



Suspension and Expulsion of School Students - Procedures

Frequently Asked Questions

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General Issues

1. What is the purpose of suspension?

Suspension is not intended as a punishment. Suspension allows the student time to think about and accept responsibility for what he or she has done. It allows time for the school to plan an intervention to help the student participate more effectively in his or her education. It also allows the school, the student and the parents the opportunity to work collaboratively and provide support. Finally, it permits the school to plan and prepare to implement any risk management measures required in the particular case.

2. What is the purpose of expulsion?

Expulsion for misbehaviour provides a student with the option of a fresh start at a new school. It may also remove a student from a school where his or her continuing and unchanged unacceptable conduct interferes with the education of others. Where the impact of an incident of misbehaviour has been significant, or the behaviour of a student has become so entrenched, it is often in the best interests of the student and the school for him or her to enrol at another school.

3. Who decides whether a student should be suspended or expelled?

The principal has the authority to impose two long (or more with approval from the Director, Public Schools NSW) and two short (or more provided to the Director, Public Schools NSW) suspensions on a student in any 12 month period. The Director, Public Schools NSW must be notified of each long suspension. The principal has the authority to expel a student from the school. Only the NSW Minister for Education and Communities can decide that a student should not be permitted to enrol in all or any government school if they are expelled.

4. Who has the authority to suspend or expel a student from school?

The principal may delegate the authority to investigate allegations (this is often good practice), but the principal must make the decision to suspend or expel. If the principal is absent, the person acting in the principal's position becomes responsible for the decision.

Suspension

5. Can students be suspended if they come to school affected by alcohol, drink alcohol at school or bring alcohol to school?

Alcohol related incidents may be seen by the principal as a health, safety or welfare risk for the student, as well as others. A principal may choose to suspend a student if it is believed the circumstances warrant it. However, in the first instance, the matter should be treated as a student welfare issue. For example the principal may decide that due to a student's level of intoxication, they are not well enough to attend school that day. Refer to *Drugs in Schools Policy: Managing Drug Related Incidents Procedures (2010)* for guidance on supporting students with alcohol issues.

6. Can a student be suspended for verbal abuse of a teacher?

The principal may decide that a particular incident of verbal abuse is so serious as to warrant a suspension. Repeated incidents of less serious verbal abuse may also result in the suspension of a student following a formal written caution and discussion with parents.

7. Should students be suspended for smoking?

Smoking is prohibited in schools. A good practice adopted by most schools is to have a system of counselling and parent contact which occurs if a student is found to be smoking at school. This should usually be accompanied by a written warning that subsequent smoking will be regarded as continued disobedience and may lead to suspension.

8. What constitutes serious behaviour?

This is a matter to be determined by the principal based on the circumstances of each individual incident. In line with government policy, a student who perpetrates violence resulting in injury, uses or possesses a suspected illegal substance, or uses or possesses a prohibited weapon, firearm or knife (without reasonable cause) is to be suspended as provided for by the procedures.

9. Would there be a reason to suspend a student for a one-off incident?

It is possible that a student's behaviour is so serious that suspension could be considered, especially if the behaviour involves a threat of violence. However suspension should generally only occur following warnings, support to the student and notice to parents.

10. What are some examples of a student's action that could constitute criminal behaviour?

Assaults which result in physical injury or sexual assault; fraud; extortion; cybercrime; serious threats; substantial property damage or theft. **If the principal considers a student's behaviour is criminal, it must be reported to the police.**

11. What must a principal do in cases of violent behaviour?

Assaults, weapons and illegal drugs must be reported immediately to the School Safety and Response Hotline (1300 363 778). Violent behaviour resulting in injury will result in the immediate suspension of the student, as provided for by the procedures. Incident reporting procedures must be followed and the police must be informed.

Expulsion

12. What are some examples of student action that could result in expulsion for misbehaviour ?

A decision to expel a student from a particular school may result from: serious incidents of misbehaviour such as violence, serious threats of violence or extensive property damage, drug dealing or bringing a gun or a prohibited weapon to school. Such incidents are criminal behaviour and must be reported to police.

A decision to deny enrolment at all or any government school for a student who has been expelled from a particular school can only be made by the NSW Minister for Education and Communities. Action of this kind is rare and usually results from extreme acts of physical violence.

13. If a student is to be expelled from a particular school, how long do students and their parents have to respond before the action occurs?

They have seven school days.

14. Who is responsible for finding an alternative school in cases of expulsion from a particular school?

Where the student's expulsion is because of misbehaviour, the principal in conjunction with local Department of Education and Communities staff and parents will arrange a place at another school or alternative educational facility appropriate to the needs of the student. This must happen within 10 school days.

15. In the case of expulsion from a particular school, can a principal at another appropriate school refuse to take the student because he or she has a record of violence?

This may not be a sufficient reason for a principal to refuse to enrol a student. The alternative school must seriously assess the application to enrol in accordance with the department's enrolment policy and the enhanced enrolment procedures. The past violent behaviour must be identified to the new school. A risk management plan would need to be completed identifying potential issues and the support that may be needed to ensure the safety of other students and members of staff. A student continues to have a right to enrol in a school, unless refused admission to all government schools by the Minister. Refer to Work Health and Safety requirements and enhanced enrolment procedures.

Length of Suspensions and Expulsion

16. How long can a suspension be for?

- a short suspension is up to and including four days (not automatically 4 days)
- a long suspension is up to and including twenty days (not automatically 20 days).

17. Does a suspension have to be four days (short) or twenty days (long)?

Not if the suspension can be resolved satisfactorily in a shorter period. The length of a suspension is determined by the need to resolve the issue satisfactorily and also to ensure the health, safety and welfare of the student, staff and other students in the class or school. The aim should be to return the student to school, with appropriate support, in the shortest possible time.

18. How soon can a suspended student return to school?

Students may return to school as soon as practical subject to agreement being reached between the school, the student and their parents.

19. What does a 'twelve month period' mean?

A twelve month period is not just a school year (i.e. always January to December only). It is any period of twelve months from the date a student was suspended.

20. Can a student who is expelled from a particular school re-enrol at that school if he or she is a local student?

If a student is expelled for misbehaviour, re-enrolment can only occur with the approval of the Executive Director, Public Schools NSW.

Discipline Interviews and Suspension Resolution Meetings

21. Does the principal have to conduct the meeting with parents?

The principal is responsible for convening a formal disciplinary meeting before making the decision to suspend a student and for convening a later meeting to discuss the basis on which the suspension can be resolved. The actual meetings could be conducted by a senior member of the executive such as a deputy principal.

22. What if the student or parents feel they need support in meetings with school personnel?

The parents can have a support person present in addition to themselves. It is up to the parents to make these arrangements. A student may also choose to have an appropriate observer of his or her choosing present at formal disciplinary meetings/interviews about long suspension or expulsion.

23. Can a principal refuse to accept a particular support person in this process?

The support person is not an advocate. Their role is to support the parents, not to represent the parents or student. Therefore principals should, wherever possible, accept the family's choice of a support person. The principal should explain to the support person their role as outlined in Appendix 3 of the *Suspension and Expulsion of School Student – Procedures*.

24. Who would be an appropriate observer?

Usually this would be a person who is trusted by the student. In some cases, if the student is from a culturally diverse background, the observer might be a member of a culturally diverse group. Principals should allow reasonable latitude. An observer is simply an observer of the process and must demonstrate impartiality. The observer can be another student. The role is outlined in Appendix 3 of *Suspension and Expulsion of School Student –Procedures*.

25. Who might the principal consider to be an inappropriate observer?

A principal would need good reasons to consider an observer to be inappropriate. A principal may have reasonable grounds to believe a particular observer would be abusive, misleading or inflammatory and therefore be disruptive of the process. If a member of staff is asked to be a support person the question of any conflicting loyalties needs to be considered. This may include any perception of bias arising from a decision about whether a support person is appropriate.

26. Why should a student have an observer present when being interviewed if a decision has not yet been made about a long suspension?

The formal disciplinary meeting/interview will be held only in cases where the allegations are such that a suspension is likely to be considered. The inclusion of an observer at this stage, when a long suspension is being considered, provides an important element of procedural fairness.

27. What if parents are unable to attend a formal suspension resolution meeting?

The inability or unwillingness of parents to attend a suspension resolution meeting should not prevent the school from resolving the suspension. Where a particular circumstance means that the student is unlikely to be back at school before the concluding date of the suspension, the Director, Public Schools NSW must be notified and alternative steps taken to resolve the suspension and enable the student to return to school. In some cases it may be appropriate to conduct a resolution meeting by telephone, particularly in isolated communities or where parents have difficulty getting to the school.

28. What if the student does not have a parent?

The school should endeavour to identify a carer or carers. If the student is living independently the principal must deal directly with the student.

29. What happens if the student and/or parents do not feel confident about speaking English?

The principal should be sensitive to this and arrange for an interpreter to be present. This can be arranged by contacting the Telephone Interpreter Service on 131 450. Translated suspension documents are available on the Department's website at:

<http://www.schools.nsw.edu.au/languagesupport/documents/index.php>

For enquiries about translation of documents regarding suspension and expulsion, contact Multicultural Programs on 9244 5311.

30. What constitutes an opportunity for the student to respond?

It is essential that the student and his or her parents consider that the student has been treated fairly throughout the process. Generally a student should be given enough time, free from duress, to consider what has been stated or written by the principal and to respond orally, or in writing. The length of time may vary according to the circumstances.

Procedural Issues

31. Is it necessary to impose a short suspension before a long suspension?

No. Some serious misbehaviour may warrant an immediate long suspension, eg physical violence, use or possession of a prohibited weapon.

32. Is it necessary to impose a long suspension before expulsion for misbehaviour?

Expulsion applies only to the most serious incidents. During the process of expulsion the student must be placed on a long suspension.

33. Does a principal need the approval of the Director, Public Schools NSW once two suspensions, either short or long, have been made in any 12 month period?

After two short suspensions the Director, Public Schools NSW must be informed about every subsequent short suspension of an individual student. After two long suspensions the approval of the Director, Public Schools NSW is necessary. The Director, Public Schools NSW must be notified of every long suspension.

34. When can a suspended student be sent home?

A student should not be sent home before the end of a school day unless the parents have been informed and arrangements made for the collection of the student from school and their supervision at home.

35. To avoid making a suspension, can the parents be asked to take the student home?

No. Principals should rely on strategies available under the school and/or departmental student welfare and discipline policies. As part of a structured behaviour management plan, a parent or carer may take his or her child home for the remainder of a school day without a suspension to assist in maintaining the student in the setting. This must be negotiated with the parents and authorised by the principal as part of an approved management plan.

36. When is a school counsellor's report required?

A school counsellor's report is required for long suspensions and expulsions. In some cases this may be a proforma report, but in others a more thorough report and assessment may be required. The school counsellor should be involved as part of the school's student welfare procedures and as part of the learning support team.

Police Involvement

37. When must a principal call the police?

The principal must call the police if a student engages in criminal behaviour which includes possession of a weapon or a suspected illegal substance and violence. The principal may call the police if a student's behaviour is threatening other students or staff, or if a student who has already been expelled or suspended refuses to leave the premises.

38. If the police are called to a matter involving a student, what must the school personnel do?

The principal should proceed with the disciplinary process regardless of any action taken by the police (without taking any steps that may interfere with any police investigation). The School Safety and Response Unit can provide advice. The principal must cooperate with police and be prepared to provide a formal statement about their complaint.

Drugs and Suspension

39. How will the school personnel know if a substance is an illegal drug?

Police can inform the principal if a substance is an illegal drug. When police attend, they will take possession of the substance. If the school's disciplinary action depends solely on the nature of the substance, the principal may request a priority analysis. Procedures are outlined in *Drugs in Schools Policy* and associated *Managing Drug Related Incidents Procedures (2010)*.

40. What if the student tells the principal that the substance is not an illegal substance and the police analysis proves the student to be correct?

Whether or not the substance proves to be illegal, the principal's decision is based on whether or not the substance is being represented as an illegal substance by the student.

41. Can school personnel suspend a student who has used alcohol or tobacco under the illegal drugs category?

Alcohol and tobacco are not illegal substances. The law makes it illegal to sell alcohol or tobacco to a person under the age of 18 years. Possession, or use, by a person under 18 years is not an offence. These matters should be covered by a school's student welfare and discipline policies. Suspension may occur if the problem persists and cannot be managed in any other way or if the behaviour of the student is offensive or criminal because of the influence of alcohol.

Study Programs

42. When is a study program required for a student?

It must be developed for any student who is on a long suspension. The student is expected to follow the program.

43. If a student does not complete the study program can this affect his or her return to school?

The study program is intended to support the student and provide continuity for his or her education. The purpose of suspension is to allow time to plan more effective intervention once the student returns to school. Non-completion of the program should not interfere with actions to return the student to school.

Appeals

44. Can a student or their parents appeal against decisions to suspend or expel a student?

Appeals can be made against suspensions, expulsions or recommendations for expulsion on the grounds that an unfair decision has been made and/or that correct procedures have not been followed. Most appeals occur because of procedural issues. The most common reason is failure to have a formal disciplinary meeting prior to the decision being made.

45. If a student or their parents decide to appeal, can the student return to school in the meantime?

The principal's decision remains in force despite the possibility of an appeal.

46. Under what circumstances might a principal decide that copies of statements of others should be withheld?

The principal may withhold copies of statements if they have reasonable grounds to believe that intimidation or retaliation against those who provided the statements or are mentioned in them is likely. Full details of allegations or summaries of statements should be provided to parents. Students do need sufficient details to be able to understand and answer the allegations against them and the basis for the school accepting the allegation.

47. Who determines the appeal?

Usually the appeal would be undertaken by the Director, Public Schools NSW. If he or she has been so involved in any part of the process to cause concern such that they may not be perceived as impartial, then the appeal would be undertaken by another Director, Public Schools NSW or Executive Director, Public Schools NSW. The person determining the appeal ensures that the appellants have received all the appropriate material, reviews all relevant material, discusses relevant matters as necessary and keeps key stakeholders informed.

48. How much time does a student and their parents have to lodge an appeal?

It is in the student's interests to lodge the appeal as quickly as possible. The process must then be completed within 20 school days after the appeal has been lodged.

49. What support is available to a student and their parents if they decide to appeal?

The local office of the Department of Education and Communities will provide a staff member (not the Director, Public Schools NSW; usually this will be learning and engagement staff) to help the parents understand the process and have all the relevant information and papers that they need. This staff member will also help identify other support, such as interpreters.

50. What happens if an appeal is upheld?

The person determining the appeal will decide what further action is appropriate. In some cases, such as a minor breach of the procedures where a suspension was appropriately imposed, it may be fitting for guidance to be provided to the school in the requirements and implementation of the procedures.

51. Over what period should a principal ensure all student welfare strategies have been applied and documented?

Each case will be different and the action needs to be appropriate for the individual circumstances of the case. The support strategies must be a genuine attempt to positively impact on the misbehaviour of the student. In most cases the nature of the support strategies provided to a student will have been documented and records will be available. Where a student has a long history of behaviour issues, the principal will decide how much documentation is necessary to make a fair and reasonable case for a decision to suspend or expel to be made.

Procedural Fairness

52. What are the important elements of procedural fairness?

Procedural fairness is generally understood to include:

- The right of the student to be heard and to understand the allegations against them
- The right to a fair and impartial decision.

Detailed information on procedural fairness is contained in Appendix 2 of the procedures. Particular emphasis should be paid to procedural fairness in cases where long suspension or expulsion is a possible outcome. An observer of the student's choice should be offered in the formal disciplinary meeting, and where possible, the functions of investigation and decision making should be carried out by different people.

53. How would a student or their parents know if the decision was fair or properly made?

As part of the notification about suspension the school personnel provides information relating to how and why the decision was made. The decision-maker needs to fully record all the reasons that he or she took into account in making the decision. If a student or their parents have doubts or questions, the staff from the local office of the Department of Education and Communities will explain the process and appeal rights.

54. What access does a student or their parents have to documentation?

Parents must be provided with a copy of *Suspension and Expulsion of School Students - Procedures*, the school's discipline code and information about appeal rights. In addition procedural fairness requires that students and parents should be provided with details of all allegations and statements in relation to the incident. However if the principal judges that it is not appropriate to provide full copies of statements then details should be provided with identifying features removed. Students need to be given sufficient detail to ensure they are able to understand the allegations and are able to provide a response to them.

Students with Disability

55. How do the procedures take into account the circumstances of a student with disability?

With a student with disability, consideration must be given to the requirements of *the Commonwealth Disability Discrimination Act 1992* and the *Disability Standards for Education 2005* (the Standards). To ensure that a student with any disability is not discriminated against, a decision to suspend that student should be based on the following considerations:

- the degree of intentionality involved in the misbehaviour
- the nature and extent of the support strategies applied to modify the student's behaviour and failure to change his or her behaviour despite a considerable period of intervention
- an unacceptable risk to the safety of others (as determined by the risk assessment / management process)
- the developmental level of a student and his or her individual needs.

It will not necessarily be discriminatory to suspend students with disability. However, the principal must ensure that consideration must be given to whether there is a requirement to provide reasonable adjustment. The principal must ensure the involvement of all appropriate personnel, both in the school community and externally in making reasonable adjustments based on the student's needs.