



Pupil Disciplinary

Process Procedure.

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1. SCHOOL DISCIPLINE: SUSPENSION AND EXPULSION

1.1 Sources of Law and School Discipline

There are a number of sources of law in this area, the Constitution, Statute Law, Common Law and Equity and International Law. The Constitution clearly sets out the rights of parents and children. Statute law sets down various rights and duties under certain acts such as the Child Care Act 1991, The Education Act 1998, The Education Welfare Act 2000 and so on. There are Common Law principles that have been laid down through judicial decisions or administrative law and there are international covenants signed and ratified by the Oireachtas viz. The European Convention on Human Rights, and the Convention on the Rights of Children. All these various pieces of legislation, judicial decisions and conventions impact in their own way on how decisions concerning discipline in school are made.

In addition, the Department of Education lays down rules and regulations from time to time some of which have been encapsulated in the Education Welfare Act and the Education Act.. The Articles of Management for Catholic Secondary Schools also sets out the powers of the Principal and Board of Management. Schools must operate disciplinary policies within this legal and administrative framework and we must always acknowledge and accommodate the rights of parents and children in procedural terms when disciplining a pupil. In particular, everyone has the right to natural justice where a decision might involve the imposition of a substantial disciplinary penalty.

1.2 Natural Justice

Before any decision is made every person has a right to have the case against them set out in full and must be afforded an opportunity to respond. There must be fair procedures.

The School Management Authority must specify what is alleged and allow the person against whom the allegation is made an opportunity to respond in full before a decision is made on the substantive issue and a penalty, if warranted, is imposed. It is inappropriate for a school or a teacher to predetermine the penalty to be imposed without giving the pupil an opportunity to respond.

Secondly, a person should not act as judge and jury in their own cause. This is usually referred to as the rule against bias. A person who has entered a complaint or who may be affected by the conduct that has given rise to serious disciplinary action, such as suspension or expulsion, should not be involved in making a decision as to the imposition of such serious disciplinary penalties. However, given the Principal's

responsibilities there may be occasions when he/she may have to combine the roles of investigator and adjudicator.

1.3 Code of Behaviour/Discipline

It is essential that school management authorities draw up clear, concise and uncomplicated school rules specifying as precisely as possible circumstances in which a pupil may be subject to discipline and the range of disciplinary penalties that may be imposed (Education Welfare Act s.23). In drafting this Code of Behaviour it is prudent to involve the various stakeholders in the process. At all times the rules and sanctions contained therein must be fair and reasonable.

The Code of Behaviour must be issued to all parents and pupils in advance of the pupil commencing his or her education in the school. (Education Welfare Act s.23.4) This is to ensure that pupils and their parents are fully aware of its content and the implications of this code. Unless the parents raise a specific objection and refuse to abide by the Code then it may be deemed that the Code has been accepted by them.

It is good practice and in accord with the Education Welfare Act (s. 23.4) to request parents to confirm in writing their acceptance of the Code of Behaviour and that they will make all reasonable efforts to ensure compliance by the child with the code.

1.4 Sanctions

The class teacher who has direct contact with the pupil, the Year Head and the Deputy Principal should have the right to impose minor disciplinary sanctions bearing in mind the principles of natural justice. In the cases of serious breaches of the Code of Behaviour where the imposition of sanctions such as suspension or expulsion are being considered, it is vital that School Management Authorities adhere to the principles of natural justice and follow due process. Suspension may be imposed by the Principal or the Board of Management and expulsion may be imposed by the Board of Management only. Such sanctions shall only be imposed following due process and adherence to the principles of natural justice.

1.5 Suspension by the Principal

“The Principal may suspend any pupil for a limited period and shall report any such suspension to the Board of Management at its next meeting.”

Articles of Management 19(b)

The power of the Principal to suspend is clearly set out in this article but it is a limited power. The period of suspension imposed by a Principal should not exceed three days but, in exceptional circumstances, it may be extended to a maximum of five days. The power to suspend for longer periods rests with the Board of Management alone.

Serious breaches of the Code of Behaviour must be fully investigated and a detailed written record of the facts should be made. The results of the investigation determine the possible sanctions that may be considered in light of the written Code of Behaviour. When suspension is being considered, it is important that, following the establishment of the facts of the incident(s), these facts are then put to the pupil involved in the incident. The pupil should be asked to give a response to the investigation. The response should be carefully noted and clarification sought where needed. Sometimes it may be necessary to double check on certain matters following the interview with the pupil.

If the Principal remains of the view that suspension should be considered, then the pupil's parents must be invited to attend a meeting at which the case should be outlined to the parents and they and the pupil should have an opportunity to respond to the accusation. When the Principal has stated the case and has heard the parents and the pupil a decision may be made as to the sanction to be imposed, if any. Should the Principal decide that a suspension is the appropriate sanction the parents must be informed of the length of the suspension and of their right to appeal the basis of the suspension to the Board of Management at its next meeting. A pupil over 18 years of age also has a similar right of appeal to the Board. In accordance with 19(b) of the Articles of Management, as stated above, the Principal shall report all suspensions to the Board at its next meeting.

If the incident is of a very grave nature the Principal may decide to suspend the pupil pending a Board of Management meeting, when all sanctions up to and including expulsion will be considered.

1.6 Hearing a Case

It is contrary to the rules of natural justice for one person or a group of persons to conduct a hearing and make a recommendation to someone else who would make a decision concerning a sanction. If the decision-maker has not had direct contact with the pupil in question or if the pupil has not had direct contact or access to the decision-maker then it would be unsafe to reach a decision on sanctions. To rely on the reports of others without allowing the person to be affected by the decision to have direct contact with the decision-maker is suspect and liable to give rise to difficulties in the future, in the courts, or under Section 29 of The Education Act.

1.7 Appeals

The imposition of penalties such as suspension or expulsion by the Board is open to review either by the courts or under Section 29. The appeal process is set down in circular M48/01. In addition, the basis of the suspension by the Principal is open to review by the Board of Management at its next meeting. At this meeting the Principal would outline the case and the parents (pupils 18+) would be invited to respond. The Board should carefully review the grounds for the appeal and the procedures adopted

in reaching the decision to suspend. In the event of such an appeal, legal opinion is that the pupil still serves the suspension. If the Board upholds the appeal all records in respect of this suspension are removed from the pupil's file.

An appeal hearing under Section 29 will have due regard to the procedural requirements of natural justice. This should always be borne in mind when suspending a pupil or when considering expulsion of a pupil. Should the matter take a legal route, the courts would also have to consider the procedural requirements of natural justice and determine whether they have been adhered to by the School Management Authority in the imposition of the sanction.

1.8 Bringing a Case to the Board of Management

“Expulsion should be resorted to only in the most extreme cases of indiscipline and only after every effort of rehabilitation has failed and every other sanction has been exhausted.” DES Circular M33/91

Article of Management 19 (c) says that “if, in the judgement of the Principal, a pupil should be expelled, the Principal should refer the matter to the Board of Management for decision”.

If a pupil has been found to have transgressed the Code of Behaviour in a very meaningful way, then it is open to the Principal to suspend the pupil pending a meeting of the Board of Management, when sanctions up to and including expulsion would be considered. To take this step, a Principal will have had to fully investigate the case and to put the case to the pupil and his/her parents and to allow them to respond. The Principal should then decide whether the matter warrants referral to the Board of Management where sanctions up to and including expulsion would be considered. The pupil may also reach this point as a result of a long history of transgressions and a lack of co-operation. It is vital that that detailed written records are maintained in such instances.

If it is the Principal's decision to refer the matter on, then a letter should be written to the parents of the pupil and the pupil if he/she is over 18 years of age indicating that the pupil is suspended pending a Board of Management meeting at which sanctions up to and including expulsion will be considered. A special meeting of the Board should be called and the parents (and pupil 18+) should be notified of the time and date of the meeting and invited to attend. In the case of a lone parent he/she should be advised that they may be accompanied by a relative or friend. This notification should be hand delivered or sent by registered post in sufficient time to allow the parents and the pupil to attend the meeting.

It is open to the Board to invite parents to bring their son/daughter to this meeting or in exceptional circumstances to meet a sub-committee of the Board. Exceptional

circumstances arise in the case of a young pupil. (Ref 2.3 (e) page 11) It is a matter for parents as to whether they permit their son/daughter to attend the meeting. Separately, in the case of a pupil over 18 years of age it would be prudent to invite this pupil to any meeting where his/her case is being discussed.

In advance of the Board meeting, the Principal should prepare all the documentation in respect of the incident(s) stating clearly the case against the pupil. This documentation, setting out the record of the pupil and/or the circumstances of the serious incident in which the pupil has been involved, should be given to the parents (and pupil 18+) sufficiently in advance of the meeting to give them adequate time to review and to respond to the case outlined in the documentation.

Having written to the parents (and pupil 18+) with an appointment time for the Board of Management meeting and having received communication of their intentions to attend or to submit their response in writing, the Board of Management meeting may proceed. If there isn't a response it would be prudent to check with the parents if the correspondence has been received and to establish what they wish to do about the matter. In some circumstances, it would be prudent to delay the meeting for a few days to allow parents time to prepare.

At the meeting, the Principal should set out fully the case against the pupil; the parents/pupil should be present to hear this case and to respond to the case as presented. There should be an opportunity for the Board of Management to clarify any issues with the Principal and with the parents/pupil and to ask questions. Also, the parents (and pupil 18+) should be allowed question the Principal and the Board. When all sides have been heard the parents/pupil and Principal must withdraw from the meeting. Then the Board should consider all the evidence, including all the submissions, written or oral, made to it, and the pupil's record in the school before reaching its decision on expulsion or other sanctions.

Finally, during the hearing of the case, it is important that members of the Board should not have had prior involvement in disciplining the pupil in question – rule against bias. This might apply to a teacher member of the Board who has had previous experience or may have had direct involvement in the current matter under consideration by the Board. Equally it could apply to a member to whom representations have been made on behalf of the pupil. Under Article 6(a) of the Articles of Management Board members are precluded from discussing Board business with any third party. This includes matters relating to the disciplining of a pupil. A Board of Management member finding himself/herself in this position should not participate in hearing the case or in the determination of the sanction.

1.9 Appeal of an Expulsion

Should the Board of Management decide to expel the pupil or to give the pupil a suspension which would bring the cumulative period of suspension to 20 school days or more in a school year, the parents must be informed of their right to appeal under

Section 29 of the Education Act. The NEWB must be informed of such a decision. It is recommended that the decision of the Board should be conveyed to the NEWB by registered post or courier. The Education Welfare Act (section 24.4) dictates that an expulsion cannot be effective before the passing of 20 school days from the receipt of the above notification by an educational welfare officer. It is open to a Board, to ensure good order and discipline in the school, to suspend the pupil during this period. The appeal process is set out in the Board of Management Manual Chapter 14, page 13 under paragraph 14.6.1.

1.10 Summary

School Management Authorities should be aware of what natural justice is: the principle of fairness, of fair play and the importance of an opportunity to respond to the allegations of misconduct. In the cases of expulsion and of suspension, the parents and pupil must have an opportunity to participate in the hearing and in the decision-making process concerning the sanction.

The Code of Behaviour in a school should specify who has the power to impose the various disciplinary sanctions bearing in mind that the Principal only may suspend or refer a pupil to the Board of Management. Also, in all cases, a pupil who is over 18 years of age and/or his/her parents has the right to appeal a decision of the Principal and/or the Board of Management. The decision of the Principal to suspend may be appealed to the Board of Management and the decision of the Board of Management to impose a long suspension or expulsion may be appealed to the Secretary General of the Department of Education and Science under Section 29 of the Education Act 1998. Sometimes the Code of Behaviour may specify, in the first instance, an appeal mechanism whereby the pupil and/or his/her parents have a right to appeal to the Trustees concerning a suspension/expulsion imposed by the Board of Management. Equally there is always an option of pursuing the matter through the courts.

1.11 Appendices

Appendices I and II have been included by kind permission of the Christian Brothers Education Offices.

2. A BRIEF GUIDE TO THE DISCIPLINARY PROCESS

2.1 Essential First Steps:

1. The Principles of Natural Justice must be observed
 - Case set out in full
 - Right to be heard
 - Right to respond
 - Fair procedures
2. Rule Against Bias - Being judge and jury in your own cause is wrong. It is highly desirable that the functions of investigation and decision making are carried out by different people but in the school setting this may not always be possible. There may be times when there is no alternative to the Principal exercising both roles. If the Principal is conducting both the investigative and decision making stages, he or she must be reasonable and objective.
3. The Class Teacher, Year Head and Deputy Principal have the right to impose minor sanctions but if suspension or expulsion are being considered the matter must be referred to the Principal.
4. It is contrary to the principles of natural justice for one person to conduct a hearing and for another to impose a sanction. The investigation of the facts may be carried out by, say, a Year Head but the Principal or the Board of Management, as appropriate, must carry out the hearing and decide the sanction to impose if suspension or expulsion is being considered.
5. Establish the facts of the incident. In the case of suspension and expulsion this responsibility rests with the Principal, though the Principal may consider reports from a Year Head or Deputy Principal or others.
6. Put the facts to the pupil. Record the response and consider it carefully.
7. In case of possible criminal offences, e.g. an allegation that a student is selling illicit drugs etc, it may be best not to question the pupil until a parent is present.
8. Ensure an accurate record is maintained on all aspects of the incident(s).

NOTE A Principal must be part of the final investigative process before a suspension is imposed.
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2.2 If SUSPENSION is being considered:

- (a) Invite the pupil's parents to attend a meeting with the Principal.
- (b) It may be deemed prudent to remove a student from class pending the meeting with parents. In this event, arrangements must be made for the supervision of the student in school. In exceptional circumstances agreement may be reached with the parents for the pupil to remain at home until the parents and the pupil are available to meet with the Principal.
- (c) At the meeting, the Principal should outline the case to the parents and the pupil.
- (d) Hear the response of the parents and the pupil.
- (e) The Principal decides the sanction (if any) and imposes it.
- (f) Right of Appeal – The parents should be informed that they have the right to appeal the basis on which the Principal made the decision to impose a suspension at the next Board meeting. The parents are invited to attend this meeting. The Principal would outline the case and the parents would be invited to respond. In the meantime, the suspension stands.
- (g) The sanction and the right of appeal must be communicated in writing to the parents.

2.3 If EXPULSION is being considered:

- (a) The Principal meets the pupils and parents and put the case to them. Record the responses.
- (b) If the situation warrants it the Principal should suspend the pupil pending a BOM meeting.
- (c) Call a Special Board Meeting.

- (d) Invite parents and, if agreed, the pupil to this meeting to allow them to hear the case and to respond. They must be notified in advance of the purpose of the meeting which is to consider the incident(s) and the possible sanctions including expulsion. In the case of a lone parent he/she should be advised that they may be accompanied by a relative or friend.

In exceptional circumstances, viz. age of a pupil, it may be deemed more appropriate for the pupil in the company of his/her parents to meet a sub-committee of the Board. Where such a facility is availed of the parents should also be afforded the opportunity to meet the full Board when the Principal would put the case to the Board.

- (e) All relevant documentation should be given to the pupil's parents in advance of the meeting.
- (f) Confirm if parents will attend or are submitting a written response.
- (g) At the BOM meeting the Principal sets out the case for expulsion and parents (and the pupil) respond.
- (h) When all sides have been heard the parents, the pupil and the Principal leave to allow the BOM make its decision.
- (i) If expulsion is decided:
 - i. Tusla – Child and Family Agency must be informed
 - ii. 20 school days from the date of receipt of this notice by Tusla – Child and Family Agency must elapse before the expulsion takes effect.
 - iii. Parents must be informed that there is a right of appeal to the Secretary General DES within 42 calendar days of receipt by parents of the BOM decision.

APPENDIX 1 PRINCIPLES OF NATURAL JUSTICE

PROCEDURAL FAIRNESS

Procedural fairness is a basic right of all individuals dealing with authorities. All communities have a legitimate expectation that schools (Boards, Principals and teaching staffs) will follow these principles in all circumstances, particularly when dealing with suspensions and expulsions.

Procedural fairness is generally recognised as having two essential elements.

1. The right to be heard which includes:

- The right to know why the action is happening
- The right to know the way in which the issues will be determined
- The right to know the allegations in the matter and any other information which will be taken into account
- The right of the person against whom the allegations have been made to respond to the allegations, and
- The right to an appeal

2. The right of a person to an impartial decision which includes:

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

As part of ensuring the right to be heard principals should establish if parents / guardians require an interpreter and, if so, make arrangements for one to be available.

Principals should also ensure that students and parents / guardians have access to policies and procedures under which action is being taken.

While it is generally preferable for the functions of investigating, and deciding to be carried out by different people, in the school setting this may not always be possible.

If the Principal is conducting both the investigative and decision making stages, he or she must be reasonable and objective. Ultimately, the Principal must act justly and be seen to act justly. While it is difficult to combine the roles of investigator and adjudicator, given the nature of the Principal's responsibilities, there may at times be no alternative to the Principal exercising both roles.

Nevertheless, it is preferable to have another appropriate officer, such as a deputy or assistant principal, carry out the investigation, if possible.

The availability of a line of appeal to a more senior officer adds to the fairness of the process and offers a check in case there is a perception of a conflict of interest. It is the Principal's responsibility to suspend a student from the particular school or to recommend to the Board the expulsion of a student from the school. This responsibility is not to be delegated to any officer other than one acting in the Principal's position.

To ensure the elements of procedural fairness are met, it is appropriate to provide students and their parents / guardians with details of all allegations relating to the incident. This usually will involve providing copies of any relevant statement, for example, because of a fear that witnesses may be intimidated, full details of the allegations outlined in the statements should be provided.

In matters where a long suspension or expulsion is contemplated, the gravity of the circumstances requires particular emphasis being given to procedural fairness. This includes the availability of a support person / observer at formal interviews, the key features of which should be taken down in writing.

(This appendix is adapted from PROCEDURES FOR THE SUSPENSION AND EXPULSION OF SCHOOL STUDENTS, NSW Department of Education and Training 1998)

APPENDIX II DISCIPLINE PROCEDURES IN SCHOOLS

Advice by Ian O’Herlihy (Arthur O’Hagan Solicitors)

- (a) It seems at least prudent that schools should adopt a policy so that when pupils are interviewed in relation to wrongdoing by others, that brief notes of those interviews are taken.
- (b) Further, in advance of any hearing which could result in the expulsion (or probably in respect of lengthy suspension), the pupil and his parents should be supplied with copies of the notes of the interviews.
- (c) The school should also have set out in clear terms the allegations against the pupil.
- (d) It would also be advisable that the notification of the meeting of the Board should make it clear that having regard to the seriousness of the allegations the punishment might well be expulsion.

In all circumstances, I would advise that schools have clearly defined written procedures for dealing with serious misconduct.

- (1) These procedures should:
 - Be known or at least made known in appropriate cases to the parents
 - Be rigorously followed
 - Provide that the Principal, or other appropriate person, will conduct an investigation, but during the course of that investigation notes will be taken of any interviews
 - Provide that the parents of the pupils are written to setting out in clear terms the allegations, which their child faces, and the level of punishment, which could result
- (2) Copies of all notes or other statements assembled should accompany such notification.
- (3) The parents should also be advised that they will have the opportunity to be heard (and the pupils should be heard if they request) by the Board of Management or other deciding authority.
- (4) The procedures should also provide that the deciding authority will hear the case made by the investigating teacher, and will also hear the parents and the pupils and any other persons who the parents of the pupils wish to bring before the Board.
- (5) It must of course be emphasised that the investigating teacher should take no part whatsoever in the decision-making process.

- (6) Further the Board should ensure that any member of the Board who might have a conflicting interest should be excused and not partake in the decision.
- (7) The Board should also of course ensure that it complies with its own rules generally in relation to such matters as having a sufficient quorum.