing that, the duty of the school authorities to make a decision to respond to the negative behaviour. The school should record the invitations made to parents and their response.

Procedures in relation to immediate suspension

Where an immediate suspension is considered by the Principal to be warranted for reasons of the safety of the student, other students, staff or others, a preliminary investigation should be conducted to establish the case for the imposition of the suspension. The formal investigation should immediately follow the imposition of the suspension. All of the conditions for suspension apply to immediate suspension. No suspension, including an immediate suspension, should be open-ended.

In the case of an immediate suspension, parents must be notified, and arrangements made with them for the student to be collected. The school must have regard to its duty of care for the student. In no circumstances should a student be sent home from school without first notifying parents.

11.6 The period of suspension

A student should not be suspended for more than three days, except in exceptional circumstances where the Principal considers that a period of suspension longer than three days is needed in order to achieve a particular objective. Each Board of Management should provide guidance to the Principal concerning the kinds of circumstances under which suspensions of longer than three days might be approved.

If a suspension longer than three days is being proposed by the Principal, the matter should be referred to the Board of Management for consideration and approval, giving the circumstances and the expected outcomes.

However, a Board of Management may wish to authorise the Principal, with the approval of the Chairperson of the Board, to impose a suspension of up to five days in circumstances where a meeting of the Board cannot be convened in a timely fashion, subject to the guidance concerning such suspensions.

The Board of Management should normally place a ceiling of ten days on any one period of suspension imposed by it.

The Board should formally review any proposal to suspend a student, where the suspension would bring the number of days for which the student has been suspended in the current school year to twenty days or more. Any such suspension is subject to appeal under section 29 of the *Education Act 1998* (see **11.7** Appeals).

These provisions enable school authorities to give the student a reasonable time to reflect on their behaviour while avoiding undue loss of teaching time and loss of contact with the positive influences of school. They recognise the serious nature of the sanction of suspension and ensure that this seriousness is reflected in school procedures. The provisions mean that the Board of Management takes ultimate responsibility for sanctions of significant length, especially where such suspensions might reach twenty days in one school year and therefore might lead to an appeal.

11.7 Appeals

The Board of Management should offer an opportunity to appeal a Principal's decision to suspend a student. In the case of decisions to suspend made by the Board of Management (see **11.6**), an appeals process may be provided by the Patron.

Section 29 Appeal

Where the total number of days for which the student has been suspended in the current school year reaches twenty days, the parents, or a student aged over eighteen years, may appeal the suspension under section 29 of the *Education Act 1998*, as amended by the *Education (Miscellaneous Provisions) Act 2007*.

At the time when parents are being formally notified of such a suspension, they and the student should be told about their right to appeal to the Secretary General of the Department of Education and Science under section 29 of the *Education Act 1998*, and should be given information about how to appeal.

If the student is attending a school under the management of a VEC, the appeal must be made in the first instance to the VEC. Where an appeal to the VEC is concluded, parents, or a student aged over eighteen years, may appeal to the Secretary General of the Department of Education and Science.

11.8 Implementing the suspension

Written notification

The Principal should notify the parents and the student in writing of the decision to suspend. The letter should confirm:

- the period of the suspension and the dates on which the suspension will begin and end
- the reasons for the suspension
- any study programme to be followed

- the arrangements for returning to school, including any commitments to be entered into by the student and the parents (for example, parents might be asked to reaffirm their commitment to the code of behaviour)
- the provision for an appeal to the Board of Management
- the provision for an appeal to the VEC, if appropriate
- the right to appeal to the Secretary General of the Department of Education and Science (*Education Act 1998*, section 29).

The letter should be clear and easy to understand. Particular care should be taken in communicating with parents who may have reading difficulties, or whose first language is not the language of the school.

Engaging with student and parents

Where a decision to suspend has been made, it can maximise the impact and value of suspension if the Principal or another staff member delegated by the Principal meets with the parents to emphasise their responsibility in helping the student to behave well when the student returns to school and to offer help and guidance in this.

Where parents do not agree to meet with the Principal, written notification will serve as notice to impose a suspension.

11.9 Grounds for removing a suspension

A suspension may be removed if the Board of Management decides to remove the suspension for any reason or if the Secretary General of the Department of Education and Science directs that it be removed following an appeal under section 29 of the *Education Act 1998*.

11.10 After the suspension ends

A period of suspension will end on the date given in the letter of notification to the parents about the suspension.

Re-integrating the student

The school should have a plan to help the student to take responsibility for catching up on work missed. This plan will help to avoid the possibility that suspension starts or amplifies a cycle of academic failure. Successful re-integration goes beyond academic work. A suspended student may feel angry or resentful about their suspension, and these feelings can trigger problems with re-integration which, in turn, may lead to further problem behaviour. Where possible, the school should arrange for a member of staff to provide support to the student during the re-integration process.

Clean slate

When any sanction, including suspension, is completed, a student should be given the opportunity and support for a fresh start. Although a record is kept of the behaviour and any sanction imposed, once the sanction has been completed the school should expect the same behaviour of this student as of all other students.

11.11 Records and reports

Records of investigation and decision-making Formal written records should be kept of:

- the investigation (including notes of all interviews held)
- the decision-making process
- the decision and the rationale for the decision
- the duration of the suspension and any conditions attached to the suspension.

Report to the Board of Management The Principal should report all suspensions to the Board of Management, with the reasons for and the duration of each suspension.

Report to NEWB The Principal is required to report suspensions in accordance with the NEWB reporting guidelines (*Education (Welfare) Act, 2000*, section 21(4)(a)).

11.12 Review of use of suspension

The Board of Management should review the use of suspension in the school at regular intervals to ensure that its use is consistent with school policies, that patterns of use are examined to identify factors that may be influencing behaviour in the school and to ensure that use of suspension is appropriate and effective.

Key Requirements: Suspension

Applying the Guidelines means:

Ensuring that the school has a policy on, and procedures for, the use of suspension that are approved by the Board of Management and in line with these Guidelines and any additional requirements set down by the Patron

Ensuring the policy is widely communicated

Developing and documenting good practice in relation to the use of suspension

Having fair procedures for investigation and decision-making

Having procedures for informing parents and students about their right to appeal

Having a system for regular review by the Board of Management of the use of suspension in the school