

PROBLEMS AT SCHOOL

A practical guide to your rights and obligations

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INTRODUCTION

This book has been written for students at school and their advocates. Read it, share it, talk to your local Community Law Centre about it! We hope that it helps you deal with any problems you might have at school and that it gives you a better understanding of your rights in the education system.

What's new in this edition of Problems at School?

Problems at School has been completely updated since the last edition (called *Schools and the Right to Discipline*), with several new sections and additions, as well as legal updates and clearer language. You'll find new information about many issues, including:

- School zones and enrolment schemes
- Cyberbullying
- Trespassing
- School searches and confiscating items
- The *New Zealand Curriculum*, including information about sex education, religious education and te reo Māori in schools
- Health and safety issues, including information about administering and storing medication, life-threatening situations, accidents, bathroom access for transgender students, food allergies and education outside the classroom.

Where can I get more help?

This guide will give you some information about your rights at school. If you need help **enforcing** your rights, contact your local Community Law Centre. Lots of Community Law Centres have student advocacy services and we are here to help! For example, we can help you to prepare for meetings with boards of trustees and someone from Community Law might even be able to attend a meeting with you. If you've been suspended or expelled, we can support you and advise you of your rights. We can connect you with other people and agencies who will help you. You can also call our Student Rights Service for free on 0800 499 488 or YouthLaw on 0800 884 529 for more information.

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Your right to education

Who has a right to free state education in New Zealand?

Everyone who is a New Zealand citizen or a permanent resident here has the right to free education at state schools from their fifth birthday until the end of the year in which they turn 19.

Education Act 1989, s 3

Can I go to any state school I want?

No. Some schools have an “enrolment scheme”, which means you only have an automatic right to go there if you live in the school’s home zone. If the school doesn’t have an enrolment scheme, anyone can go there – see below.

Education Act 1989, ss 11D, 146A

Also, girls don’t have a right to go to boys-only schools, and boys don’t have a right to go to girls-only schools. For more information on how this applies to transgender or gender non-conforming students, see below.

If I have a disability, does that affect my right to education?

No. If you have special educational needs, whether because of a disability or some other reason, you have the same rights to go to state schools as other students.

Education Act 1989, s 8

For more about students with disabilities, see “Special education”, page 30.

School zones and “enrolment schemes”

What’s an “enrolment scheme” and why do some schools have them?

If a school has an enrolment scheme, this means the school has to accept all students who live in the “home zone” that’s identified in the scheme. Students who live outside the zone can only go to the school if they’re selected for a place under the rules of the scheme. Out-of-zone students are selected by balloting.

Education Act 1989, ss 11A-11F

Schools can only adopt an enrolment scheme if this is necessary to avoid overcrowding. When there are more students who want to go to the school than there are spaces available, an enrolment scheme makes sure students are selected fairly and transparently, rather than having the school just choose whichever students it wants.

Education Act 1989, s 11E

How is a school's home zone decided?

The school defines its home zone on the basis that the school is a reasonably convenient one for students living in that area. The enrolment scheme has to define the zone precisely so that any particular address is either inside or outside the zone.

Education Act 1989, s 11F(1)

How are out-of-zone students selected?

If you live outside the home zone, then whether or not you'll be able to go to the school will depend on how many places the school has for out-of-zone students. To fill those out-of-zones places, the school has to follow an order of priority that's set nationally, by law:

1. children who are accepted into special programmes run by the school (for example, special education or a Māori language immersion class)
2. brothers and sisters of current students of the school
3. brothers and sisters of past students of the school
4. children of past students of the school
5. children of school staff or of the board of trustees
6. all other children who apply.

So if, for example, there are enough out-of-zone places to take all children from categories 1 to 3, but not enough for everyone in category 4, a ballot will decide which category 4 children will get to go to the school.

Education Act 1989, s 11F(3)

Who counts as a "brother" or "sister" for an enrolment scheme?

Brothers and sisters ("siblings") include:

- full biological brothers and sisters
- half-brothers and sisters
- step-brothers and step-sisters by marriage, civil union or de facto partnership, and
- children who live in the same house and are treated by the adults of the house as if they're brothers and sisters.

In particular cases the Ministry of Education can also instruct the school that particular children are to be treated as brothers or sisters.

What if, later, we move out of the home zone?

The school's board of trustees can cancel your enrolment if it believes on reasonable grounds that your parents used a temporary address to enrol you at the school. The school must send your parents a "review notice" first, giving them a chance to explain. If the board then decides to cancel your enrolment, you have one month to leave the school.

Education Act 1989, ss 11O, 11OA

Attendance requirements: When you have to be at school

Between what ages do I have to go to school?

You must be enrolled at and attend school from your sixth birthday until you turn 16.

Education Act 1989, ss 20, 25

However, a six-year-old doesn't have to go to school if they'd have to walk more than three kilometres to the nearest school.

Exemptions from having to go to school

There are some exceptions to the rule that all children between six and 16 have to go to school:

Education Act 1989, ss 9, 20(2), 21, 22

- **Long walking distances (6-year-olds)** – A six-year-old doesn't have to go to school if they'd have to walk more than three kilometres to the nearest school.
- **Home-schooling** – The Ministry of Education can allow you to be taught at home by your parents if it's satisfied you'll be taught as well and as regularly as you would at school (see "Home-schooling", page 18)
- **Special needs** – A child who has special needs may have all their schooling provided by a specialist service
- **Early leaving exemption (15-year-olds)** – If you've turned 15, the Ministry of Education can allow you to leave school if it's satisfied that because of educational or behavioural issues you're not getting any benefit from staying in school.

For more about students with disabilities, see "Special education", page 30.

Can I go to school part-time?

No. Between the ages of 6 and 16 you have to go to school regularly and full-time.

Education Act 1989, s 25

If you're 16 or older, it may be possible to arrange with the school to go part-time – but this would be unusual.

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Education Act 1989, s 27

Can students take days off for funerals or other good reasons?

Yes, but only with the principal's permission. Principals can allow students to be away for up to five school days at any one time. Going on holiday usually won't be an acceptable reason.

Education Act 1989, s 25

Can I take my child out of school for an overseas holiday?

If you'd like to take your child out of school for longer than five days, you should talk to the principal. If the principal gives their permission for a holiday during term time, you're unlikely to run into any issues.

But while many principals will give their permission, they are not legally obligated to do so.

If you choose to take your child out of school anyway, this could technically be considered truancy. Even though it's unlikely, you as a parent could be prosecuted (see "What can happen to me if I wag school?" below).

As long as you've let the principal know about the absence, your child can not be removed from the school roll.

Education Act 1989, s 21

What if parents want to teach their children themselves?

Parents can apply to the Ministry of Education (MOE) for an exemption to allow this, which is commonly known as "home-schooling" (see "Different types of schools", page 16).

Health (Immunisation) Regulations
1995, reg 12.

Immunisations

Do I have to be immunised to attend school?

No, students who haven't been immunised cannot be prevented from enrolling at school. However, the Ministry of Health recommends that all children complete their immunisations on time, particularly before starting school. Diseases can spread very quickly in the classroom environment. Immunisation also protects other students and members of the community who are immunocompromised (this means that their body is unable to respond normally to infection due to a weakened immune system).

School Immunisation Register

Before or soon after enrolling, all primary schools must ask a student's parents for their immunisation certificate. Parents must provide the information. All primary schools must keep an immunisation register of all students, showing which diseases they have been immunised against and if they are fully immunised. If parents do not provide their child's immunisation certificate, the school must keep note of this.

The school must keep the immunisation register confidential. However, if a student has contracted a serious infectious disease, the local Medical Officer of Health can look at the register without parental consent and contact parents of unimmunised students to offer immunisation.

Health (Immunisation) Regulations 1995.

What happens if a student contracts a vaccine-preventable disease?

The principal can make a student stay home to prevent the spread of disease (see "Being sent home on health grounds", page 87).

Students suffering from particular infectious diseases (including chickenpox, meningitis and mumps) must be excluded from school for a specified period to allow them to get well.

Unimmunised students who have been exposed to particular infectious diseases (like measles, diphtheria and whooping cough) must also be excluded for a specified period.

Education Act 1989, s 19; Health (Infectious and Notifiable Diseases) Regulations 1966.

For more information, contact the Immunisation Advisory Centre on 0800 IMMUNE (0800 466 863) or Healthline on 0800 611 116.

Truancy: Wagging school

What can happen to me if I wag school?

Schools vary in how they deal with this. Some may give you a punishment like writing lines or doing a detention.

If you wag school regularly, the principal could stand you down or suspend you, on the ground that this is continual disobedience that's a dangerous or harmful example to other students (see "On what grounds can I be stood down from school?", page 67 and see "What types of behaviour can justify a suspension?", page 72. However, the school should investigate first and consider the reasons why you were absent and consider how the problem could be addressed.

Education Act 1989, ss 14, 25

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Education (School Attendance)
Regulations 1951, reg 11

If you're absent for 20 school days in a row and you don't tell the school that it's just a temporary absence, the principal can record you as having left the school. If you're under 16, you'll then have to either re-enrol at that school or enrol at another one.

What can happen to parents if their children are truant?

Education Act 1989, ss 20, 24, 25, 29

Parents have to enrol their children in school between the ages of six and 16. Each parent can be fined up to \$3,000 each if they fail to do this.

As well as enrolling their children, parents also have to make sure their children go to school every day it's open, unless there's a genuine excuse, like being sick. If you don't make your children go to school, you could be charged and fined up to \$30 for every day your child wags. If you're found guilty of this a first time, you could be fined up to a total of \$300. If you're charged and found guilty again, you could have to pay up to \$3,000.

How many hours a day do I have to be at school?

Education Act 1989, s 25(3)

On any given day you have to be at school for at least four hours, otherwise you'll be considered truant on that day. However, that doesn't mean you can leave school after four hours, as you'll still need to get the school's permission to leave before regular class hours are over. If you leave early without permission, you won't be officially marked as truant, but the school can discipline you.

A student with a disability might ask for permission to attend for the minimum four hours a day.

What are the school's responsibilities if a student is truant?

Education Act 1989, ss 25, 31;
Education (School Attendance)
Regulations 1951, reg 3

Boards of trustees have to take all reasonable steps to make sure the school's students are at school whenever it's open. Schools have to keep accurate daily attendance records for all students, and the school should also have a plan for managing non-attendance.

Steps the school could take to deal with a case of regular truancy could include:

- assessing the situation at a meeting of senior staff or the board of trustees
- making sure the family is told about the problem, both verbally and in writing, and in a way they can understand
- arranging a family meeting to discuss the problem
- contacting other agencies if there are issues such as learning difficulties, or abuse, neglect or other problems at home.

Attendance officers: Their role and powers

Schools can employ an “attendance officer” to make sure students go to school.

Education Act 1989, s 31

Attendance officers can detain students if they find them outside school, but they have to produce evidence of who they are, such as a badge. They can ask the student to provide their name and address, the name and address of their school, and the reason why they're absent. If the attendance officer isn't satisfied with the student's response, they can take the student home or to the school they think the student is enrolled at. However, an attendance officer can't go into the student's home uninvited.

A police officer has the same powers to deal with truant students as attendance officers.

When Child, Youth and Family and other agencies may get involved

If you're regularly truant from school and the school has tried all options under its own attendance management plan, it can get the Ministry of Education's Attendance Service involved. One of the service's local organisations will then phone or visit your family to discuss your absence. They will work with you and your school to develop a plan to get you back into school.

In some cases your school or the police may also contact Child, Youth and Family on the basis that you may come under the care and protection laws.

If Child, Youth and Family become involved, they'll probably call a family group conference (FGC) to look at the issues of concern. At the conference, your parents and other family members can talk about why you're not going to school and can suggest solutions. The family group conference should develop a plan of action and Child, Youth and Family should make sure support is in place for you and your family.

I'm concerned about my child wagging school – what can I do?

You could start by contacting one of the following people and telling them about your concerns:

- the school's attendance officer
- the school's guidance counsellor
- the dean for your child's year
- the principal

- the local Attendance Service organisation – they'll help in finding your child and getting them back to school. You can contact the Attendance Service through your school or the Ministry of Education.

You can also ask the school for an attendance report for your child.

Different types of schools

In New Zealand, there are three main types of schools:

- state schools, including not only ordinary state schools but also kura kaupapa Māori, "designated character" schools and special schools
- integrated schools – once private schools that are now part of the state school system but that still have a special character (Catholic schools for example)
- private schools.

Private schools aren't covered by the same laws and regulations as state and integrated schools, and most of the information in this booklet doesn't apply to private schools. A student's rights at a private school are summarised below under "Private schools".

Note: The rights and obligations of students in state and integrated schools are mainly contained in the Education Act 1989. The Private Schools Conditional Integration Act 1975 deals with how integrated schools fit into the state system.

Education Act 1989, ss 2 ("State school" definition), 9, 155, 156

State schools

Types of state schools

State schools are the primary schools, intermediate schools, secondary schools and composite (primary/secondary) schools that are funded by the government and overseen by the Ministry of Education.

State schools also include:

- kura kaupapa Māori
- "designated character" schools – a designated character school could be, for example, an Islamic school
- special schools – schools established for students with disabilities.

Integrated (formerly private) schools

What are “integrated” schools?

Integrated schools are schools that used to be private but that have now been “integrated” into the state system.

Private Schools Conditional Integration Act 1975

They receive the same amount of government funding as state schools and have to teach the *New Zealand Curriculum*, but they’re allowed to keep their “special character”, which is usually a connection to a particular religion or church. It can be a condition of enrolling at an integrated school that the student and parents agree to the school’s special character.

Integrated schools can also charge a compulsory fee, called “attendance dues”. Integrated schools include, for example, Catholic, Anglican, Methodist, Jewish, Islamic, Steiner and Montessori schools.

Private schools

What are a student’s rights at a private school?

Enrolment at a private school is governed by a private contract (an agreement) between the school and the student’s parents, rather than by the Education Act and the other laws and regulations that govern state and integrated schools. When they enrol, parents and students are making an agreement with the school: the parents will pay fees and the student will obey the school’s rules, and in return the school will provide the student with an education.

If there’s a dispute, including if the parents think the school has breached the contract, parents can use the court system. For small claims, parents can go to the Disputes Tribunal. It is a quicker, cheaper way of resolving disputes that sits outside of the formal court system. There are no lawyers or judges – instead a referee makes a decision.

Although they’re not covered by the Education Act, private schools must still follow all other New Zealand law. As well as standard contract law, this includes the Privacy Act 1993, the Human Rights Act 1993, and the New Zealand Bill of Rights Act 1990.

Education Act 1989, ss 35C, 35I(5), 35F

What curriculum do they teach at private schools?

Private schools don't have to teach the same curriculum as state schools. They can develop their own curriculum and their own assessment standards, although these are reviewed regularly by the Education Review Office (ERO). The teaching standards must be at least as good as in state schools.

ERO reviews each private school every three years. The review makes sure that the school has suitable premises, staffing and equipment, that it has a suitable curriculum and that the teaching is of a standard at least as good as in state schools.

If it offers national qualifications like NCEA, the school will have to meet the standards set by the New Zealand Qualifications Authority (NZQA).

Disciplinary processes at private schools

If the student breaches the school rules, they'll be dealt with under the school's specific disciplinary processes. However, parents and students can also expect that the school will behave fairly and reasonably. Any disciplinary process must be legal. For example, a teacher can't smack a child, because that is against the law.

Home-schooling

What if I want to teach my child myself?

You do not have a *right* to home-school your child, but you can apply for a long-term exemption from enrolment. To do this, you'll need to satisfy the Secretary of Education that your child will be taught as regularly and as well as they would be at school.

You'll need to provide enough information to prove that you are meeting these requirements. For example, the Ministry will want to see weekly timetables or routines that show you can teach in a planned way. You don't need to teach the *New Zealand Curriculum*, but you need a plan of what you'll teach and how you'll assess your child's learning. The Ministry will want to make sure you're confident and prepared

There are online support groups for home-schoolers that will help you to complete your application.

Note: Your child must attend school until you receive the exemption certificate. Otherwise they will be considered truant (see "Truancy: Wagging school", page 13).

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. It is a registered school which follows the *New Zealand Curriculum*. Students have an assigned teacher that monitors them and assesses their work.

There are two types of enrolment. If your child is eligible as a **full time eligible student**, you will not have to pay fees and they will go on the roll. Your child may be eligible if they:

- compete in art or sports at an international level, which makes school attendance difficult
- live a long way from any school
- lead an itinerant lifestyle (i.e. move location at least once per term)
- are a young parent
- are in the care of Child, Youth and Family or the Department of Corrections
- have been excluded or expelled from school
- have severe psychological or psycho-social needs.

These criteria are subject to change. To see if your child may be eligible, contact Te Kura on 0800 65 99 88.

Students can also be **dual enrolled** – this means they remain enrolled at their current school, but receive extra tuition through Te Kura. This is government-funded in certain situations, including if the student has high health or educational needs.

Any student can also pay to be dual enrolled at Te Kura.

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

High and Complex Needs Unit

A special unit is available to help students (usually aged between 6 and 14) who are a risk to themselves or others and who have complex and challenging needs that can't be met by local services. The student must already be involved with more than one agency from the education or health sectors (including disability or mental health) or Child, Youth and Family. The unit brings these agencies together with the student and their family and whānau to develop a plan, and provides tools, resources and information. See www.hcn.govt.nz

Alternative Education

Students aged 13–15 with behavioural difficulties, or who are alienated or disengaged from school, may be able to enrol in an Alternative Education programme or an Activity Centre.

Alternative Education programmes 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. The school oversees the programme and is responsible for the student.

There are advantages to working with students in the existing school environment. These 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. 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.

School fees

Can state schools charge fees?

No. Every New Zealand citizen or permanent resident is guaranteed free enrolment and free education from their fifth birthday until the end of the year in which they turn 19.

The school can only charge for activities or services that are optional, and for items that students make at school but get to take home and keep. Schools can ask for voluntary donations, and parents can't be forced to pay these donations. This is explained in more detail below.

Do I have to pay the "school donation" / "school fee"?

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 of parents contributing to the school by topping up government funding. Schools should make it clear to parents that this is a voluntary donation and that parents don't have to pay it. Unfortunately, some schools use the term "fee" or even "levy" to describe the voluntary donation, which implies that the parents have to pay it – this is wrong.

Schools can suggest an amount for the annual donation, but they can't penalise parents (or the students) for choosing not to pay the suggested amount. In particular, schools can't insist that the donation be paid before they'll confirm the student's enrolment at the school.

The receipt the school gives you for your donation should state that it's a donation, and the donation will qualify for an income tax rebate. The school shouldn't include GST in any amount that qualifies as a donation, as schools don't have to pay GST on voluntary contributions from parents.

Can the school charge "activity fees" for course materials?

Parents shouldn't be charged for the cost of teaching or materials used in delivering the school curriculum, unless there's a very clear take-home component. In subjects with a practical component, such as clothing and workshop technology, schools can

Education Act 1989, s 3

Note: Schools must clearly identify – in their prospectus, website information and notices to parents – that *all* charges for optional activities, including materials and services, are just that: optional. If a parent hasn't agreed to their child doing the activity, they can't be charged.

charge for materials if the end-product belongs to the student and can, if paid for, be taken home.

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

If you're uncertain or disagree about whether an activity is part of the school curriculum, you can contact the Ministry of Education about it.

Can the school charge "activity fees" for activities and events?

Schools often ask parents to pay specific activity fees for events or activities like field trips, school camps, and music concerts.

If the event or activity isn't part of teaching the curriculum but rather is something that enhances it (for example, a trip to see a play), then it's legitimate for the school to exclude students who haven't paid the admission price or travel costs. However, the school can't send the student home during the activity, and must provide them with activities and supervision. This could involve placing the student in a different class while their class is on the trip. The school should also try to provide the student with an alternative experience or insight into the curriculum – for example, a video.

If, however, a class field trip is an essential requirement for a subject (particularly at senior high school level), the school can't charge an activity fee for this, as it's part of the school curriculum and the school is funded by the government to deliver the curriculum.

It's reasonable for the school to ask parents to voluntarily pay a donation towards the travel costs associated with activities that are part of delivering the curriculum, like fieldwork in biology. But the school can't exclude any students whose parents can't or won't pay. The school should also make every effort to minimise the costs, by holding the activity as close to the school as possible.

It's also reasonable for schools to ask parents to voluntarily contribute towards the cost of a school camp or a fun trip (for example, a trip to the botanical gardens), which is part of the broader school programme. But again, the school can't require anyone to pay, and can't exclude students who don't pay.

The school must tell parents in advance of any activity fees, and parents must be given the opportunity to agree to pay the charges. Schools may also ask for advance payment for optional activities during the year, but can't insist on this.

Note: If you can't afford an activity fee for take-home course materials or for optional activities, you should contact the school principal. In some cases, you may be able to negotiate an informal arrangement with the school, for example, a payment plan. You may also want to explore other avenues, such as an advance on your benefit from Work and Income.

Can integrated schools charge fees?

Integrated schools can charge a compulsory fee – called an “attendance due” – but this can’t be more than the amount approved by the Minister of Education (which is published in the *New Zealand Gazette* – go to www.gazette.govt.nz). These dues should also be clearly set out in any prospectus or enrolment information. 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 school’s land or buildings. The school can’t charge parents interest on unpaid dues.

Private Schools Conditional Integration Act 1975, s 36

Can we be refused a copy of the school magazine because we didn’t 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 a student ID card if we don’t pay the donation?

This depends. Some schools fund their student ID cards entirely from school donations, in which case they could refuse to issue a card if the donation isn’t paid. However, the school should take into account that refusing to issue an ID card could have serious consequences for the student – for example, not being able to use the school library or get a student pass for public transport. This could amount to unfair and illegal discrimination against the student.

It may be possible to work out a compromise – for example, the parents might be able to pay for the cost of the ID card alone.

Can a school withhold a school report or leaving certificate because the family owes the school money?

Schools are legally required to report on a student’s progress and achievements to the student and to 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. If a school tries to withhold school reports to “encourage” parents to pay the school donation or pay any money owed to the school, the school could be breaching its legal obligations.

National Administration Guidelines (NAGs) 2, 2A

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Note: Students and parents can also make specific requests under the privacy and information laws for all other information that the school holds about the student: see “Getting information from the school”, page 115.

However, school leaving certificates are different from school reports. These are basically administrative, rather than recording educational achievement, as they record things like whether the student has returned all borrowed school items, has any outstanding amount owed on their account, or has been taken off the school roll. The school can therefore refuse to release a student’s leaving certificate if there is money owed on the child’s account (for example, for stationery that the family have chosen to get from the school), but not for unpaid donations.

Dealing with debt collectors hired by the school

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

Parents should first check that this “debt” is in fact something they’re required to pay. Parents can’t be required to pay the school donation, as this is a voluntary contribution, even if the school describes it as the “school fee”.

However, it will be legitimate for the school to hire debt collectors to recover charges that you do in fact owe – like the cost of lost or damaged library books, or charges for additional events or activities (like school camps) that the parents have agreed to pay.

If you disagree that you owe the debt, or with the specific amount that the school is claiming, it’s important to write to both the debt collection agency and the school as soon as possible. If you can’t come to an agreement, ask for help from YouthLaw or your nearest Community Law Centre (see www.youthlaw.co.nz)

The New Zealand Curriculum

Who decides what’s taught in schools?

There are three levels in the curriculum (the subjects studied at schools).

1. The national curriculum (called *The New Zealand Curriculum*)
2. The school curriculum
3. The classroom curriculum

The *New Zealand Curriculum* sets the general framework for what is studied in all state and state-integrated schools. It sets out principles, values, key competencies and learning areas.

The board of trustees of every state and state-integrated school must develop and implement a curriculum that's based on the principles and values in the *New Zealand Curriculum* and helps students develop the key competencies. However, schools have a lot of flexibility to decide how to shape their own curriculum to fit the needs of their own community.

In the classroom, teachers decide how to tailor the national and school curricula to their individual students.

For example, some of the *New Zealand Curriculum* values are community and participation, ecological sustainability, integrity and respect. In line with these values and those of their community, a school might make the environment a focus of their curriculum. An individual class may then choose to study native plants and animals.

To give another example, one of the values in the *New Zealand Curriculum* is "excellence, by aiming high and persevering in the face of difficulties." Renwick School recognises this at the school level through a "Give it a go kid" award, and at the classroom level through "personal best" tables.

Are there compulsory subjects that my school must teach?

Yes. The *New Zealand Curriculum* sets out seven learning areas that are compulsory for students in years 1 to 10:

- English
- The arts (dance, drama, music/sound arts, visual arts)
- Health and physical education
- Mathematics and statistics
- Science
- Social sciences
- Technology.

All schools with students in years 7 to 10 should also work towards offering their students the opportunity to learn second languages.

Does my school have to offer swimming?

Yes. Swimming is part of the *New Zealand Curriculum* and it is expected that all students will have had opportunities to learn basic aquatic skills by the end of year 6.

The Ministry of Education doesn't fully fund school pools, but they do provide operational funding which can be used either to run and maintain a school swimming pool or for travel and entry to a public swimming pool. Schools may also want to explore the possibility of using another local school's pool.

I think a teacher taught something inappropriate. What can I do?

If a teacher taught material that you think was inappropriate for your child's age, it would be best to begin by talking to the teacher about your concerns. If you still have issues, you can then follow the school's general complaints procedure (see "Fixing problems and making complaints", page 128).

In some cases, inappropriate comments (for example, a teacher discussing their own genitals) may be more serious. If it adversely affects the well-being or learning of students or reflects badly on their fitness to be a teacher, it could amount to serious misconduct.

For more information about allegations of misconduct, see "Can I take my complaint any further?", page 44.

Exemption rules

Can I be released from a curriculum class on religious or cultural grounds?

Your parents can ask the principal to release you from a particular class or subject on religious or cultural grounds, or you can ask yourself if you're 16 or older. The principal can only release you if they're satisfied you have sincerely held religious or cultural views and that you'll be adequately supervised while you're out of class, either at school or outside. This right doesn't apply to integrated schools (see "Integrated (formerly private) schools", page 17).

The request has to be in writing, and be made at least 24 hours before the relevant class. If it's your parents who ask, the principal must find out what you think about this.

Education Act 1989, s 25A

Sex education

Education Act 1964, s 79

Can schools teach about sex?

Sexuality education is a key learning area of health and physical education curriculum, and must be taught at all state and integrated schools, at both primary and secondary levels. Schools must consult with the community when they're developing their health and sexuality programmes.

Education Act 1989, s 60B

A parent can require the school to exclude their child from sexuality education. The principal must arrange this and make sure that the child is supervised during this time.

However, the principal can't also be expected to ensure the student is excluded at any other time just in case another student asks the teacher about part of the sexuality education curriculum.

Religious instruction

What is the difference between religious observance, instruction and education?

Religious observance involves things like reciting prayers and singing the hymns of a particular faith.

Religious instruction involves teaching about a faith. It is not neutral; it assumes belief in that faith.

Religious education (religious studies) is teaching about religion as part of a broader context. It should be neutral, and not favour any particular religious belief.

Any school is free to teach religious education – facts *about* religions and the role of religion in society. This is compatible with secular education. The curriculum must be inclusive and reflect our cultural identity – no particular belief should be supported.

State primary schools

State primary schools must be secular during the hours a school is open for instruction.

Education Act 1989, ss 77 – 79.

However, they can provide religious instruction and observance under certain conditions:

- The school must be closed for instruction, and
- It must be voluntary.

It is only voluntary if students can opt out freely. Students shouldn't be coerced into participating, and they must be supervised if they do not attend.

When is a school closed for instruction?

A school is "open for instruction" when an educational activity is taking place for students, like normal class activities. Schools are considered closed at lunchtime.

Schools can close for instruction for up to one hour per week for a maximum of 20 hours per year to allow religious instruction or observance. This is considered to be consistent with providing secular education, as it is outside normal teaching hours.

A board can close the whole school or just a part, like a single class room.

State secondary schools

Teaching at state secondary schools does not have to be secular. Boards of trustees have broad discretion to control and manage their school, including religious instruction.

However, if a school chooses to teach religious instruction, it must comply with New Zealand's Bill of Rights. It cannot be discriminatory and students must be able to opt out.

Integrated or private schools

Integrated and private schools don't have to provide a secular education. Many integrated schools have a special character based on religious belief. They can have religious instruction and observance without closing the school.

In private schools, religious teaching depends on the parents' contractual agreements with the school.

If an integrated or private school chooses to provide religious instruction or observance, parents must be able to withdraw their children freely.

Can my child's school have prayers or karakia at assembly?

Although teaching in state primary schools must be secular, religious observance can be carried out when the school is closed for instruction. Depending on the circumstances, a school might be considered closed during an assembly.

It is lawful as long as the school is closed for instruction, it doesn't go beyond the time constraints, and students can opt out.

Students who opt out shouldn't be discriminated against. Discrimination occurs when:

- a student is treated differently because of their belief
- they are disadvantaged, and
- the school's actions can't be justified under the Bill of Rights.

What should I do if I have a problem?

If the issue is in the classroom, you should first speak to your child's teacher. If it can't be resolved, you can then raise your concerns with the principal. If necessary, the next step is to write to the board of trustees, which makes the school rules. Finally, if a complaint can't be resolved within the school, you can complain to the Human Rights Commission.

Te Reo Māori in schools

Can I speak te reo Māori in the classroom?

Te reo Māori is one of the official languages of New Zealand, and is protected as a taonga by Te Tiriti o Waitangi (the Treaty of Waitangi). The New Zealand government has committed to work in partnership with Māori to promote the language for future generations.

The right to speak your own language is a human right recognised in international law.

Under the Human Rights Act, it's unlawful to exclude a student or disadvantage them because of their race or ethnic origins. This means it's probably illegal to punish students for speaking te reo, if it's related to their ethnicity. It is difficult to think of a situation where punishing any student for speaking te reo could be reasonable.

Can I do my assessments in te reo Māori?

According to the rules of the New Zealand Qualifications Authority (NZQA), secondary students sitting NCEA external assessments can answer their exams in English and/or te reo Māori. For most subjects, translated examination booklets are also available.

If you wish to sit your external exams wholly or partly in te reo, you should let your school know so that they can make arrangements.

Te Ture mō te Reo Māori/the Māori Language Act, ss 4, 5A and 6A

United Nations Conventions on the Rights of the Child, art 30; International Covenant on Civil and Political Rights, art 27.

Human Rights Act 1993, s 57.

See "Punishments", page 54 for more on legal and illegal punishments.

Assessment (including Examination) Rules for Schools with Consent to Assess 2015, 5.9.

Must my school offer te reo Māori?

No, te reo is not a compulsory part of the *New Zealand Curriculum*, although it is taught at many schools.

Education Act 1989, s 61(3).

However, schools are required by their charters to:

- Aim to develop school policies and practices reflecting New Zealand's cultural diversity and the unique position of Māori culture
- Aim to take all reasonable steps to teach tikanga Māori and te reo Māori to all full-time students whose parents ask for it

If you'd like your school to offer te reo Māori, it's a good idea to talk to the principal and let them know. You can ask to see the school charter to see what steps they are taking towards these aims.

The Ministry of Education has developed curriculum guidelines to support teaching and learning te reo Māori in English-speaking schools. If you're at secondary school, you may be able to take Māori by correspondence.

- Te Reo Māori in English-Medium Schools: tereomaori.tki.org.nz
- Te Aho o te Kura Pounamu - The Correspondence School:
www.tekura.school.nz

Special education

New Zealand aims to have an inclusive education system. However, some students are denied access to some or all of the curriculum because they have a disability of some kind. For example:

- 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 their 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.

It is important to note 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.

Education Act 1989, s 8.

My child’s needs aren’t being met at school – what can I do?

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) is a programme for students with special education needs, which can be developed by you, your child, your child’s teacher and specialists as appropriate. If you have an IEP, it should be reviewed at least twice a year, in a meeting with all those that developed it.

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 Special Education Grant (SEG) to help 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 and parents to meet the needs of students with moderate learning and/or behavioural difficulties. If your child has high social, behavioural or educational needs, you should talk to someone from Special Education at the Ministry of Education.

For more detailed information on the help available, see the Ministry of Education’s resource, *Meeting Special Education Needs at School*, online at www.minedu.govt.nz

If problems arise, you should consider taking your issue to the principal and then the board of trustees.

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. Some of these services are:

Ongoing Resourcing Scheme (ORS)

This is available for a very small group of children (about one per cent of the school population) with severe difficulties and high or very high education needs. The funding can be used for a wide range of specialist services and support, including:

- physiotherapists
- speech language therapists
- educational psychologists
- sign language interpreters
- additional teacher time
- teacher's aides
- visual or communication aids.

Applications are usually made by school staff with the help of parents, and can be made at any time. Applications are assessed by verifiers (specialists from the Ministry of Education), who usually make their decision within three weeks.

Education Act 1989, s 10.

If an application for ORS funding is declined, you can appeal the decision. First, you can request that a different team of verifiers reviews the decision. Requests for review have to be made in writing within 6 months of the date the application was made. If your application has been reviewed and you're still unhappy, you can appeal to the Secretary of Education. Appeals are conducted by an arbitrator, who is like an independent referee. The Secretary of Education must comply with the arbitrator's decision.

School High Health Needs Fund

This fund provides a teacher aide for students with significant health issues lasting more than 6 weeks. For example:

- students with seizures who need constant supervision
- students using oxygen bottles that need adult help to carry their equipment around school
- students with cancer who suffer severe tiredness, nausea and vomiting.

The fund doesn't cover students who have high health needs resulting from an accident, as these are covered by the Accident Compensation Corporation (ACC).

Intensive Wraparound Service (IWS)

The Intensive Wraparound Service is for students from years 3 to 10 with severe behavioural needs. It's available for students who are struggling to stay at school due to their highly challenging behaviour, and who need support at school, at home, and in the community.

Referrals usually must be made by a Resource Teacher Learning and Behaviour (RTLb) or someone from the Ministry of Education's Special Education team. If the student already has ORS funding (see above), their school can also make a referral.

If a referral is successful, a psychologist will work with the student, their family and whānau, the school and other agencies to develop a plan. Support is available for up to 3 years.

Interim Response Fund (IRF)

This funding is available for urgent situations that require a short term response while a more long term plan is being implemented. It's usually used when a school has exhausted all its resources and is unable to manage – for example, where a student's behaviour is likely to cause harm to others if it is not immediately addressed.

Schools request the funding from their local Ministry of Education office. Applications are made over the phone, and are processed quickly once approved.

Other specialists available through Special Education Offices include:

- 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.

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). 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. A range of funding is available. School principals and boards of trustees should follow Ministry of Education policy and guidelines.

What happens when a student is suspended for behaviour that is a symptom of their disorder?

Behavioural problems caused by recognised medical conditions wouldn't usually be considered deliberate, and so wouldn't amount to "continual disobedience", because continual disobedience is when a student regularly and deliberately disobeys the school rules. There has to be deliberate non-cooperation or defiance.

Before suspending a student for being continually disobedient, the school should be able to show 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 provided 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.

Can a student be prevented from going on school camp due to their intellectual disability?

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

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.

A parent should 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 a school have to go to accommodate a child with a disability?

Schools can't refuse to enrol disabled students or provide them with less favourable conditions or benefits than other students. However, schools are only obliged to make reasonable attempts to accommodate students.

Human Rights Act 1993, s 57

Schools don't have to provide special services or facilities when it's very difficult to do so. For instance, for a school camp the school wouldn't be expected to provide accessible toilet facilities for a student who uses a wheelchair. However, 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. If you feel your child is facing discrimination on the grounds of

The Ministry Of Education Health And Safety Code Of Practice For State And State Integrated Schools, reg 3.

their special needs, you should discuss the matter with someone at the Human Rights Commission who will assist you to lay a complaint if necessary.

My child uses a wheelchair – does the school need to be physically accessible?

Yes. The school is responsible for making sure all students, including disabled students, can get around safely. They can get help from the property and special education teams at the Ministry of Education.

It is a good idea to tell the school about your child's needs before they start, to give the school time to make any changes.

Alternatives to mainstream schooling

Sometimes, your child might need more support than can be provided at a mainstream school. For a list of alternatives, see "Options other than mainstream schooling", page 19.

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 1A 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).

Transgender, agender, non-binary and gender non-conforming students

As a transgender student, can I continue to attend my single-sex school?

New Zealand law allows for boys' schools, girls' schools and co-educational schools. If you are, for example, attending a girls' school and transitioning from female to male, you may wish to remain at your current school. It is not illegal for you to attend – the Minister of Education can allow a certain number of boys to enrol at a girls' school and vice versa. However, you will need to talk to your school, as the Education Act sets out a process to follow.

Education Act 1989, s 146A.

Can I attend a single-sex school of my chosen gender?

Yes. You have the right to freedom from discrimination on the grounds of sex, which includes gender and gender identity. However, the school may ask for proof of your gender or of your intention to transition.

Human Rights Act 1993, s 21.

Can I attend a single-sex school as an agender, non-binary or gender non-conforming student?

National Education Goal 2.

The law on this is untested. However, it seems that it would be inconsistent with the following policies underpinning the education sector to exclude a gender non-conforming student from their school of choice:

For information about transgender students and school uniforms, see "Uniforms and appearance", page 93.

- The National Education Goals provide for equal educational opportunity for all by removing barriers to achievement
- The Ministry of Education encourages schools to test stereotypes and assumptions about gender and sexuality and to operate an inclusive environment which recognises and affirms all students' identities
- The *New Zealand Curriculum* is based on values including diversity, equity, integrity and respect for human rights.

Does my school have to recognise my chosen gender on their records?

Human Rights Act 1993, s 21.

As part of freedom from discrimination, your gender should be recognised. Also, under the Privacy Act, everyone has the right to correct information held about themselves by an organisation. This means that you can ask your school to list your chosen gender. If they refuse, they must at least attach your version of the information to your file.

The school should also recognise your right to privacy, and not disclose your gender identity to others without your permission unless necessary.

If you are having problems with getting your school to recognise your gender, you should first discuss it with the school. The next step is to make a complaint to the Human Rights Commission. For help with this, contact Student Rights Service (formerly the Parents Legal Information Line) on 0800 499 488. Alternatively, you can make the complaint yourself online. For more information, see www.hrc.co.nz

Can I wear the uniform matching my gender identity?

Human Rights Commission 'Supporting trans students'; Ministry of Education 'Sexuality Education: A guide for principals, boards of trustees, and teachers'

The law on this has not yet been tested. However, the Human Rights Commission has said that "trans students should be allowed to wear the uniform that matches their gender identity". If you attend a single sex school, they may not be able to develop a new uniform for you. However, they may allow you to modify part of the uniform, for example by wearing dress pants rather than a skirt.

Transgender students should not be punished for wearing the uniform matching their gender identity, and bullying should not be tolerated.

Many schools in the United Kingdom have begun to have gender neutral uniform policies. This involves having gender neutral clothing options (such as shorts) and, making all students subject to the same rules surrounding hair, nails and jewellery.

This is supported by the Human Rights Commission and by the New Zealand Ministry of Education, which has suggested that schools consider offering a gender neutral option when uniforms come up for review. If you would like your school to consider this, you could bring it up with the board of trustees.

Does my school have to provide a unisex bathroom?

See “Specific health and safety issues”, page 46.

Further information

For more information and support for transgender and gender diverse students, check out insideout.org.nz/trans-resource and genderminorities.com

MANAGEMENT AND DISCIPLINE



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Boards of trustees: Their role and powers

What powers and responsibilities does the board of trustees have?

Whereas the principal deals with the day-to-day management of the school, the school's board provides overall direction for areas such as finance, property, staffing and discipline. The Education Act gives the board very wide powers and rights: it says the board has "complete discretion to control the management of the school as it thinks fit". It also has the power to hire and dismiss teachers and other school staff.

Education Act 1989, ss 72, 75(2), 76

A board can also make rules (bylaws) for the control and management of the school, but these rules will be subject to the Education Act and other Acts, and to the school's charter.

A board's key responsibilities include:

Education Act 1989, ss 61, 63B, 75(1)

- making sure each student at the school is able to achieve their highest possible educational standards
- making sure the school has a written charter, and making sure the charter is made available (see below)
- making sure that the school provides a safe physical and emotional environment for all students
- promoting healthy food and nutrition for all students.

Who sits on the board of trustees?

A board of trustees consists of:

Education Act 1989, s 94

- at least three but not more than seven parent representatives (most schools have five)
- the principal
- if it's an integrated school, up to four representatives appointed by the school's owner (the owner will be a trust, church or some other body)
- a staff representative
- any other people co-opted by the board to be board members
- a student representative (if the school has secondary students).

The board of trustees should tell parents when board meetings will be held, and should welcome parents to those meetings.

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Education Act 1989, ss 96, 101, 101A;
Education (School Trustee Elections)
Regulations 2000

Note: If you have a question about the role or governance of the board of trustees, call the Student Rights Service on 0800 499 488 or YouthLaw on 0800 UTH LAW

Education Act 1989, ss 61, 63B

Education Act 1989, Part 7A (ss 78H-78T)

How are boards of trustees elected?

Parents of children in the school elect members of the board of trustees, for no longer than a three-year term. The election process is laid down in the Education Act and regulations.

School charters

A school charter is a signed agreement between the school's board of trustees and the Government. It states the school's aims, purposes and specific objectives, and it includes the national aims and objectives from the National Education Guidelines (NEGs).

The charter must reflect New Zealand's cultural diversity. It should have a special emphasis on Māori culture (tikanga Māori) and language (te reo), and it must specifically include the aim of providing teaching in te reo and tikanga Māori for students whose parents ask for it.

The charter must be made available to parents. The school should also review its charter regularly to make sure it continues to reflect the changing educational needs of students.

What can happen if a board doesn't perform adequately?

There are a range of things the Ministry of Education can do if it thinks the current board is a risk to the operation of the school or to the welfare or educational performance of its students. These include:

- asking the board for specific information
- requiring the board to bring in specialist help
- requiring the board to prepare and carry out an action plan
- appointing a limited statutory manager (an independent temporary manager who takes responsibility for particular aspects of the board's role)
- dissolving the board and appointing a commissioner in its place

If you think the Ministry of Education needs to intervene in the board's running of the school, you should contact the Ministry.

I have an issue I want to take to the board – what should I do?

Usually you should try to talk the issue through with the principal first. However, if you feel you can't approach the principal, or if after approaching them you're not happy with their response, you could:

- phone or write to the chairperson of the board, asking for some time to speak to the board at its next meeting, or
- write to the chairperson explaining the issue and saying what action you would like the board to take. Mark your letter "Confidential", and address it to the chairperson, care of the school.

I'm not happy with the way the board has dealt with an issue – what can I do?

Ask the board for a copy of its complaints procedure. Put your complaint in writing, clearly stating the facts relevant to the issue you're complaining about, as well as what you would like done to put things right.

If you're not satisfied with the board's response, consider taking your concerns to one of the following government agencies or officials:

- **Ministry of Education (MOE)** – The MOE oversees the conduct of all state and integrated schools. Complaints can be lodged with your local Ministry office.
- **Children's Commissioner** – The Commissioner's role is to protect the rights of children and young people under the age of 18. They can receive complaints about schools, and can make recommendations to the school.
- **Education Review Office (ERO)** – ERO generally visits schools every three years to make sure they're being run properly. ERO doesn't deal with individual complaints, but if several complaints have been received they'll look into the problem when they visit. All complaints will be noted and could affect the school's ERO report, which is a public record. Complaints to ERO should be made in writing.

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 the chief executive to manage the school day-to-day.



School staff: The principal delegates certain responsibilities to teachers and administrative staff.

- **Ombudsmen** – The Ombudsmen can investigate complaints about decisions made by boards of trustees, and can make recommendations to the board. While the recommendations aren't legally binding, schools usually take them seriously. The Ombudsmen provide an annual written report to Parliament, which includes the names of schools that have ignored their recommendations.

Teachers and staff

What gives teachers the right to discipline their students?

The Education Act gives a board of trustees complete discretion to control and manage the school, so long as they act consistently with the Act and other New Zealand law. This means that boards have the authority to make reasonable rules, and the teachers they employ can exercise reasonable disciplinary powers and enforce these rules.

How can I make a complaint about my child's teacher?

If you're having a problem with a teacher, it's usually best to start by talking to them directly.

If that doesn't resolve things, or if you can't speak to them for some reason, the next step is to talk to the principal. If you're still unhappy with how it's being handled, you can go to the school's board of trustees. You can get the details of the chairperson from the school office, and write to them confidentially. If you like, you can ask to be present at the meeting where your issue is discussed.

Can I take my complaint any further?

Yes, in some circumstances you can make a complaint to the Education Council (formerly the Teacher's Council). You can do this if:

- You think the board of trustees won't be able to deal with your issue because of a conflict of interest (for example, if the principal is married to the teacher you want to complain about)
- You have already complained to the principal or board, but you're not satisfied with the way they dealt with your complaint
- The complaint is about a teacher who has left the school

- There are other exceptional circumstances (for example, where the complaint is about incidents involving children who did not attend the teacher's school, or where there is possible criminal offending).

The Education Council is responsible for investigating the competence and conduct of teachers. Competence is about whether the teacher meets the criteria to do their job, and is an employment issue. Conduct is about behaviour that is unsafe. Serious misconduct includes things like physically abusing students, inappropriate relationships, neglect and fraud.

To make a complaint, you need to fill out their complaint form. You can find this on their website at www.educationcouncil.org.nz

Some important things to note:

- If you haven't taken your complaint to the board of trustees first, the Education Council is likely to refer the matter back to them
- You must provide your name on the complaint form – you can't make an anonymous complaint
- The teacher will be given a chance to respond to any accusations you make.

Student welfare and safety: The school's obligations

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 and for providing a safe learning environment. They have key obligations in the following areas:

- **Education policy and guidelines** – School boards are required by government education guidelines to provide a safe physical and emotional environment for students. Schools should have policies to achieve a safe environment, including an anti-bullying policy, and should regularly review these policies. The guidelines also require the school to promote healthy food and nutrition for all students.
- **Health and safety laws** – Schools have to take all practicable steps to make sure no physical or mental harm happens to students during school hours, on school grounds, or at school-related activities. These health and safety

Education Act 1989, ss 60A, 61, 63; National Administration Guidelines, NAG 2(b), 5 (go to: www.minedu.govt.nz)

Health and Safety at Work Act 2015, ss 37 and 45

Accident Compensation Act 2001,
s 317

Code of Ethics for Registered
Teachers, clause 1(f)
www.teacherscouncil.govt.nz/ethics

See "Bullying in schools",
page 104 for more on schools'
obligations.

Ministry of Education Circular 1997/29
"The Administration of Prescribed
Medication by School Staff in
Non-Emergency Situations"

Ministry of Education, Health
Conditions in Education Settings: A
Guide for Early Childhood Services and
Schools

Crimes Act 1961, s 157

requirements apply not just to school boards of trustees but also to governing committees of school boarding hostels.

- **Duty of care under civil law** – Schools also owe a duty of care to their students under the civil law of negligence, and a student who suffers harm may be able to bring a claim in the courts for a breach of this duty of care. However, in particular cases, this right may be barred by the ACC laws. Physical injuries, and psychological harm related to physical injuries, are likely to be covered by ACC, and that means you can't bring civil claims in the courts for them. A lawyer will be able to help you understand what options may be available in your case.
- **Teachers' ethical duties** – 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".

Specific health and safety issues

My child's school is refusing to administer their prescribed medication – what can I do?

School boards should have a policy on administering medication at school.

Students must be allowed to take prescribed medication during school hours if necessary to access their right to education.

However, school staff have the right to choose whether they want to take on the responsibility for administering medication. It's reasonable for schools to require parents or guardians to give written permission for staff to hold this responsibility.

Life threatening situations

If a student has an existing medical condition, it is a good idea to plan how to manage an emergency situation in their health care plan. For example, by deciding who will be responsible for making decisions or administering first aid.

There is no general duty to save a life in the law generally. However, if someone assumes responsibility for doing an act, like providing medical treatment, and failure to do that act might be dangerous to life, then that person is under a legal duty to do that act.

The person doesn't have to explicitly say they're taking responsibility; it might be shown by their actions.

For example, if a student starts having a life-threatening asthma attack, and a teacher runs to collect their inhaler, a court might find that the teacher then had a legal duty to administer the inhaler.

How should medicines be stored at school?

Check product instructions – for example, the product instructions for Ritalin, an ADHD medication, recommend keeping it out of reach of children by storing it in a locked cupboard at least one-and-a-half metres above the ground.

Boards are responsible for making sure that any substance that is capable of endangering people's health is stored in a safe and secure manner. This might apply to some medications.

Ministry of Education, Health Conditions in Education Settings: A Guide for Early Childhood Services and Schools

The Health and Safety Code of Practice for State and State Integrated Schools, clause 15

I was hurt in an accident at school – is the school required to record this?

Yes. The school must keep a register and record any accidents that result in harm (or might have resulted in harm) to anyone in the school. If you were given first aid treatment, the school needs to also record this.

If someone is seriously harmed, the school must also notify WorkSafe and complete a written report.

Health and Safety Code of Practice for State and State Integrated Schools

I'm a transgender student and I need access to a gender neutral bathroom at school. What can I do about this?

The Ministry of Education's *Sexuality Education* guidelines (2015) state that schools may want to consider reviewing their toilet facilities to ensure all students have a choice of a safe space. This may include allowing students to use the bathrooms matching their gender identity or offering gender neutral (unisex) bathrooms. If you'd like your school to review their toilet facilities, you should talk to your teacher or principal, or write to the board of trustees.

If a school chooses to offer gender neutral bathrooms, each facility must:

- Be in a self-contained unit;
- Have full height doors and walls to maintain full privacy; and
- Contain a toilet, basin and sanitary item disposal area.

Compliance Document for New Zealand Building Code, cl G1 Personal Hygiene

Note: Schools don't have to provide separate toilet facilities for male and female students. If you're asking your school to review their toilet facilities, it may help your case to remind them of this.

I have a food allergy – should my school ban all foods with the allergen in them?

Allergy New Zealand doesn't recommend banning food products. Bans are often impractical, and don't teach children the strategies they need to cope with their allergy.

Instead, they recommend four steps:

1. **Medical information.** Schools will usually ask for medical information when a student enrolls. If they don't, it's important for parents to provide comprehensive information about their child's allergy as soon as possible, including: what their child is allergic to (their allergens), the appropriate first aid response and medications, and emergency contact details (including their doctor). Parents might want to meet with staff to explain this further.
2. **Staff training.** Schools must provide a safe environment for students (NAG 5(a)). Staff should be educated about allergies and anaphylaxis (a severe, potentially fatal allergic reaction). They should know the causes of allergic reactions and be confident in recognising them and applying first aid – including using adrenaline autoinjectors (EpiPens) if necessary. Face-to-face training is best, but free online training is available from the Australasian Society of Clinical Immunology and Allergy at www.allergy.org.nz
3. **Practical strategies.** For food allergies, strategies include: no trading or sharing food, clearly labelling lunch boxes and drinks, and teaching about hand washing. For stings and bites, strategies include: taking reasonable measures to decrease plants which attract stinging insects and ensuring children wear appropriate clothing and play in low risk areas.
4. **Education of students and peers.** It's mostly a parent's responsibility to teach their child about their allergy and how to look after themselves. However, practical strategies are likely to be more effective if a student's peers are also educated. This can also help combat allergy-related bullying.

Education outside the classroom (EOTC)

Can my child be taken on a school trip without my permission?

Parents should usually be informed in writing of any activities that will take their children out of school grounds. However, schools might not need to get consent – it might be enough to post a notice in the newsletter or send a letter home.

Whether consent is necessary, and what form it needs to take, will depend on the features of the activity, like:

- The duration – is it one hour, one day or one week?
- The location – on school grounds, in the local community or overseas?
- Whether it is in school hours or goes beyond them
- The risk involved.

For example, if it's a short activity in the local community during school hours, and involves a low risk environment – like a library or art gallery – it might not be necessary to get parental consent.

On the other hand, your school might ask you to sign a blanket consent form at the beginning of the year to cover low risk activities.

For activities which extend out of school hours or involve higher risk, the school should consider getting a signed parental consent form for each student.

If you choose not to consent, the school should not take your child on the activity.

Examples of activities and the kind of consent that might be needed:

Ministry of Education's Education
Outside the Classroom Guidelines

This table is a guide only to the level of consent a school might expect to seek, based on guidelines by the Ministry of Education. However, whether consent is needed will depend on all factors. If you have any issue, contact the school or the Student Rights Service on 0800 499 488.

Activity	Duration	Location	School hours	Environmental risk	Likely consent needed
Painting a mural at school	One hour	School grounds	✓	Low	None
Visit to local library	2 hours	Local community	✓	Low	None or blanket consent
Visit to local beach	3 hours	Local community	✓	Medium	Blanket or separate
Day hike in local bush	6 hours	Wider region	✗	Medium	Blanket or separate
School camp	3 days	Wider region	✗	Medium	Separate consent
Overseas sports tournament	2 weeks	Overseas	✗	High	Separate consent and risk disclosure

I've been asked to sign a "risk disclosure" form for school camp – does this mean the school won't be responsible if anything happens to my child?

No. Sometimes with high risk activities, you might be asked to sign a risk disclosure form. This is good practice and is only intended to inform you of the risks involved in the activity – it *does not* remove the school's responsibilities towards your child.

My child was sent home from a trip early for misbehaving – do I need to meet the transport costs?

If you were asked to sign a consent form, you should check it – you may have already agreed to pay the costs if your child is sent home early.

Otherwise, you should contact your school to make an arrangement.

I'm helping out at school camp, and I've been told I need to get a police check. Do I have to?

Education Act 1989, s 78C, 78CA & 361.

The Ministry of Education recommends that schools select volunteers carefully. They aren't legally required to have volunteers vetted, but they may choose to. Schools are allowed to make a police check a condition of volunteering.

There are other situations where school are required to carry out police checks. Non-teaching employees (like cleaners) must be vetted if they work during normal school hours. Contractors employed to work at the school (for example, doing building work) have to be vetted if they're likely to have unsupervised access to students during normal school hours.

Also, registered teachers need to have had a recent satisfactory police check in order to get their practising certificate.

Discipline and rules

A typical discipline structure in schools

Many schools use something like the following structure for dealing with disciplinary problems, beginning with individual teachers and then, if necessary, involving more senior school staff:

- the subject teacher, or perhaps the head of department for that subject
- the form teacher

- the dean
- an assistant principal or deputy principal
- the principal.

The school guidance counsellor may also become involved in disciplining a student, but counsellors usually prefer to stay outside the discipline process so that they can provide support for the student. See also “Students and confidential school counselling”, page 121.

School rules

How are school rules made, and who makes them?

New Zealand schools are self-governing, with each school setting its own policies and rules for keeping discipline and order. School rules (or “bylaws”) are made by the school’s board of trustees.

Education Act 1989, ss 72, 75

Limits on school rules

Any rules that a school board makes must be consistent with the school’s charter, which incorporates the National Administration Guidelines (NAGs) and the National Education Guidelines (NEGs), and with the general law of New Zealand, both legislation and case law (decisions of judges).

Education Act 1989, s 72, 75

Any rule has to be precise and clear enough to allow students and parents to fully understand what a rule requires so they know how to act without breaking the rule.

Battison v Melloy [2014] NZHC 1462

School rules must be fixed in advance. They should be in writing, and parents and students must be able to have access to them. The rules, and what happens if they’re broken, will usually be included in the school’s discipline policy.

Some guidelines for school boards in making rules

Before it makes a rule, the board of trustees should consider the following questions:

- **Have parents and students been consulted?** Although the board isn’t legally required to consult with them, it’s always a good idea to do so.
- **Can the rules be legally enforced?** For example, a rule giving teachers wide powers to search students, beyond the search and confiscation laws that apply in schools, would be illegal. A rule will also be unenforceable if it’s too vague and uncertain.

- **Are the rules reasonable?**
- **Is the rule appropriate for the particular age group?** For example, while a primary school rule might ban students from playing in the rain at lunchtime, it's unlikely that the same rule could be applied to high school students.
- **Are the rules relevant to the school's educational role?**
- **How will parents and students be told about of the rules?**
- **What will the school do if the rules are broken?** A school rule can't impose an automatic penalty. If a rule is broken, the school has to take into account all the circumstances of the particular case when it decides how to respond.

What sorts of behaviour is likely to be against the rules?

Behaviour that's likely to be against school rules would include:

- bullying
- fighting
- swearing
- spitting
- being abusive or insulting
- vandalism
- stealing
- behaving in a way that prevents other students or staff from doing their work
- having illegal or banned items, like knives, alcohol, drugs, cigarettes or skateboards
- gambling.

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

- being on time for class
- being prepared for class, including having the necessary paper, pens and books, and having completed homework and assignments
- participating in class work in a constructive way
- wearing the correct uniform
- bringing notes from parents to explain being away from school.

Note: Schools can differ widely in what they expect of their students, and in the sorts of behaviour they find acceptable or unacceptable. For instance, if you question an instruction given by a teacher, some schools might see this as you simply exercising your right to be fully informed – but other schools might see this as you being rude and disrespectful.

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

No automatic penalties

A school rule can't impose an automatic penalty. If a rule is broken, the school has to take into account all the circumstances of the particular case when it decides how to respond.

Scope of the school's authority: When and where you're under its control

Can the school have authority over me outside the gates and outside school hours?

Your school usually doesn't have any authority over you when it's outside school hours, you're not on school grounds, and you're not representing the school in any way. For example, a school couldn't suspend you for smoking cannabis at a private party at the weekend.

In some situations the school could still have authority over you even though it's outside school hours and you're not on school grounds. For example:

- **In uniform / representing the school** – If you're wearing school uniform you can generally be seen as representing the school, and therefore the school probably has authority over you. However, this hasn't yet been tested in the New Zealand courts so the law is unclear.
- **On school trips** – When you're on a school trip the school will have authority over you. Your parents will usually be asked to sign an agreement before the trip.
- **At special school events** – If for example you're at a school ball, the school will have authority over you.
- **Travelling to and from school** – In general, you're under the school's control during journeys to and from school. This clearly includes when you're travelling on school buses, but possibly also when you're using public transport or walking or biking to and from school. You won't be under the school's control if you're picked up or dropped off by your parents.

- **Damaging the school's reputation** – A school may be able to punish if you harm its reputation outside school hours – for example, if you made serious accusations online about school staff or other students. However, the courts haven't decided this question so it's unclear.

Whether a school has control over you when you're outside the school gates could also depend on other factors like:

- **Distance from the school** – For example, a school could punish you if you swore at a teacher just outside the school gate, or if someone who lived nearby told the school they saw a group of students taking fruit from their trees on their way home.
- **Safety issues** – For example, a school could punish if you were seen near the school, just after school finished, throwing stones from a bridge on to cars below.

Punishments

School punishments that are legal

Written work

Any written work the school gives as a punishment, such as lines and essays, should be reasonable and should take into account the particular student and their ability. For example, a dyslexic student shouldn't be punished by being given extra writing to do.

Detentions

If you're given a detention outside school hours, it's good practice for schools to give your parents advance notice, so they can make any necessary arrangements. The school can assume that your parents agree to the detention if they don't tell the school they object.

If you're given a lunchtime detention, you should still be given enough time to have lunch and go to the toilet.

It's quite common for schools to give a whole class a detention – "until someone owns up" or "because so many have been talking". However, these whole class detentions may breach the Bill of Rights, which says a person can't be detained "arbitrarily" – that is, without a good reason.

Extra work around school

This can involve things like picking up rubbish, or sweeping and general cleaning.

However, this work shouldn't be done in normal class time and you must be given the equipment necessary for the job – for example, gloves for dealing with unpleasant rubbish. The school must make sure you're safe.

Time-out, or sending students out of class

Although "time-outs" can be helpful for both the student and the teacher, by giving a chance for the situation to cool down, they must be used carefully and not for long periods. Everyone in New Zealand over the age of five is entitled to an education, and sending students outside the classroom may violate this right if this is done too often.

Education Act 1989, s 3

When deciding whether to use a time-out, teachers should take into account the psychological impact this would have on the particular student. Relevant factors will be how long the student will be kept isolated from other students and what the time-out room is like – that is, how big it is, and whether it has natural light and proper ventilation.

Taking away privileges

A school shouldn't take away a privilege from you if this could affect your education. For example, you shouldn't be punished by being kept back from a trip to see a play or film that's part of the English syllabus. The sorts of privileges that can be taken away are:

- going to a sports game
- going to a school dance (but only if it's one organised by the school, rather than by, for example, the Parent Teachers Association or another group as a fundraising exercise)
- going on a class outing, like a picnic.

Behaviour management programmes

Programmes that help students learn self-discipline or change their behaviour – like anger-management and drug-awareness programmes – can be creative ways of helping students with behavioural problems. However, they shouldn't be seen as a form of punishment but rather as a potentially effective tool for changing behaviour.

Being told off (reprimanded) in front of the principal and your 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

The school can monitor a student’s behaviour through daily reports. Teachers fill in a report card and at the end of each day show it to the principal, deputy principal, dean or a nominated teacher.

Behavioural contracts

Behavioural contracts are usually drawn up as a condition when a student goes back to school after they’ve been suspended (see “Stand-downs, suspensions and expulsions”, page 64).

The contract should be negotiated with you and your parents, rather than simply being imposed on you. It should be a two-way agreement, recognising the school’s duty to provide you with guidance and counselling as well as the conditions that you and your parents agree to.

The contract should say exactly what’s expected of you, and set out some goals. These should be reasonable, realistic and achievable – you shouldn’t be set up to fail.

If you breach the contract, the principal may ask the board of trustees to hold another meeting to discuss the situation. It shouldn’t be a condition of the contract that your parents have to withdraw you from the school if you don’t keep to the contract. Each case must be treated individually. The only way a school can suspend, exclude or expel you is through the school suspension/expulsion process (see “When and how can a student be prevented from attending school?”, page 65).

Punishments that are illegal or suspect

Physical (“corporal”) punishments

Physical punishments are illegal – this includes all correction or punishment involving physical force, like hitting or slapping you, or using a strap or cane, or throwing things at you like pens or whiteboard erasers. Any deliberate use of force, or attempted force,

against you could be an assault and therefore could justify a criminal complaint to the police, even if you're not hurt.

If you have in fact been injured, however, your parents should promptly take you to a doctor for a medical certificate. This can be used as part of a complaint to the school, or as evidence if criminal charges are laid.

Sending the student home

Your school can't send you home, even if only for a day or part of a day, unless the principal uses the formal stand-down or suspension process, and the necessary grounds for stand-down or suspension exist.

You shouldn't be sent home for trivial reasons like an incorrect uniform, or because the school doesn't have the resources to deal with your special needs. These aren't grounds that can justify a stand-down or suspension. The process and necessary grounds are explained in the chapter on stand-downs and suspensions from page 64.

Punishments that are cruel or degrading

Cruel or degrading punishments are against the Bill of Rights. Examples include a teacher putting you down in front of the class, or making you stand or hold your arms above your head for a long period. Asking you to make an apology in front of the whole school might also fall into this category.

New Zealand Bill of Rights Act 1990, s 9

"In-school" suspensions

An "in-school suspension" is when the school, rather than sending you home, gets you to do work around the school for a day or two, instead of attending class. Arguably, this type of "suspension" is illegal, because if you're attending school you have the right to take part in educational activities there.

However, if you've been officially suspended, it's legal for the school to ask you to return to school to participate in counselling or an educational programme that will help deal with your behaviour. A principal can also allow a suspended student to return to school to sit exams, if the parents have asked for this.

Using the power to excuse attendance as a means of punishment

Principals have the power to excuse a student from attending school for short periods (up to five days) if the principal thinks this is justified – this might be used, for example, to allow you to attend a funeral or tangihanga. Schools can't use this power to send you home for misbehaving: students who misbehave can only be removed from school if the principal uses the formal stand-down or suspension process (again, see "Stand-downs, suspensions and expulsions", page 64).

Taking action about illegal or inappropriate punishments

What can I do if I'm not happy about a punishment?

If you're not happy about a punishment that your school has given you, you and your parents could raise this with the school.

Parents should make sure they're aware of all the facts, and should ask the school for an explanation.

You could suggest alternative types of discipline that you think will be more appropriate.

Outside agencies that can help

If you're not happy with the school's response to your complaint about a punishment, you could contact an agency who can help you, such as:

- the Children's Commissioner
- your local Community Law Centre
- your local Citizens Advice Bureau
- the Student Rights Service (or SRS. Formerly called the Parents Legal Information Line) 0800 499 488
- a specialist advocacy service like IHC or CCS
- the Education Review Office (ERO).

For contact details, see "Useful contacts", page 139.

It may be that the punishment was illegal, or breached the school's charter or the National Administration Guidelines. The Student Rights Service, the Children's Commissioner or your local Community Law Centre can tell you about this.

If the punishment was legal, but you think it was too severe or inappropriate, or that your version of events wasn't taken into account, you should approach the teacher concerned. If you're not satisfied with the explanation, complain to the principal. You're also entitled to take your concerns to the board of trustees – you should do this in writing and address your letter to the chairperson.

Students' rights in the disciplinary process: Natural justice principles

What rights does a student have in the discipline process?

The law sets out specific processes that schools have to follow when standing down, suspending or expelling students (see "Stand-downs, suspensions and expulsions", page 64). But in all situations when students are being disciplined by schools, even when the law doesn't set out detailed processes, students have the protection of some basic legal principles – called "natural justice". In short, natural justice means you have to be treated fairly, and decisions affecting your rights (a suspension for example) should be made using fair processes.

These natural justice principles are guaranteed under the Bill of Rights, which covers all bodies and individuals that are carrying out a public judicial (that is, court-like) function – this includes teachers, principals and school boards making disciplinary decisions.

The part of the Education Act that deals with stand-downs, suspensions and expulsions specifically refers to natural justice, saying that one of the purposes of that part of the Act is to make sure that natural justice principles are followed in these cases.

What are the principles of natural justice that apply to students?

Natural justice will usually require a school to do the following things when disciplining a student:

- **Right to be heard** – You have the right to speak and be heard. If a teacher thinks you've broken a school rule, they should talk to you and tell you exactly what the problem is and how the rule has been breached. They should also explain the effects of what you've done, if any, on others at the school. You should then be given a chance to explain what happened. You should only be punished if you can't give a reasonable explanation.

Note: The Education Review Office (ERO) is a body that checks whether a school is running as it should. If you send ERO a written complaint, they'll file it and then check these concerns when its officers visit the school. However, if the complaint is particularly serious, or a number of students or parents voice the same concern, ERO can order a special audit of the school, or bring a planned audit forward.

New Zealand Bill of Rights 1990, s 27

Education Act 1989, s 13(c)

- **No prejudging** – The school has to approach its decision with an open mind, without prejudging your case.
- **No bias or personal motives** – The school has to make its decision without bias and in good faith, without any personal malice towards you or any other improper motives.
- **Flexibility** – When it's deciding how to deal with any misconduct or rule-breaking, the school can't follow an inflexible rule or policy (for example that any student found with alcohol will be suspended). The school has to consider your particular circumstances, weigh up all the factors, and consider all the available options.

Restorative justice

Restorative justice is a way of thinking about and responding to harm. It's an alternative way of managing relationships which originated in the criminal justice system. It can be used in a school setting in response to misconduct, and to reduce the number of stand-downs, suspensions and expulsions.

It involves a different way of looking at things – the focus is not on punishment but on repairing harm and restoring relationships. A key principle is that the whole school community works together to both develop rules and to find ways to move forward when rules are broken.

What is a restorative approach?

Depending on the situation and misbehaviour, it could range from an informal chat to a sit-down conference.

It can involve the person who has caused harm, the person harmed, school staff, whānau, community members and, if necessary, the police. The purpose is to establish what harm was caused, why it was done, the wider emotional context, what is needed to put things right, and how the situation can be avoided in the future.

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

Is it easy for schools to implement restorative justice?

Not necessarily. It works best if the school is willing to invest time and resources. Schools will need to engage in a school-wide cultural change, which will involve staff training and regular evaluation. But schools who have done it suggest that it 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 they have to face their bully, will they just get bullied more?

No, not if the process is followed properly. Restorative justice focuses on victims' needs, which many find empowering. Instead of making distressed people re-live 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, time to calm down, acknowledgement of the impact, a sincere apology and reassurance it won't happen again. Restorative approaches can meet all these needs.

My child often gets in trouble but their teachers never listen to their side of the story. How would restorative justice help?

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.

Restorative justice allows a young person who has caused harm, on purpose or deliberately: time to think, a chance to explain, an opportunity to apologise, a chance to make amends, and reassurance the matter is dealt with and they can move on. More traditional, punitive approaches rarely provide the kind of environment that can meet these needs.

Is it a soft option?

Not really. Restorative approaches are often more challenging, as students must face up to their shortcomings and are held to account in front of people who matter to them.

Key differences between restorative justice and traditional approaches to discipline

Traditional discipline	Restorative justice
Imposed on the student by the disciplinary authority	Involves a person who caused harm, the person harmed, school staff, whānau, others in the community
Key questions: <ul style="list-style-type: none">▪ What happened?▪ What rule was broken?▪ Who is to blame?	Key questions: <ul style="list-style-type: none">▪ What happened?▪ Who has been affected?▪ How can we make this right?
What is the punishment going to be?	How can we involve everyone to find a way forward? How can everyone do things differently in the future?
Assumes punishment acts as a deterrent and changes behaviour	Encourages students to evaluate their behaviour and take responsibility for it
Doesn't consider the needs of those harmed	Focuses on the needs of those harmed by the wrongdoing
Doesn't help ongoing relationships	Tries to repair the ongoing relationship between those involved
Can be disruptive to learning	Recognises that successful relationships are necessary for successful learning
Can be a negative experience with authority	Encourages positive, respectful relationships between students and teachers

More information

Sean Buckley and Gabrielle Maxwell *Respectful Schools: Restorative Practices in Education* (Office of the Children's Commissioner and The Institute of Policy Studies, Victoria University, Wellington, January 2007). www.occ.org.nz/publications

Restorative Schools: www.restorativeschools.org.nz/resources

Restorative Justice in New Zealand: www.restorativejusticeaotearoa.org.nz

Te Kotahitanga: www.tekotahitanga.tki.org.nz

Positive Behaviour for Learning Restorative Practice: www.pb4l.tki.org.nz

STAND-DOWNS, SUSPENSIONS AND EXPULSIONS



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Overview: When you can be removed from school

When and how can a student be prevented from attending school?

A student can only be prevented from attending a state or integrated school in one of the following ways:

- **Stand-downs** – This is a formal removal of a student from school for a short period, which can be up to 10 days.
- **Suspensions** – This is the formal removal of a student from school, usually for longer periods than for stand-downs and usually for more serious types of misbehaviour. The initial decision to suspend the student is made by the principal, and after that the board of trustees must meet to decide what to do about the student. The board can lift the suspension, or extend it with conditions, or exclude or expel the student.
- **Exclusions / expulsions** – “Exclusion” is the formal and permanent removal of a student who is under 16, while “expulsion” is the word used if the student is 16 or older. A student can only be excluded or expelled in the most serious cases. When a student is “excluded”, the principal has to try to arrange for them to go to another school, and if the principal can’t do this then the Ministry of Education will help. When a student is “expelled”, the principal and the Ministry don’t have to help them find a new school.
- **Being kept away on health grounds** – The principal can send a student home if they’re not clean enough or if they could have an infectious disease (see “Being sent home on health grounds”, page 87).

Note: Different laws apply to being suspended or expelled from a private school (see “Private schools: Suspensions and expulsions”, page 90) and from school boarding hostels (see “What happens if a boarder breaches a hostel rule?”, page 111).

Are there other legal ways of removing a student from school?

No. It’s illegal for a school to use some other method to remove you from school for disciplinary reasons, like sending you home without following the proper stand-down or suspension process, or encouraging your parents to voluntarily withdraw you from school (see “Illegal suspensions”, page 88).

Stand-downs: Short-term removal from school

Stand Down Process

1. *Principal's decision*



The principal has to decide whether a stand-down is justified on any of these grounds:

- Gross misconduct which is a harmful or dangerous example
- Continual disobedience which is a harmful or dangerous example
- Behaviour risking serious harm if the student is not suspended

You cannot be stood down by teachers, deputy principals or deans.

The principal can send you home right after making the decision, but the stand-down only officially starts from the next school day.

2. *Informing parents*



The principal must immediately inform one of your parents of the stand-down, its length and the reasons for it. They must also provide them with information on stand-downs and suspensions.

A stand-down can last up to 5 days. However, you can only be stood down for a maximum of 5 days in any school term and 10 days in a school year.

3. *Stand-down meeting*



It is not compulsory for the principal to call a meeting. However, if your parents ask for a meeting, the principal has to arrange one as soon as possible. They can discuss what led to the stand-down, what steps can be taken to address the behaviour, and expectations for when you return to school. Your parents can give the principal reasons why the stand-down should be lifted or shortened.

4. *Return to school*

At the end of the period, the stand-down is over and you can return to your school.

Before the stand-down expires, the principal can shorten the stand-down and allow you to return to school.

What is a “stand-down”?

A stand-down is when you’re formally removed from school by the principal for a short period. It can be for up to 10 days, but it’s usually only one to three days. Stand-downs are intended to give you, your parents and the school time to look at what’s happened and work out how to stop it happening again. Sometimes there’ll be a stand-down meeting for you and your parents to discuss this with the principal.

Education Act 1989, ss 14, 18(1);
Education (Stand-Down, Suspension,
Exclusion, and Expulsion) Rules 1999,
rule 9

The principal must immediately tell your parents about the stand-down, the reasons for it, and how long the stand-down is for. You and your parents must also be given information sheets on stand-downs.

Only the principal or acting principal can stand you down. Deputy principals, deans and other teachers can’t do it.

On what grounds can I be stood down from school?

You can only be stood down for:

Education Act 1989, s 14(1)

- gross misconduct that’s harmful or dangerous to other students, or
- continual disobedience that’s harmful or dangerous to other students, or
- behaviour that’s likely to cause serious harm to you or to other students if you’re not stood down.

These are the same grounds as for suspensions, but stand-downs are generally given for less serious types of misbehaviour – most often for continual disobedience, or for assaulting other students, or for abusing teachers. Stand-downs usually happen in secondary schools.

How long can I be stood down for?

Stand-downs are usually for one to three days, but you can be stood down for a maximum of five days in a single school term or a maximum of 10 days in a school year.

Education Act 1989, s 14(2)

You can be stood down more than once, so long as the total days stood down aren’t more than five days in a term or 10 days in a year.

The day you’re stood down, and any non-school days, aren’t counted.

Before the stand-down comes to an end, the principal can decide, for any reason, to shorten it and allow you to return to school.

If I'm stood down, will I be sent home immediately?

The principal can send you home for the rest of the day as soon as they make the stand-down decision, or they can decide that you'll remain at school until the end of that school day, in which case you have to be supervised. When deciding whether to send you home immediately, the Ministry of Education has advised that principals should consider your age and your parents' situation.

Stand-down meetings

If you're stood down, the principal can call a stand-down meeting. The purpose is to discuss and share information about what led to the problem and what can be done to address your behaviour at school. The principal may also want to discuss what the school will expect of you when you're back at school.

You or your parents can also ask for a stand-down meeting, and the principal must then arrange one as soon as practicable. At the meeting, you and your parents can provide reasons why you think the stand-down should be lifted or shortened. The principal can decide to cancel the stand-down if they decide it wasn't in fact justified.

Can I go to school during a stand-down if necessary?

Yes. You or your parents can ask for you to be allowed to attend school for a time for particular reasons – for example, to sit exams, fulfil a course requirement, or have guidance and counselling. If the principal thinks the request is reasonable they must agree to it.

Once the principal agrees to this, you have to go to school at the relevant times, or else you'll be considered truant.

There may be other situations when you could be allowed on school grounds. Talk to the principal about this – they have to agree to any reasonable request.

What are my rights while I'm stood down?

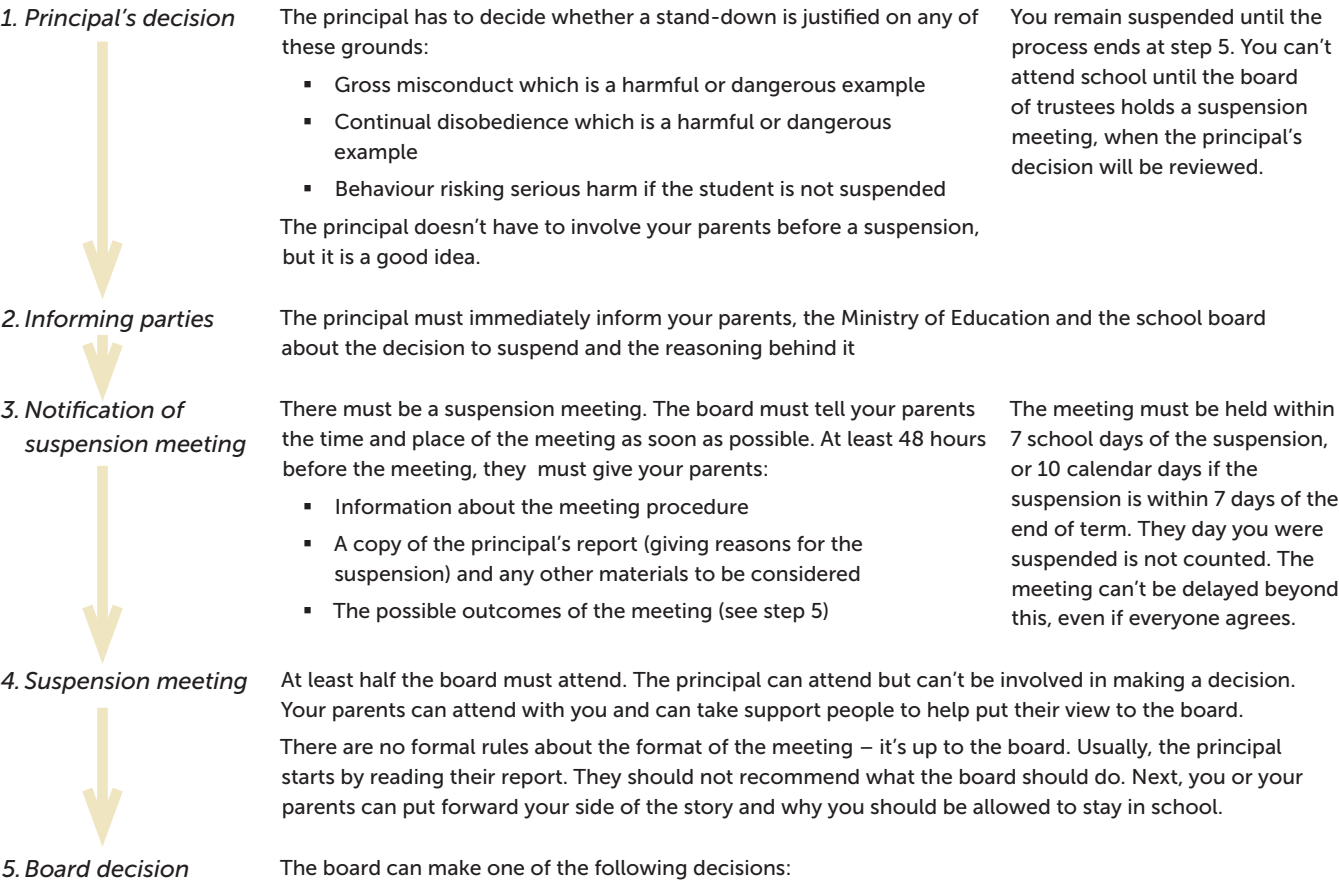
You stay on the school roll while you're stood down, and the principal must make sure you get guidance and counselling.

Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999, rules 11, 12

Education Act 1989, s 14(3)

Education Act 1989, s 17A(1)

Suspension Process



<i>Lift suspension without conditions</i>	<i>Lift the suspension with conditions</i>	<i>Extend the suspension with conditions</i>	<i>Exclusion (if under 16 years old)</i>	<i>Expulsion (if over 16 years old)</i>
The disciplinary process is over and you can return to school full time.	You can return to school full time but you must comply with ongoing conditions. If you don't, the board can hold another meeting to reconsider their decision.	You must not attend school. You will be required to comply with conditions which are meant to help you return to school. You can return when either the conditions are met or the time period ends.	You must not attend school. The principal must try to arrange enrolment in another school within 10 school days. If they fail to do so, they must inform the Ministry of Education.	You must not attend school. Neither the principal nor the Ministry have to help you find a new school.

Stand-downs vs Suspensions

	Stand-down	Suspension
<i>Purpose</i>	Allow schools, students and families time to evaluate the problems that have occurred	Formal removal of a student from school so the board of trustees can make a decision
<i>Who initiates?</i>	Only the principal or acting principal can stand-down a student	Initiated by the principal, but board of trustees must make the final decision
<i>Criteria</i>	<ul style="list-style-type: none">▪ Continual disobedience or gross misconduct that is a harmful or dangerous example▪ Behaviour likely to cause harm to the student or other students	
<i>Length</i>	Short term. Maximum of 5 days in a school term or 10 days in a school year	A suspension can be extended for a 'reasonable period'. It extended for 4 weeks or more, the board must monitor the student's progress
<i>Can it be shortened?</i>	Yes – at any time before the stand-down expires and for any reason, the principal can shorten it	The board of trustees can choose to lift the suspension, either with or without conditions
<i>When does it take effect?</i>	The principal can send the student home for the rest of the day, but the stand-down or suspension starts the following day	
<i>What information should the principal provide?</i>	Immediately, the principal must tell the parents that the student has been stood-down, why, and for how long. They must provide information sheets about stand-downs	Immediately, the principal must tell the student's parents, the board of trustees and the Ministry of Education that the student has been suspended and why
<i>What information should the board provide?</i>	n/a	As soon as possible, the board must provide parents with: <ul style="list-style-type: none">▪ The time, place and procedure of the meeting▪ The principals' report▪ Any other material to be discussed▪ The possible outcomes
<i>Can the student attend school?</i>	Not usually while they're stood-down or suspended. But the principal must consider any reasonable request to allow the student to attend school for a particular period, e.g. for an exam	

	Stand-down	Suspension
	The meeting	
Who is it with?	The principal	The board of trustees
Is it compulsory?	No, the principal doesn't have to call a meeting. However, if the parents request a meeting, the principal must arrange one as soon as possible	Yes, but parents do not have to attend. If they do attend (which is recommended), they can bring a support person.
Procedural requirements	None	<ul style="list-style-type: none">▪ The meeting must occur within 7 school days of the principal's decision (or 10 days if the suspension was within 7 days of the end of term)▪ The parents must have 48 hours' notice▪ The meeting cannot be delayed, even by agreement▪ At least half the Board must attend
What is discussed?	What led to the situation, what steps can be taken to address the student's behaviour, and the expectations when the student returns. Parents can provide reasons why the stand-down should be lifted or shortened.	The principal's report, the student's version of the facts, and the board's options. Parents and students can give reasons why the student should be allowed to stay in school.

Note: In 2014, approximately 45% of suspensions were lifted at the suspension meeting (within 7 school days of the initial decision). Around 37% of students were excluded or expelled. The remaining 17% of suspensions were extended beyond the first week.

Education Act 1989, s 14(1)

D v Havill and Board of Trustees of Western Springs College (2009)

Education Act 1989, s 14(1)(a); M & R v Syms and the Board of Trustees of Palmerston North Boys' High School (December 1990) [2003] NZAR 705

Suspensions

What is a suspension?

A suspension is you're formally removed from school by the school, initially by the principal but then by the board of trustees if the board decides to extend the suspension. Whereas stand-downs are usually only for several days, a suspension can be a week or more. Compared to stand-downs, suspensions are generally given for more serious misbehaviour, and in the most serious cases they can lead to the board deciding to permanently "exclude" or "expel" the student.

When a student can be suspended

What types of behaviour can justify a suspension?

A principal can suspend you if your behaviour fits into one of the following three categories:

- gross misconduct that's a harmful or dangerous example to other students
- continual disobedience that's a harmful or dangerous example to other students
- behaviour that is likely to cause serious harm to you or to other students if you're not suspended.

"Gross misconduct" and "continual disobedience" are explained in detail below.

Those three grounds are the same as for stand-downs, but suspensions are generally used for more serious cases.

The principal, and later the board if it extends the suspension, must specifically identify which of these three grounds they believe applies to the particular case. If they don't do this, the suspension is invalid and you can't be prevented from attending school.

A principal must choose either to stand-down or to suspend a student, and must follow through with the required legal process for the particular course they choose – they can't do both.

What is "gross misconduct"?

"Gross misconduct" is serious misbehaviour. The courts have said it must be "striking and reprehensible to a high degree", and not just trivial behaviour that children or

teenagers could be expected to engage in every now and then. The misconduct must be serious enough to justify removing you from school even though this might harm your education.

Whether an incident is gross misconduct will always depend on the particular situation. For example, in a case where students on a school ski trip were suspended for drinking alcohol, the judge said that whether drinking alcohol amounted to “gross misconduct” would depend on all the circumstances, and the school had to consider questions such as who had obtained the alcohol, how much was consumed, and whether the student was drunk.

School policies can’t automatically label a particular type of behaviour as gross misconduct. The Education Act gives schools a discretion that shouldn’t be restricted by self-imposed rules that don’t allow for any exceptions. The school must allow for students’ individual needs and problems – for example:

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

You can’t be suspended for gross misconduct unless your behaviour amounts to a dangerous or harmful example to other students.

What is “continual disobedience”?

Continual disobedience is when you regularly and deliberately ignore rules or refuse to do what you’re told. It’s not continual disobedience if you merely respond slowly or don’t do what you’re told: there must be an element of deliberate non-cooperation or defiance, and it has to happen more than once.

Continual disobedience isn’t enough by itself for a suspension or stand-down – the behaviour must also be a harmful or dangerous example to other students. The school should consider whether your disobedience would undermine discipline and safety standards in the school if you’re not suspended.

Education Act 1989, s 14(1)(a); J v Board of Trustees of Lynfield College (2007)

The principal's decision

The principal has to follow the rules of natural justice – basically this means they must act fairly at all times, must listen to and consider what you have to say without prejudging the situation, and can't rely on any information or factors that are irrelevant to the case at hand.

The principal should try to understand the context by considering any relevant information the school has and that parents may be able to provide. The principal isn't legally required to talk to your parents before suspending you, but this may be a good idea. The information the principal has must be reliable enough to meet one of the three possible suspension grounds.

It's the role of the board of trustees to review the principal's decision at the suspension meeting.

Can the principal suspend one student involved in an incident, but not another?

The principal has to consider all the circumstances and factors. Although two students may have done the same thing, it may in fact be fair to treat each student differently.

If you've been suspended but another student who was also involved in the wrongdoing wasn't suspended, you can raise this issue with the board of trustees at its suspension meeting (see "The board of trustees' suspension meeting" below). Be prepared to give reasons why you should be treated the same as the other student and be allowed to return to school; you could make some suggestions for alternative measures for the board to consider, like in-school punishments.

What are my rights if I have special needs?

It may be illegal discrimination if you were suspended for behaviour that you couldn't really help and that was the result of your disability. Even if the suspension is justified, it could still be illegal discrimination if the school didn't have an appropriate behavioural plan for you and effectively set you up to fail.

The question to ask is whether the school has done everything reasonable to meet your needs, taking into account the school's obligation to maintain a safe environment for you and other students.

What happens after the principal suspends a student

Principal must notify the parents, the board and the Ministry

After suspending you the principal must immediately inform your parents, the board of trustees and the Ministry of Education. The principal has to state the reasons for the suspension – this includes explaining specifically which of the three suspension grounds they’re relying on and how what you did meets that ground (see above, “What types of behaviour can justify a suspension?”).

The issue then goes to the board of trustees for a decision (see below).

When will the board of trustees meet and make a decision?

If the principal has suspended you, you stay suspended until the board of trustees holds a suspension meeting to decide what will happen. The meeting must happen within seven school days after the suspension, or within 10 calendar days after it if you were suspended less than seven school days before the end of term. The day on which you were suspended isn’t counted.

If, for example, you’re told on a Tuesday afternoon that you’re suspended, the first of the seven school days would be the Wednesday, even if a letter formally notifying you and your family doesn’t arrive for another few days.

The board has to hold the suspension meeting and make a final decision by the time limit. If it doesn’t, the suspension is over and you can go back to school. The meeting and decision can’t be delayed, even if both sides agree to put it off. The meeting can go ahead without you and your family being there (as long as the family had 48 hours’ notice).

Getting notice of the suspension meeting and other information

As soon as possible, the board must let you and your parents know, in writing, the time and the place of the meeting. The board has to make sure you get this information at least 48 hours before the suspension meeting. This 48-hour period can only be reduced if everyone agrees.

The information provided to you must be as complete as possible, and must include:

- information about the procedure at the suspension meeting
- a copy of the principal’s report to the board giving the reasons for the suspension

Education Act 1989, s 18(2); *D v Havill and Board of Trustees of Western Springs College* (2009)

Note: Because suspended students stay on the school roll, the principal has to take all reasonable, practicable steps to provide you with guidance and counselling, in order to minimise the disruption to your education and facilitate your return to school when that’s appropriate.

Education Act 1989, ss 13(b), 17A

Education Act 1989, s 15(4); Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999, rule 15(3)

Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999, rule 15

- any other material about the suspension that will be presented at the meeting
- the options available to the board.

The principles of natural justice require that you get a fair hearing. If you become aware that a board member has a potential bias (for example, they're related to someone involved in the incident), you should contact the board's chairperson promptly to let them know this and suggest that the board member shouldn't participate in the meeting and the board's decision.

What if the parents withdraw the student from school before the board meeting?

Parents shouldn't be hasty in withdrawing their child from school to avoid them being excluded or expelled, as this can in fact leave the student worse off. When a student under 16 is excluded, the principal and the Ministry of Education have some obligations to help the student find a new school. Even if the student is 16 or older and has been expelled, the Ministry has the power to direct another state school to accept the student. Withdrawing voluntarily may therefore you won't get any help from the principal or the Ministry. For more details, see "What are my rights after I've been excluded or expelled?", page 84.

Note: Principals have to enter all stand-downs, suspensions and exclusions/expulsions into ENROL, the nationwide electronic enrolment management system. When a student is suspended, the principal must inform the Ministry of Education immediately, by submitting an "Advice of Suspension" form. After the board meeting has been held, its decision must be immediately communicated to the Ministry through an "Advice of BOT Decision" form. ENROL automatically checks that the process is completed before a student is withdrawn. If a school tries to remove a student from its roll without doing this, ENROL shows a warning message, stating: "The Ministry has been advised this student was suspended by your school. Please submit the 'Advice of BOT Decision' form before withdrawing the student."

The board of trustees' suspension meeting

Who goes to the suspension meeting?

The suspension meeting is an independent review of the principal's decision to suspend you. The principal doesn't have a role in the decision, but as a member of the board can attend the meeting.

You, the suspended student, can attend the meeting, along with your parents. You're allowed to take someone to support or represent you, such as a lawyer, a church elder, a kaumātua, a youth worker, an advocate or a whānau member. A representative can support you and help you explain your side of things to the board.

For the board's meeting to be valid, at least half the trustees, not counting the principal, must be there. As most state school boards have seven or eight trustees, there must usually be four or five board members present. Integrated schools more commonly have 11 or 12 trustees, requiring at least six or seven members for a valid meeting.

What you can do to prepare for the suspension meeting

Before the meeting, you should plan what you're going to say and prepare any letters or other documents that will support your case:

- **Responding to questions** – Prepare for any questions the board might ask (see below, "What sorts of questions will the board ask?").
- **Mitigating factors** – At the meeting you should tell the board about any mitigating factors – in other words, aspects of what happened that mean it's not as bad as it otherwise might have been, or things about your situation that make it appropriate for the board to respond less severely. For example, you may have immediately tried to put right the harm or damage you caused, or what happened may have been out of character for you. You should explore the reasons behind what happened, and provide evidence that might back up your explanation – for example, medical or psychologists' reports.
- **Witnesses** – You should provide statements from anyone who witnessed what happened. If the board's chairperson agrees, witnesses will be able to come to the meeting and present their version of events in person. It's a good idea to give the board written copies of any witness statements before the meeting (and also other documents like character references and an apology); but if you haven't done this, bring copies to the meeting and give them to the board then.
- **Character references** – Bring along any character references or testimonials that might help your case – for example, from guidance counsellors, sports coaches or teacher aides.
- **Admitting the wrongdoing** – At the meeting you should acknowledge that what you did was wrong. You should show the board that you have a strong

Note: It's best that the student comes to the suspension meeting, as most boards like to meet the student and hear their side of the story. If the student can't make it to the meeting, the parents could read out a letter from the student to the board.

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Note: A student is far more likely to present a good case to the board if they genuinely want to return to school. Parents should therefore take the time to talk to their child and discuss whether they actually want to return to school – and if not, why not. Parents should also be careful not to suggest anything to the board that the student won't be willing to agree to.

desire to stay at the school and that you're willing to take practical, pro-active steps to prevent the same thing happening again. Bear in mind that board members are parents too, and they'll be concerned for their own children about safety and discipline at the school.

- **Apology** – Write a letter of apology to the board, and also prepare a verbal apology to present to the board when it's your turn to speak at the meeting.
- **Conditions** – Be ready to accept any reasonable conditions that the board might impose as part of its decision.

What's the process at the suspension meeting?

There are no legal rules or regulations dealing with the procedure at suspension meetings. The format and process for the meeting will be decided by the board. Usually, however:

- the meeting will begin with the principal reading out their report for the board to consider
- then the student, the parents or their representative will tell their side and provide reasons why the student should be allowed to stay in school
- the board will make its decision.

Principal's role at the suspension meeting

The meeting usually begins with the principal reading out their report for the board to consider.

The Education Act doesn't give the principal any authority to recommend what the board should do. You and your parents will have been sent a copy of the principal's report before the meeting, and if you find any recommendations in it you should contact the principal and ask them to take out those recommendations. If, at the meeting, the principal makes a recommendation that's not in their report, you can raise this issue at the meeting and remind the board that it's their responsibility to review the principal's suspension decision and make their own decision.

The law requires the board to take all the relevant circumstances into account, to consider each of the options available to it, and to then make an independent decision.

A key principle of natural justice prevents the principal from taking part in the decision about whether to lift or extend a suspension, because they're the person who initiated the suspension. The principal is like the "prosecutor", so they can't also be one of the judges. Although they're a member of the board, the principal shouldn't remain with the board when it's making its decision. The principal should leave the board meeting at the same time as you, your family and representatives.

If the board wants to call the principal back into the meeting to provide any other information, then you, your family and representatives should also be called back in and be given a chance to question the principal.

If the principal (or any board members) raise any new information or issues that you or your parents haven't heard about before, you can ask for the meeting to be adjourned (put off to a later date) so that you can consider the new information, and perhaps also get advice from a lawyer. If the meeting is adjourned, 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) time limit.

Note: Regardless of the principal's view that a school rule has been broken, the board should consider whether you the student in fact effectively complied with the school.

Note: Any teacher, parent or other student who was directly involved in the incident that led to the suspension shouldn't be involved in any of the school's decision-making about the incident.

Telling your side of the story at the meeting

After the principal has read their report to the board, usually the next step in the meeting is that you, your parents or your representative tell your version of what happened. The right to tell your side of the story, after having had adequate time to prepare your case, is a key principle of "natural justice". Natural justice is specifically mentioned in the part of the Education Act 1989 that deals with suspensions and expulsions.

Education Act 1989, s 13(c)

The board will want to hear you admit that what you did was wrong and show them that you're willing to change. They'll want to hear you that you're keen to return to school, and you should give them reasons why you think you should be allowed to go back. It's a good idea to list some practical steps that you plan to take to prevent the incident happening again. For some detailed advice on putting your case at the meeting, see "What you can do to prepare for the suspension meeting", page 77.

If you don't agree with the principal's report and any other information the board is looking at, it's important that you and your family put forward your version of the facts and explain why you disagree. This can make a difference to the board in deciding whether you'll stay in school.

You may choose not to say anything about what happened. However, the board can still form a view about what happened and might draw conclusions from your silence – for example, they might think that you agree with what the principal has said. If the board does draw conclusions, they should let you know and invite you to comment, without pressuring you to provide answers or explanations.

What sorts of questions will the board ask?

When you tell your side of the story at the suspension meeting, the board of trustees is likely to ask the following types of questions (if you haven't already dealt with these issues):

- Do you agree with what the principal has said?
- Do you admit that what you did was wrong and not acceptable?
- Are you sorry for what you did?
- Can you explain your behaviour?
- What effects do you think your behaviour has had on others?
- Why do you want to come back to school?
- Why should the board allow you to come back to school?
- How would you change your behaviour if you were allowed to return to school?
- How can the board be confident that you will in fact change your behaviour?
- Why should the board believe the things you have to say?

Before the meeting, parents should help make sure the student is well prepared to answer each of those questions. This doesn't mean giving the student the answers or putting words into their mouths – it means getting them to think in advance about how they'll respond to questions. A good way to prepare is to role-play the suspension meeting, with the parents as the board of trustees.

When and how the board makes its decision

After hearing from you, your parents or your representative, the board of trustees will usually ask you and your parents to leave the room so they can discuss the issues and make a decision. However, the board might decide to ask you all to stay so that everyone can try to reach agreement about what should happen.

The board's decision

Key principles for the board's decision-making

The board of trustees at a suspension meeting must:

- listen to both sides
- not follow an inflexible rule or policy – the board has to consider your particular circumstances, weigh up all the factors, and consider all the options available to it, including the option of lifting the suspension subject to conditions
- take into account relevant factors only – this means they must ignore any irrelevant information that was brought to the meeting
- make their decision in good faith, without any personal malice towards you or other improper motives
- approach their decision with open minds, without pre-conceived decisions – However, the board **won't** be guilty of pre-determining a case just because:
 - it puts importance on school traditions and setting high standards
 - it makes a quick decision, so long as the decision was made carefully
 - a school staff member told the student they would be suspended, so long as that other staff member isn't involved in the board's decision
 - the board is consistent in how it deals with particular disciplinary issues.

X v Bovey [2014] NZHC 1103.

What options does the board have?

The board of trustees has the following options:

Education Act 1989, ss 15, 17, 18(3)

- **Lift the suspension without conditions** – Here you go back to school full-time. The formal disciplinary process is over and the board is no longer involved.

- **Lift the suspension with conditions** – You go back to school full-time but have to comply with some ongoing conditions. For example, if you were suspended for bullying, conditions could include doing a behaviour management course and having counselling. Any conditions must be reasonable. For what happens if you don't comply with the conditions, see below: "Rights and obligations during a suspension".
- **Extend the suspension with conditions** – Here you aren't allowed to go back to school for a set time (unless the principal allows you to) and you must also meet some conditions. The length of the extended suspension can't be unreasonable. The conditions must also be reasonable and must be aimed at getting you back to school. Once the conditions are met or the extended suspension comes to an end (whichever happens first), you can return to school.
- **"Exclude" you from the school (if under 16)** – If you're excluded, the principal must try to arrange for you to be enrolled in another reasonably convenient school. If the principal hasn't been able to do this after 10 school days, they have to tell the Ministry of Education. For more details about exclusions, see page 84.
- **Expel you (if 16 or older)** – The principal and the Ministry don't have to help you find a new school if you've been expelled. For more details about expulsions, see page 84.

In making its decisions and setting any conditions, the board has to try to minimise the disruption to your education.

Board must give written decision and reasons

After it makes its decision, the board must write to your parents and the Ministry of Education, stating the decision and the reasons for it. The board has to explain how your behaviour met one of the statutory grounds for a suspension, and how they came to their decision (see "What types of behaviour can justify a suspension?", page 72). The board should keep a good record of the issues they discussed and their conclusions.

Can the board consider alternatives to a suspension or exclusion/expulsion?

Yes. Suspensions, exclusions and expulsions are for only the most serious breaches of school rules. The rules in the Education Act provide for a range of responses for cases of varying levels of seriousness, and the board has the option of lifting the suspension and imposing various conditions.

Education Act 1989, ss 13, 15, 17; D v M and Board of Trustees of Auckland Grammar School (1998)

Before it makes a decision, the board has to consider your circumstances, weigh up all the factors, and consider all options. In one court case where the board's decision was overturned, the judge found that the board's failure to consider the possibility of lifting a suspension, subject to conditions, meant that the school hadn't treated the student fairly.

At the board meeting, you and your parents should be prepared to put forward alternative measures for the board to consider as possible conditions – for example:

- in-school punishments such as detention or daily reports
- counselling courses for things like anger management or stopping smoking
- education courses on drugs or alcohol
- a plan for you to use your particular skill-set to assist teachers – for example, helping to coach a junior sports team, or helping an art teacher after school
- a restorative justice approach – for example, holding a conference with all parties involved in the incident so that everyone can move forward. See "Restorative justice", page 60 for more details about this approach.

Rights and obligations during a suspension

Will I stay on the school roll while I'm suspended?

Yes, you stay on the roll. You'll only be removed once you're enrolled at another school, or are expelled or leave school (if you're 16 or older), or are granted an early-leaving exemption (if you're 15).

Education Act 1989, s 17C

What does the school have to do during a suspension?

If you've been suspended, the principal must make sure you get guidance and counselling.

Education Act 1989, s 17A; Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999, rule 18

While you're out of school on an extended suspension given by the board, the principal must also make sure you have appropriate school work to do at home, in order to help you get back to school and so that any educational disadvantages are minimised.

If the board has extended your suspension for four weeks or more, it must monitor your progress by making sure it gets written reports. You and your parents must be given copies of these reports.

Can I go to school during a suspension if necessary?

Yes. The same rules apply here as for a stand-down: see "Can I go to school during a stand-down if necessary?", page 68.

What I don't follow the conditions of the suspension?

If you don't comply with the conditions the board has set for your suspension (or that the board set when it lifted your suspension), the principal can ask the board to reconsider its decision. The boards' reconsideration meeting will follow the same process as the original suspension meeting, starting with the board having to notify you and your parents of the meeting 48 hours in advance.

Education Act 1989, s 15(3); Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999, rule 20

Exclusions and expulsions

How is being "excluded" different from being "expelled"?

In both cases you're permanently removed from your particular school, but "excluded" is the term used if you're under 16, while "expelled" is used if you're 16 or older.

There are some important differences, however, in what happens next if you're "excluded" rather than "expelled".

What are my rights after I've been excluded or expelled?

If you're under 16 and have been excluded from your school, the principal has to try to help you find another school that's suitable for you and reasonably convenient for where you live. However, other schools can refuse to accept you, and therefore it can be very difficult to find another school. If the principal can't find one within 10 days, they have to tell the Ministry of Education.

Education Act 1989, ss 15, 17

Education Act 1989, ss 15, 16, 17D

The Ministry can then either lift the exclusion and allow you to go back to your school (if they think this is appropriate), or direct another school to accept you, or direct your parents to enrol you with the correspondence school. However, the Ministry only rarely uses those powers.

Before it can lift the exclusion or direct another school to take you, the Ministry has to consult with you and your parents and with the relevant school board. It can also consult with other people or organisations about your education or welfare if it thinks this is appropriate.

Note: If you've been excluded from a school and you're looking for a new school to go to, other schools can refuse to accept you while you're currently excluded. However, this doesn't mean that just because you were **once** excluded from a school, any other school can continue to refuse you. If you're excluded from school A, but you're taken in by school B, then school C can no longer refuse to accept you if you're otherwise entitled to go there (for example if you're in school C's home zone). The only exception is the school that excluded you – they can continue to refuse to accept you indefinitely.

If you're 16 or older and have been expelled, the principal doesn't have to help you find another school. However, the Ministry of Education may still decide to help you find one, and can direct a state school to accept you.

Education Act 1989, s 17D

Can the school tell other schools about my suspension or exclusion/expulsion?

Yes. The school will record the details of your suspension or exclusion/expulsion on your file, and the file will be passed on if you transfer to another school.

However, if you think the information is incorrect, the Privacy Act gives you the right to ask for the information to be corrected and, if the school refuses, to have a statement from you attached to the information.

Privacy Act 1993, s 6 (principle 7)

Challenging a suspension, exclusion or expulsion

What can I do if my suspension or exclusion/expulsion was unfair?

If you don't accept that your suspension or exclusion/expulsion was reasonable, you have a number of options:

- **Ask the board to reconsider** – You'll need to be clear about exactly why you think the process at the board's meeting wasn't fair. To ask for a reconsideration meeting, you should write a "Request for reconsideration letter" to the chairperson of the board, care of the school (see "Sample letters", page 134).
- **Ministry's power to lift exclusions** – If you're under 16 and you've been excluded, you can ask the Ministry of Education to use its power to lift the exclusion and direct the school to take you back.
- **Complain to Ombudsmen** – If the board refuses your request for a reconsideration meeting, you can complain to the Ombudsmen. This is free and can be done by phone or in writing. The Ombudsmen can't overturn the board's original decision but they can investigate your complaint and if they find that it's justified (for example, there's been some breach of process), the Ombudsmen can recommend to the board that it reconsiders its decision. However, the Ombudsmen's investigation can take several months and you may need to enrol in another school in the meantime.
- **Go to court** – If you challenge the decision through the courts, you'll need to apply to the High Court, and for this you'll need a lawyer. Note that Parliament has assigned decision-making authority to school boards. This means that the Court will focus on whether the legal rules have been applied correctly rather than examining the facts in detail or substituting their view for the board's. Again, this will take a long time and will be expensive, as legal aid is not available for cases involving schools.
- **Discrimination complaint** – You can complain to the Human Rights Commission if you think the board's decision discriminated against you.
- **Complain to Education Review Office** – You can complain to ERO about the way the school runs its disciplinary system. ERO reviews schools on average once every three years, and they may decide to review a school more often if the school's performance is poor and there are risks to the education and safety of the students. ERO reports are available to the public.

Education Act 1989, s 16(1)(a)

Ombudsmen Act 1975, ss 13, 16

- **Advice and support** – To get advice, information and support if you want to challenge the board’s decision, contact the Student Rights Service (SRS), YouthLaw or your local Community Law Centre (see “Useful contacts”, page 139).

What’s the most effective way to challenge a board’s decision?

Asking the board of trustees to reconsider is likely to be the fastest and most effective way of changing the board’s decision. With the other options explained above, it may be a number of months – even years – before the decision is changed, assuming you have a good case.

In particular, asking the board to reconsider its decision will be the appropriate option if the board didn’t have some important information when it made its decision, or if you have a reasonable argument that the process the board followed was somehow unfair.

Records of stand-downs, suspensions and expulsions

Who can see a student’s stand-down and suspension history?

On the ENROL (electronic enrolment management) system, a school can see the history of all stand-downs and suspensions that have occurred at that school.

A school can only see information on ENROL about stand-downs from previous schools if those stand-downs happened during that same year.

Schools **can’t** see information about suspensions from previous schools in ENROL.

Being sent home on health grounds

When exactly can a student be sent home on health grounds?

You can be sent home (“precluded”) from school by the principal if the principal has reasonable grounds to think that:

- you may have an infectious disease (like measles, meningitis or head lice) within the meaning of the Health Act 1956), or
- you aren’t clean enough to stay at school.

Education Act 1989, s 19

This is because of the school's responsibility to provide a safe physical and emotional environment for all students.

The principal should seek advice before deciding whether it's necessary to send a student home on health grounds. They must also apply this law consistently. If, for example, a principal precluded one child with head lice but not others, it may be a breach of the Human Rights Act 1993.

What happens after a student is sent home on health grounds?

Immediately after sending you home on health grounds, the principal must inform:

- your parents
- the board of trustees, and
- if it's a case of an infectious disease, the district health authorities.

The board must then look into the issue and decide whether to confirm or cancel the principal's decision. You may have to produce a medical certificate to get back into school.

Illegal suspensions

Students can only be sent home from school if they're stood down or suspended on one of the specific grounds set out in the Education Act 1989, or if they're sent home on health grounds under the rules in the Education Act.

Students can't be sent home or out of school for disciplinary reasons except under the formal stand-down or suspension process in the Education Act.

However, schools have sometimes used other – illegal – ways of removing a student from school (sometimes called "Kiwi suspensions"), explained below. If this happens in your case, there are ways for you to challenge and overturn the decision.

Sending students home without the formal stand-down/suspension process

There are many different circumstances in which schools have illegally sent students home or out of school. For example, when a student with dreadlocks is sent home and told not to come back "until you've cut them off", or when a student is sent home for not wearing the correct uniform, or when parents of special needs children are told to keep their children home because the teacher aide is away from school.

Education Act 1989, s 19(2)

Education Act 1989, ss 14, 19;
Education (Stand-Down, Suspension,
Exclusion, and Expulsion) Rules 1999,
rule 8

Principals have the power to excuse a student from attending school for short periods (up to five days). An example of this could be if the student needs to attend a funeral or tangihanga. However, schools can't use this power to send a student home for misbehaving.

Education Act 1989, s 27; Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999, rule 8

Voluntary withdrawal at the school's request

Sometimes principals try to get rid of students they believe are difficult or uncooperative by telling parents they should withdraw their child "before they're excluded or expelled". This may be put to parents as being in the student's best interests – a chance to put their past behind them and make a fresh start in a new school. Sometimes the option is presented as follows: "We don't seem to be meeting your daughter's needs and we feel she may be able to better reach her potential at another school."

Schools may try to deal with "problem students" in this way if they know the student couldn't 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 shouldn't feel obliged to withdraw their child from school in these situations. The school has an obligation to support each of its students if there are problems. In particular, principals have to take all reasonable steps to make sure that students get good guidance and counselling.

Education Act 1989, s 77(a)

Remember that principals don't have the power to exclude or expel a student: only the board of trustees can do this, and only after following the proper process and hearing from the student and the parents: for more information see "The board of trustees' suspension meeting", page 76.

If you think you've been removed from school illegally, contact the Student Rights Service, YouthLaw, your local Community Law Centre, or the Ministry of Education: see "Useful contacts", page 139.

Private schools: Suspensions and expulsions

When and how can I be suspended or expelled from a private school?

Private schools aren't bound by the rules in the Education Act for suspensions and exclusions/expulsions. Instead, discipline in private schools is governed by each school's own rules and processes. However, parents and students can rely on an implied term of their enrolment agreement with the school that the school will behave fairly and reasonably.

What happens after I'm suspended or expelled from a private school?

Although suspension and expulsion decisions in private schools are governed by each school's own rules, the Education Act does specify what has to happen after the student is suspended or expelled.

First, the principal must immediately notify the Ministry of Education. If you're under 16 and you're not back at school or at a new school within a reasonable time, the Ministry has to make other arrangements for you. In these cases, the Ministry has to do one of the following things:

- arrange for you to be enrolled in another school
- direct a state school to enrol you, or
- direct your parents to enrol you in a correspondence school.

If you're 16 or older, the Ministry doesn't have to do any of those things, but it can choose to do so.

Before it directs a state school to accept you in one of these cases, the Ministry has to consult with you, your parents and the new school's board. It can also consult with other people or organisations about your education or welfare if it thinks this is appropriate.



SPECIFIC AREAS OF CONTROL AND DISCIPLINE



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Uniforms and appearance

If my school has a uniform, do I have to wear it?

Most New Zealand secondary schools, and some primary and intermediate schools, have rules requiring students to wear a school uniform. This comes under a school board's powers to make any rules it thinks are "necessary or desirable for the control and management of the school".

Education Act 1989, s 72; New Zealand Bill of Rights Act 1990, s 14

Technically, a school uniform rule won't be legally enforceable if it breaches students' rights of freedom of expression under the New Zealand Bill of Rights Act 1990. However, the New Zealand courts would probably see most school uniform codes as being a reasonable and allowable restriction on a student's right to freedom of expression.

Can I be punished for not wearing the uniform?

This would depend on the particular case.

You shouldn't be punished if your parents or caregivers can't afford to buy a uniform. Parents should talk to the school, which may have second-hand uniforms that can be bought cheaply. Parents who are on a low income or benefit may be able to get financial help from Work and Income.

However, if you simply refuse to wear a uniform, the school could:

Education Act 1989, s 14

- give you a warning
- give you a detention or extra duties
- stand you down or suspend you for continual disobedience, if you've already had a number of warnings.

Can I be sent home for not wearing the correct uniform?

You can only be sent home if you've been formally stood down or suspended.

Education Act 1989, s 14; Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999, rule 8

Can students wear items of cultural or religious significance?

Yes. It's illegal to discriminate on the basis of race, gender, or national or ethnic origin, and so, for example, the Human Rights Commission has upheld the right of Māori students to wear taonga at school, despite uniform codes that ban jewellery.

Schools can ask, however, that students provide a genuine reason for wanting to wear items of cultural and religious significance.

New Zealand Bill of Rights Act 1990, s 19 (state schools); Human Rights Act 1993, s 21 (private schools)

Human Rights Commission, Supporting Trans Students, www.hrc.co.nz

See page 37 for more about “Transgender, agender, non-binary and gender non-conforming students”.

Edwards v Onehunga High School Board [1974] 2 NZLR 238 (CA); New Zealand Bill of Rights Act 1990, s 14; *Battison v Melloy* [2014] NZHC 1462

Are schools allowed to have different uniforms for males and females?

Although it’s illegal for schools to treat students differently on the basis of gender, this probably doesn’t prevent different school uniform codes for male and female students.

In one case (from 1991) the Human Rights Commission agreed with a complaint by two female-identified students who claimed that the school requirement to wear a skirt disadvantaged them because it restricted their activities and therefore it amounted to discrimination on gender grounds. This particular case was settled by the school agreeing to change its uniform so that female students could choose to wear “culottes” (shorts that look like skirts). This case shows that the current law is probably that schools can have different uniforms for male and females, but that the particular uniforms can’t disadvantage one gender or any other particular group.

Can transgender students choose which uniform they wear?

The Human Rights Commission has said that transgender students should be able to wear the uniform that matches their gender identity. The Ministry of Education has suggested that schools consider offering a gender-neutral option when uniforms come up for review.

Can schools order boys to cut their hair?

The law here isn’t clear. In the 1970s, the Court of Appeal upheld a school’s right to enforce rules about hair. However that decision is now more than 40 years old, and it was made before the Bill of Rights was passed, protecting the right of freedom of expression.

In a 2014 High Court decision (*Battison v Melloy*), the judge found that the particular hair rule in this case wasn’t legally enforceable because it wasn’t certain enough. In this case, the school board had agreed with the principal’s decision that the hair rule had been broken. However, the judge disagreed with the board’s decision because the board hadn’t independently considered whether the student’s offer to wear his hair in a bun amounted to effective compliance with the rule (which didn’t specifically say that a student’s hair had to be cut short).

The judge in *Battison v Melloy* said that schools should carefully consider whether a proposed hair rule would breach students’ rights to autonomy and individual dignity, and their right to freedom of expression under the Bill of Rights. The judge said that it would be unlawful to make a rule which gave the principal complete discretion to decide whether a student’s dress and appearance was acceptable.

There will also be 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.

Challenging a rule about uniform or appearance

While schools have the right to make rules, students and parents who are unhappy about a particular rule should ask the school why the rule exists – is it, for example, for safety reasons? You should think about these questions:

- How important is this issue to you? Is it important enough to risk disrupting your education?
- Why is the issue important? For example, are religious or cultural values involved?
- What are the possible consequences of continuing to challenge the rule?

Sometimes schools and families can become hardened in positions they've taken about an issue. There are sometimes no easy answers. If you've carefully thought about the issue and want to pursue it further, you can contact one of the agencies listed at the back of this booklet (see "Useful contacts", page 139).

Searching students and confiscating items

Detailed laws were introduced in 2014 giving teachers in state and integrated schools limited powers to search students' clothing and bags in some situations and to confiscate items from them. However, the students themselves can't be searched, and neither can their clothing while they're still wearing it.

Education Act 1989, ss 139AAA-139AAI; Education (Surrender, Retention, and Search) Rules 2013; Ministry of Education's "Guidelines for the Surrender and Retention of Property and Searches"

Teacher's power to order student to hand over an item

A teacher can require you to hand over an item if they believe on reasonable grounds that it's something likely to endanger anyone's safety or to have a negative or disruptive effect on the school's learning environment. The teacher can only do this if you have the item in clear view or if they have reasonable grounds to think you're hiding it in your pockets or somewhere else about you, or in a bag or container.

Education Act 1989, ss 139AAA, 139AAD, 139AAF

The teacher can't search you directly for the item or use any physical force.

If you refuse to hand over the item, the school can take reasonable disciplinary steps against you.

Teacher's power to search clothing and bags for harmful items

Schools have limited powers to search your clothing and bags, but only if they think you have something harmful. An item is considered "harmful" if it poses an immediate threat to anyone's safety, including their emotional safety.

If a teacher believes on reasonable grounds that you have something harmful and you've refused to hand it over, the teacher can require you to:

- take off any outer clothing you're wearing (including a coat, jacket, jumper or cardigan)
- take off your shoes and socks (but not tights or stockings)
- hand over the bag or other container.

The teacher can then search the clothing, footwear, bag or container. The teacher **can't** search any clothing while you're still wearing it.

Whether or not the teacher finds anything, they have to immediately return your clothing, footwear, bag or container to you.

What does "reasonable grounds" mean?

The teacher doesn't need to be absolutely certain you have the item in order to have a "reasonable" belief. What's reasonable will depend on the context, and also on the type of item the teacher thinks you have. Reasonable grounds can be based, for example, on information from other students. But it wouldn't be reasonable for the teacher to make assumptions based on what you've done in the past. That means even if they have found a harmful item on you before, they must not use this as grounds for searching your clothes or belongings if they have no other evidence.

My school has a policy that students and their property can be searched by school staff – is this legal?

No. The school can only carry out searches as allowed by the search and confiscation powers explained in this section. Students also can't be asked to consent to something that's outside those powers.

The school may argue that by being enrolled at the school, you and your parents have agreed to this policy, but this is incorrect, as schools can't adopt policies that breach New Zealand law.

However, if you freely volunteer to empty your bag (for example, because you're keen to prove you're innocent), then that is fine.

Can the school strip-search me?

No. However, if you refuse to remove your outer clothing when asked, or refuse to hand over a bag or container, the school can take reasonable disciplinary steps against you.

Education Act 1989, ss 139AAD, 139AAF

Can schools do blanket searches of whole classes or groups of students?

No. If, for example, something has apparently been stolen, the school can't do a blanket search, even for a harmful item. For a teacher to be able to use the power to search students' outer clothing or bags for harmful items, the teacher must have a reasonable belief relating to **each** student.

If a stolen item isn't harmful – a pair of shoes, for example – and the teacher has a reasonable suspicion that a particular student has it, the teacher can demand that the student return the item. If the student doesn't return it, they can be disciplined.

The police can be called if the school thinks this is appropriate.

Can a school search my locker?

A school can search its own property at any time for any reason. This includes lockers and desks provided to students for storage, like lockers and desks. If you freely choose to use a school-provided storage area, the school will be free to search it. The terms and conditions about the use of lockers should state that the school can search your locker and any bag or container in it.

This doesn't mean that a school can search your bag whenever you leave it somewhere. If you've only left your bag somewhere temporarily – for example, on a hook in the changing room during a single PE class – you probably haven't given up control of it. This means your bag could only be searched if a teacher reasonably believed it contained a harmful item.

If you don't want your school to be able to search your bag at any time, it is best not to leave it in a school-provided storage area.

If teachers think a student has something illegal, can they hold them until the police arrive?

The school can keep you under supervision until the police arrive. If you leave, the school can discipline you. If you leave the school grounds, you'll be considered truant.

The laws on searches and confiscations in schools don't affect the powers that the police have. The police can carry out searches if these are lawful and reasonable, and this will depend on the circumstances in each case. For example, if police have reasonable grounds to believe drugs are involved, they can search you without your consent. The police, like the school, can't carry out "blanket searches" of whole groups or classes of students – to carry out a search of any student or their property, the police have to have reasonable grounds that relate specifically to that student.

If the police want to search you, you should say clearly that you don't consent to the search, but it is best not to resist. If you think the search was carried out roughly or without good reason, you should complain to the Independent Police Conduct Authority – www.ipca.govt.nz

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

Education Act 1989, s 139AAE

A school can search its own property at any time, for any reason, and by any method. This includes lockers, desks and other storage containers provided to students. The school can hire contractors to bring in drug-sniffing dogs to search desks, lockers and other school property. However, the students themselves can't be searched.

The police can use drug-sniffing dogs to search a person if the police have a reasonable suspicion, or if they have a search warrant issued by a court.

Can a school carry out drug-testing of students?

Random drug testing of students isn't allowed.

Education Act 1989, ss 15, 17

However, if you've been suspended, the board of trustees can place reasonable conditions on you coming back to school. These can include requiring you to participate in a drug treatment programme that includes testing for drugs.

Students can also freely agree to be tested for drugs.

Investigating criminal behaviour by students

For students

What rights do I have when being questioned by the police?

Anyone being questioned by the police has the right:

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

New Zealand Bill of Rights Act 1990, s 23.

Children and young people (under 17) also have extra rights:

- A child (10 to 13 years old) or young person (14 to 16 years old) who wants to make a statement to the police has the right to a “nominated adult”. This means you can pick an adult *of your choice* as a support person. It doesn’t have to be your parent or caregiver.
- You must be informed of your right to talk to a lawyer, in a way which you can understand. You’re allowed to speak with a lawyer *and* the adult you choose.

Children, Young Persons, and Their Families Act 1989

The same rights apply whether the police are questioning you at school or out of school.

Who can I choose as my “nominated adult”?

You can choose any adult to support you if you’re being interviewed by the police. It could be, for example:

- Your parent or guardian
- An adult family/whānau member
- A teacher (it’s best if it isn’t the staff member involved in the incident)
- Any other adult of your choosing.

Children, Young Persons, and Their Families Act 1989, s 222.

If you don’t nominate someone, the police can choose an adult for you. It can’t be a police officer.

What if I choose someone that the police officer thinks is unsuitable?

Any adult you nominate must be allowed to support you, unless:

- The police believe the adult may try to interfere with the investigation (for example, by helping you lie to the police)
- They can't be found or won't be available within a reasonable amount of time.

What are my rights when school staff interview me about a crime?

Your rights in this situation aren't covered by legislation, as they are when being interviewed by police. Generally, a school's duties are about education and safety at school. The school shouldn't question you about things that happen outside of school, unless they directly affect the school or your education.

If school staff have a reason to interview you about criminal activity happening at school, you have the following rights:

Principles of natural justice

The school should:

- Act in good faith, without bias. This means they should be fair.
- Give you a chance to tell your side of the story
- Tell you what they're accusing you of and give you time to get a defence ready.

United Nations Convention on Rights of the Child, article 40

You have the right:

- To be presumed innocent until proven guilty
- To be told what you're accused of
- To have your parents or guardians with you
- To have legal or other appropriate help
- Not to be made to give a statement or confess guilt
- To have your privacy fully respected at all stages of the interview.

This means that before questioning you, your school should:

- Tell you what you are being questioned about or accused of

- Ask you if you would like to have your parent, guardian, or another adult to with you. If you don't want your parent there, you could ask for the guidance counsellor or another teacher.

If you feel a teacher or principal was overbearing or forced you into anything, you should tell another adult. This might mean the interview was unfair, and the information they got might not be able to be used against you.

Can I be made to sign a statement or confession?

No. You can't be made to sign a statement, and if the school asks you to, you should think about it carefully.

Sometimes the school might ask you to sign a statement confessing or accusing another student of an offence. Questioning students shouldn't involve written statements or confessions. But if the school does ask you to sign something, you should talk to your parents or another adult and consider:

- The purpose of the document and why you're being asked to sign it
- Whether the document is going to be used in evidence.

It's unlikely that a statement could be used as evidence in court, unless all the legal safeguards had been followed.

If the school plans to use the statement for another purpose (like a board of trustees disciplinary meeting) the principles of natural justice and UN Convention on the Rights of the Child must be followed (see above).

Any staff member that asks you to sign a statement should:

- Explain that you don't have to sign
- Explain where and how the statement might be used
- Suggest that you get legal advice before signing.

You should never be forced to sign something by threats of what will happen if you don't.

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

For parents and caregivers

I have been chosen as a “nominated adult” – what is my role?

Your role is to:

- Do your best to make sure the child or young person understands what the police officer tells them, including their rights
- Support the child or young person before and during questioning
- Support them during a statement, if they agree to make one.

You aren’t just there to observe, but to help and advise the child or young person. You should meet with them privately before the police interview starts, to:

- Gain their confidence
- Understand how they communicate
- Make sure they understand their rights and what is going to happen during the interview
- Learn what they want to say during the interview.

It’s a good idea to encourage the young person to get some legal advice as soon as possible, and to make sure they get it. It’s unlikely that they will know a lawyer, so they should be given the names of some lawyers who they could talk to over the phone or in person. The questioning police officer should be able to give you a list.

During the police interview, you should provide support. You should make sure the young person understands the questions, can answer them as they want to, and is understood properly. Your role is to make sure they are not disadvantaged.

Does the school need to let me know that my child is being questioned by the police at school?

The law is unclear on this. However, it is important to remember that schools must 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 when questioning occurs at a police station. The police must let parents or guardians know when a young person is being questioned at a police station, even if the young person nominates someone else as a support person. You have the right to visit them and talk to them privately.

What if my child says, “I don’t want my parents to be contacted”?

Children, Young Persons, and Their Families Act 1989, s 229.

If the student is at a police station and under 17 years old, the police must inform their parents or guardians. If the student is 17 or over, the police do not have to do this.

At school, whether parents are contacted will be up to the school policy, however, it is the school’s duty to inform parents of matters which, in the principal’s opinion, are affecting students’ progress or harming their relationship with other students.

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

The school’s role is not clearly defined by legislation. If a teacher attends the interview as a young person’s “nominated adult” supporter, they have the duties set out above. If the teacher is not the student’s nominated adult, the teacher has no automatic right to be there. They can be there only if police and the student both consent.

For young people, the consequences of admitting guilt, or getting a conviction, can be very serious. Schools should stress the student’s right to consult a lawyer, and help them to take advantage of this right. Teachers should also be aware of the young person’s right to silence, and make sure that the student is not pressured to respond.

What policy should schools have about police questioning 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 ask for another adult to be present during the interview.

Bullying in schools

What is bullying?

Bullying is behaviour that makes you feel afraid or uncomfortable. It includes not just physical attacks but also verbal bullying and other emotional attacks, such as gossip, name-calling, humiliating or shaming people, and excluding people from groups and games.

There are a range of legal and other protections against bullying, and these apply not just to things that students do but also to teachers' behaviour

With the arrival of texting and social networking websites, bullying in schools has become more sophisticated and more difficult to control – for example, bullies can create false online profiles or post abusive comments or embarrassing pictures or videos. Although “cyberbullying” of this type might start outside school, the flow-on effects can lead to serious problems within the school.

Schools' responsibilities to protect against bullying

What are the school's obligations to protect against bullying?

Schools have various legal and ethical responsibilities to try to stop bullying and to deal with it effectively when it happens:

- **Education policy and guidelines** – School boards are required by government education guidelines to “provide a safe physical and emotional environment for students”. Schools should have an anti-bullying policy and other policies to achieve a safe environment, and should regularly review these policies.
- **Health and safety laws** – Schools have to take every possible step to make sure no physical or mental harm happens to students, teachers and others at school as a result of any “hazard” – which includes people's behaviour. This could also include, for example, the long-term systematic bullying that some children with disabilities may experience. A school that allows bullying

to occur – for example by teachers failing to take action against it – could face prosecution under the health and safety laws. These health and safety requirements apply not just to school boards of trustees but also to governing committees of school boarding hostels.

- **Duty of care under civil law** – Schools also owe a “duty of care” to their students under the civil law of negligence. This means that they have to ensure the safety and well-being of students. A student who suffers harm through being bullied may be able to bring a claim in the courts for a breach of this duty of care. However, in particular cases this right may be barred by the ACC laws. Physical injuries, and psychological harm related to physical injuries, are likely to be covered by ACC, and that means you can’t bring civil claims in the courts for them. A lawyer will be able to help you understand what options may be available in your case. Call into your local Community Law Centre for free legal advice.
- **Teachers’ ethical duties** – 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”. You may be able to use this code as a basis for challenging a teacher’s bullying behaviour.

Accident Compensation Act 2001,
s 317

Code of Ethics for Registered
Teachers, clause 1(f)
www.teacherscouncil.govt.nz/ethics

Complaining to your school about bullying

Reporting the bullying to the school

If you are concerned that you or your child is being bullied at school, you should start by talking to the student’s teacher or the principal.

Find out if the school has a specific anti-bullying policy, and processes for dealing with it. This policy may say who reports of bullying should be made to. You could also ask if the school has a “confidential disclosure system” so that both victims and bullies can talk safely about the bullying.

If the school doesn’t have a specific anti-bullying policy you could emphasise to the school that it has a legal duty to provide a safe environment for students, and encourage them to develop a policy.

If the school does have an anti-bullying policy but it doesn’t seem to be working in practice, you could ask that you meet with the principal and the chairperson of the board of trustees to discuss how to address this.

How the school should respond

The Children's Commissioner has made suggestions about how schools should respond to reports of bullying. In summary, students and their parents should expect that the school will:

- hear and respond to them with sensitivity
- respond appropriately to the problem
- give them feedback
- protect them from any negative consequences resulting from reporting the bullying
- support victims of bullying at the school.

What if we're not happy with the school's response?

If a student and their parents aren't happy about the way the school has dealt with a complaint of bullying, they can make a written complaint to the board of trustees. Parents can ask to be at the meeting where their complaint will be discussed. To get to speak at the meeting, parents will need permission from the chairperson. It may help to take along a support person who's 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 deals with their complaint, they can complain to the Education Review Office, the Ministry of Education or the Children's Commissioner (see Useful Contacts).

Complaining to the police under the criminal law

Can I lodge a complaint with the police?

In some cases, yes. The section below explains when bullying can amount to a criminal offence.

If the police decide the criminal law has been broken, and the student doing the bullying is under 14 years old, the student could be asked to attend a family group conference with their family. Young people aged 14, 15 or 16 can be charged and dealt with in the Youth Court, while those who have turned 17 could face a criminal charge in the District Court (the adult courts). In deciding whether to take action on

a complaint, the police will consider all the circumstances, including how serious the behaviour was.

Whether or not you complain to the police, you should report all forms of bullying to the school.

Can bullying be a criminal offence?

It might be, depending on how serious and damaging the bullying is, and depending also on the context and the type of bullying:

- **Assaults and threats** – It's a criminal assault not only if someone physically assaults you, but also if they threaten to do this and you have a reasonable belief that they can carry out the threat. This would include not just threats made face-to-face but also by, for example, a text message. There's also a separate criminal offence of threatening to kill or injure someone.
- **Intimidation** – The offence of intimidation includes threatening to injure you or damage your property, if the person intends to frighten or intimidate you.
- **Criminal harassment** – Harassment can be a criminal offence if the harasser intends to make you afraid and there's a pattern of behaviour that includes doing any of the followings things at least twice during a 12-month period: following or confronting you, contacting you (including by text or online), interfering with your possessions, or acting in any other way that would cause a reasonable person to fear for their safety. If the harasser doesn't realise you feel distressed or harassed, their behaviour could still be "civil harassment", which means you can apply to the Family Court for a restraining order to stop the harassment; but you can do this only if the harasser is 17 or older.
- **Misusing a phone** – It's a criminal offence for someone to intentionally use a phone to disturb, annoy or irritate you, or to send you a fake instruction or message. It's also an offence to use "profane, indecent, or obscene" language over a phone, or to suggest something to you that's profane, indecent or obscene, if they do this with the intention of offending you.

Crimes Act 1961, ss 196, 306;
Summary Offences Act 1981, s 9

Summary Offences Act 1981, s 21

Harassment Act 1997, s 8

Telecommunications Act 2001, s 112

Cyberbullying – what you can do about bullying through texts and social media

"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 like Facebook, and all New Zealand mobile phone providers, bullying is a breach of the terms of use. If you've been cyberbullied, you can complain to the bully's mobile phone provider or the social networking site. A warning to the bully from the provider that they could be banned from using their phone or the site is likely to be a powerful deterrent to them.

The website **www.netsafe.org.nz** has information on how to report abuse to social networking sites providers.

If the cyberbullying involves physical threats, and you're concerned about your safety, contact the police.

If you've been cyberbullied, you should make sure you save all the bullying messages and pictures. Text messages can be saved on a mobile phone, and you can save screenshots of bullying on websites or online chats. These can be useful if you report the bullying to your school or the police.

Support for victims of bullying

Who can provide support for victims of bullying?

- **Community Law Centres**, including **YouthLaw**, are a good source of free legal advice.
- **Kidsline** (0800 54 37 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, 8 pm to midnight.
- **What's Up** (0800 942 8787): Telephone counselling services for 5–18-year-olds daily, noon to midnight.
- **www.cyberbullying.org.nz** has information for parents, teachers and young people.
- **www.netsafe.org.nz** has information on how to report abuse to social networking sites providers. The site also has resources – like the NetSafe Kit – to help schools achieve and maintain “cyber-safety”.
- See also “Useful contacts”, page 139.

Boarders and school hostels

How school hostels are regulated and managed

Boarding hostels are generally run by independent governing boards, even if the hostel is attached to a state or integrated school. Hostels must be licensed under the Education (Hostels) Regulations 2005.

These regulations set out:

- minimum requirements for hostel premises and facilities, and for hostels' management practices
- options for the Ministry of Education to intervene if a hostel doesn't meet the minimum requirements.

A boarder or a boarder's parent can complain to the owner of a hostel about a breach of these regulations: see below.

Do hostels have to have written policies and rules?

Yes. In managing the hostel the owners have to follow written policies and operating procedures.

Education (Hostels) Regulations 2005, regs 54, 57

The hostel's policies must ensure that its 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 need.

Copies of the policies must be given to parents and boarders who ask for them. The hostel must review their policies at least every three years, and must consult with boarders and parents when they do these reviews.

What's the legal relationship between the hostel and the student/parents?

The relationship between parents, students and the hostel board is a contractual one, like a commercial agreement. Each party agrees to carry out their part:

- The parents agree to pay fees to the hostel.
- The hostel agrees to provide food, support and a safe environment for the student.
- The student agrees to follow the hostel rules.

A student's relationship with the hostel is separate from their relationship with the school, as the hostel and the school are different institutions. So if the hostel cancels a student's boarding contract, this doesn't mean the student is suspended or expelled from the school itself.

Policy on hostel relationships and treatment of boarders

All hostels must have a policy that deals with relationships at the hostel, including relationships between the boarders and relationships between boarders and staff. This policy must help to make sure:

- that boarders are treated with respect and dignity
- that they're given positive guidance promoting appropriate behaviour, and in a way that takes into account each boarder's age and level of maturity
- that they're given positive guidance by the use of praise and encouragement, and that blame, harsh language, and belittling and degrading responses are avoided
- that when boarders are being given direction and guidance they're not discriminated against in any way (including by favouritism or hostility), they're not physically ill-treated or put in solitary confinement, and they're not refused food, drink, warmth, shelter, privacy or protection
- that boarders are physically restrained only in the types of situations specified in the policy and only in accordance with the restrictions in the policy.

When can boarders have contact with their parents?

Parents must be able to see or have contact with their child whenever the child is at the hostel and there's no good reason for the hostel to deny this. A good reason for denying access or contact would include, for example, if a court order forbids it, or if a parent's behaviour would be likely to be disruptive.

Education (Hostels) Regulations 2005,
reg 66

What happens if a boarder breaches a hostel rule?

The law doesn't set out specific disciplinary processes for boarding hostels. Each hostel will instead have its own disciplinary policies and processes.

The hostel has a contractual obligation to follow the policies and processes it has adopted, as part of the hostel's contractual relationship with the boarder and parents. However, parents and students can also rely on an implied term of their contract that the hostel will behave fairly and reasonably.

The hostel should have provided the student and parents with a list of hostel rules. If for example the student drank alcohol at the hostel, and this is specifically forbidden by the rules, the hostel should:

- interview each student involved in the incident and ask them for a response
- consider each student's response without prejudging whether or not they're guilty
- reach a decision based on the facts and evidence.

If the hostel rules clearly state that drinking alcohol can result in the student being expelled from the hostel, and the student is given a fair hearing, the board may be justified in cancelling their contract with the student and expelling them from the hostel.

The hostel's disciplinary policy may include an appeal procedure that you can use if you're not happy with a disciplinary decision.

Can a student be disciplined by the school for breaking hostel rules?

The hostel and the school are separate institutions, and each will have to follow a proper process for dealing with misbehaviour according to their own rules. A student can't be automatically expelled from school simply because they've been expelled from the hostel. Unfortunately, being expelled from the hostel often means the student won't have a suitable place to live and so won't be able to continue at the school.

For the formal suspension process, see page 72.

Education (Hostels) Regulations 2005, regs 67, 68, 75

If a boarder has breached the hostel rules, the school principal will need to consider whether any school rule has also been breached. For example, if the boarder drank alcohol in the hostel and the school rules ban alcohol from the school premises, the principal will need to consider whether the hostel is part of the school premises. If the principal decides a school rule has in fact been broken, they'll need to decide what action to take. If they formally suspend the student, the student will need to appear before a disciplinary hearing with the school board of trustees.

What if the hostel breaches the hostel regulations?

Boarders and their parents can complain to the owner of the hostel, either verbally or in writing, if the hostel breaches the hostel regulations – for example, if the hostel building and rooms aren't up to the minimum standards, or if the school doesn't have the required written policies in place or if they haven't followed their policies.

All hostels must have a complaints process in place that is fair, simple, speedy and efficient.

If hostels don't comply with the rules and minimum standards in the regulations, the owner can be prosecuted and fined up to \$10,000.

Education (Hostels) Regulations 2005, regs 68, 69

How will the hostel deal with my complaint?

When a hostel owner receives a complaint from you, they have to:

- put the complaint in writing, if you made it verbally
- give you a written acknowledgement of your complaint within five working days
- tell you about their internal processes for dealing with complaints, and give you a copy of this information if you ask for it
- give you a copy of all information they have that may be relevant
- put their response to your complaint in writing.

The hostel owner then has 10 working days to either make a decision about the complaint or let you know you that they need more time. If they do take more time, they must still make a decision as soon as possible.



INFORMATION AND PRIVACY



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Getting information from the school

Students getting information from the school

Can students get access to their own school records and other information?

Yes. If you're a student, you're entitled to access to your school records and other information that the school holds about you, unless the school has a right to withhold the information on one of the specific grounds in the Privacy Act or some other Act. The grounds on which schools can withhold information include, among others:

- if you're under 16 and the school thinks it wouldn't be in your interests to give you the information
- if the information was supplied by some other person and the school promised them that the information or that person's identity, or both, would be kept confidential.

If the school refuses to give you the information, they have to tell you why.

Schools are allowed to give you a summary of the information. If there is a reason for withholding some of a document, the school can also provide you with some of the document only, after deleting the other parts.

If you think the school has withheld information from you wrongly, you should complain to the school first. If you're not happy with the school's response, you can then complain to the Privacy Commissioner.

Privacy Act 1993, ss 6 (principle 6), 29, 42(1)(e), 43(1), 44

If there are mistakes in my school records, can I get them corrected?

If you think any of the information about you is wrong, you can ask the school to correct it. Write out a statement correcting the mistakes, and give this to the school. The school doesn't have to make the change if it disagrees that the information is wrong, but you can require the school to attach your statement to your file, so that both the school's information and your statement will always be read together.

Schools have to take all reasonable steps to make sure all the information they hold about you is accurate, up-to-date, complete, relevant and not misleading.

Privacy Act 1993, s 6 (principles 7, 8)

Parents getting information from the school

How do parents and others go about getting information from the school?

If you want information about your child from their school, or if you're a non-parent wanting information about a school (such as its policies), you should ask for this under the Official Information Act 1982 (OIA). (Only the students themselves have a right to their school records under the Privacy Act.)

Under the Official Information Act, the starting position is that the school has to make the information available. However, schools can withhold information if there are good reasons for doing so – for example, to protect the privacy of a student who has said things in confidence to a school counsellor, or if giving information to parents could have a serious effect on a student. Schools should get a student's consent before giving out information about the student to their parents.

When people other than parents ask for information, the school will also need to consider whether there's a strong public interest in making the information available, one that outweighs the student's interests. For example, if a reporter asks a school to explain a particular incident by providing information about particular students, the school would need to take care around giving out this information.

If a school refuses to give out information after an OIA request, the person who asked for the information can take the matter to the Ombudsmen.

When should parents be told about problems with a student?

The principal has to take all reasonable steps to tell a student's parents if there are problems that are preventing or slowing a student's progress through school, or that are harming the student's relationships with teachers or other students. Both parents must be told, even if the student only lives with one parent. "Parent" here also includes guardians and immediate caregivers.

Parents are unlikely to be contacted for minor incidents like talking in class or being late one time, but if the problem keeps occurring the parents should be told.

Education Act 1989, s 77(b), and ss 60, 92 ("parent" definition)

Note: Schools, including boards of trustees, are bound by the rules in the Privacy Act 1993 for dealing with information. Each school must also appoint a privacy officer, to deal with information requests and generally encourage the school to comply with the privacy laws.

Do schools need a student's consent to send school reports to their parents or caregivers?

No. Schools have to report on a student's progress and achievements to the student and to 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.

National Administration Guidelines (NAGs) 2, 2A

Who does the school have to give school reports to?

Schools can provide reports to both parents, but usually they only provide them to the main caregiver.

If a student asks the school not to give out information about them to one of their parents, the school will need to consider the obligation to inform parents of anything the principal thinks is preventing or slowing the student's progress through the school or harming the student's relationships with teachers or other students.

Education Act 1989, s 77(b)

Can one parent stop the school giving information to the other parent?

No, not unless they have a court order.

If the principal believes there are problems that are slowing a student's progress or harming their relationships at school, they must take reasonable steps to inform the student's parents. It makes no difference if the parents are separated. Both parents are entitled to the same information about their child, unless it isn't reasonable to expect the school to provide the information to both – for example, if one of the parents lives overseas and can't be contacted. "Parent" here also includes guardians and immediate caregivers.

Education Act 1989, s 77(b), and ss 60, 92 ("parent" definition)

Can a student stop the school passing their records on to a particular parent?

A student can ask the school, but schools don't always have to agree to this. There may be a written parenting agreement or a court order that deals with this, in which case the school would need to comply with the agreement or order. In other cases the school's response would depend on the particular circumstances – including whether the parent is a legal guardian of the student, the student's age and level of maturity, whether there's a public interest in releasing the information, and the obligation to keep parents informed about any problems at school.

Health Act 1956, s 22F; Health Information Privacy Code 1994, rule 11

Do I have the right to see health information that the school holds about my 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 the child is under 16.

Occasionally, if the school is satisfied that giving out the information isn't in the student's interest and is more likely to harm the student, the school doesn't have to release the information – for example, if giving it out might be a breach of trust and could mean the student won't be willing to access confidential counselling, sexual health services, or other health facilities. If your request for information is denied, you can complain to the Privacy Commissioner.

It's best if schools encourage students to share the information themselves with their caregivers wherever possible.

Do I have the right to see 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 and no obligation to pass on anything the student tells the counsellor.

School counsellors have to comply with the Privacy Act and if they belong to the New Zealand Association of Counsellors, they also have to comply with the association's Code of Professional Ethics. The Code makes it clear that all communication between a counsellor and client must be kept confidential, unless the counsellor believes there's a clear and imminent danger to the client or someone else. Only in limited circumstances can school counsellors notify the police or 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.

Schools collecting your information

What information can schools collect?

Schools can only collect information that's necessary for a school-related purpose. This would include:

Privacy Act 1993, s 6 (principle 1)

- academic records from previous schools
- names and contact details of parents and guardians
- any family circumstances that might affect a student's progress – for example, parents having recently separated, or the death of a family member.

The school's responsibilities when it collects information

When schools collect information from you, they must explain the following things to you:

Privacy Act 1993, s 6 (principle 3)

- the fact that the information is being collected
- why it's being collected
- who'll see the information
- where the information will be kept
- whether the person is legally required to provide the information
- any consequences if they don't provide the information
- the person's right to have access to the information and to ask for it to be corrected.

These things should be explained to you before you give the information or, if that's not practical, then as soon as possible afterwards.

However, there are some situations when the school doesn't have to explain those things – for example:

- if you've recently given similar information
- if the information is collected for statistical or research purposes and won't be used in a way that will identify you personally.

Schools storing and protecting your information

What obligations do schools have to protect student information?

Privacy Act 1993, s 6 (principle 5)

Schools must use reasonable safeguards to prevent students' information being lost, being misused, or being accessed or given out when this isn't authorised. For instance, a teacher shouldn't leave a student's private information lying on the teacher's desk while the teacher isn't there so that students or other school staff could see it.

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

Privacy Act 1993, s 6 (principle 9);
Public Records Act 2005

Schools shouldn't keep student information that they no longer need. There are, however, legitimate reasons for holding on to some information – for example, state schools are legally required to keep some school records for archival purposes.

If a school wants to keep student information so that that they can provide references and maintain a record of ex-students, they need to get the former student's permission.

When schools can give your information to others

What information can a school pass on if I transfer to a new school?

Education Act 1989, s 77A(2)

Schools are required to collect enrolment information and to pass it on to any school that you transfer to. This includes your academic record. However, schools should consider exactly which information they need to send on, and shouldn't transfer everything in the your record. For example, it may not be appropriate to forward information about your family circumstances or religious beliefs without first getting your permission.

Can a school give information about a student to government agencies?

Schools usually need a student's permission before they can give out information to an outside agency or individual.

However, in certain situations schools are legally permitted – and sometimes required – to give out information:

- **Child, Youth and Family** – A school must release information relevant to care and protection issues if a Care and Protection Coordinator from Child, Youth and Family requires it to.
- **Reporting abuse to police or CYF** – If any person, including a principal or teacher, believes that a child under 17 has been abused, or is likely to be abused, they can report this to either the police or a social worker from Child, Youth and Family. The person making the report will be completely protected against any privacy complaint.
- **Orders from the courts** – 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 documents or other items from the school.

Children, Young Persons, and Their Families Act 1989, s 66

Children, Young Persons, and Their Families Act 1989, ss 15, 16

Search and Surveillance Act 2012, s 6

What about giving out information to other people outside the school?

Schools must look after students' information and not pass it on to anyone outside the school, unless they're legally required or permitted to do this. Schools can release information if, for example:

Privacy Act 1993, s 6 (principle 11)

- giving out the information is one of the purposes for which the information was collected in the first place (for example, passing on a student's academic record to their new school)
- giving out the information is necessary to enforce the law (for example, giving the police details about a student caught smoking marijuana at school, including the student's name and address)
- giving out the information may prevent or lessen a threat to the student's health or safety or the health or safety of others
- giving out the information is required or permitted by some Act other than the Privacy Act.

Students and confidential school counselling

Can school guidance counsellors pass on things I tell them?

No. Anything you tell a school guidance counsellor is confidential and they can't tell other school staff or your parents, unless you agree to particular things being passed on.

There's an exception to this when there are serious issues that justifies the counsellor passing on the information. They can do this if they believe on reasonable grounds that:

- there's a serious danger, in the immediate or foreseeable future, to you or someone else, or
- you're likely to be harmed or abused (whether physically, sexually or emotionally) or neglected, and you're under 17.

What can I do if a guidance counsellor passes on things I've told them?

In these cases you can complain to the Health and Disability Commissioner, the New Zealand Association of Counsellors, or another professional body the counsellor belongs to.

You can find out about how to complain about a counsellor, including about a breach of confidence, by going to the website of the Association of Counsellors – www.nzac.org.nz

Complaining about privacy or information issues

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

If you have a concern about a privacy issue, you should contact the school first and speak with the school's privacy officer. You should tell the school what you would like done to help put the matter right – for example, you might want an apology, or to have inaccurate information corrected.

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

For contact details see "Useful contacts", page 139.



PARENTS AND SCHOOLS



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Your right to be kept informed by the school

When should I be told about my child's progress and any problems?

Schools have to report on a student's progress and achievements to the student and to 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.

The principal has to take all reasonable steps to tell a student's parents if there are problems that are preventing or slowing a student's progress through school, or that are harming the student's relationships with teachers or other students. Both parents must be told, even if the student only lives with one parent. "Parent" here also includes guardians and immediate caregivers.

If you feel the school hasn't kept you well-informed, ask the principal for an explanation. Make sure the school knows how to contact you, and make it clear to them that you want and expect the school to keep you informed.

National Administration Guidelines (NAGs) 2, 2A

Education Act 1989, s 77(b), and ss 60, 92 ("parent" definition)

For more about parents getting information from the school, see page 116.

Separated parents

If my child doesn't live with me at all, can I still access information held at their school?

Yes. All parents, including those who don't have day-to-day care of their child, and all non-parent guardians, should usually:

- be given copies of their child's school reports
- be able to participate in PTA and other school functions
- get information about school trips, camps and other activities
- be contacted by the school if urgent medical treatment is necessary
- be able to attend parent-teacher interviews (parents who are separated can ask that these be held separately for each parent).

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.

However, schools will have to follow any court order or written parenting agreement that deals with the release of information to either parent.

For more details about this area, see "Parents getting information from the school", page 116.

What happens when separated parents can't agree on aspects of their child's schooling?

If parents can't agree, either of them can apply for a Family Court order to decide the issue.

This may include:

- **Religious education** – Schools can generally rely on one parent's permission for the child to attend religious education. However, if there's a disagreement, the school should try to get permission from both parents, or follow any relevant court order.
- **Photographs** – Schools can provide photographs to parents, unless there's a court order preventing it. In one case where a father who didn't have day-to-day care asked for photographs of his child, the judge refused this, ruling that the father's request was for his own benefit, not the child's, who was actually frightened of him.

L v H (1996)

Trespass: Being banned from school grounds

Can I be ordered off school grounds?

Any occupier of a property, or one of their employees, can legally order a person to leave and stay off the property, and this means that the school principal, or a board member or any staff member probably has the authority to do this. Other people – another parent, for example – won't have the legal authority to do this.

There are two kinds of trespass notices, warnings to leave and warnings to stay off. Both kinds can be given either verbally or in writing. They don't have to follow a set form or use a set form of words.

Being warned to leave

If you've warned to leave you must leave the school grounds immediately. If you refuse, this is a criminal offence. However, once you leave, you're free to return later, unless you've also been given a warning to stay off.

Being warned to stay off

A warning to stay off bans you from returning to the school for two years. If you do come back within that time, it's a criminal offence.

Trespass Act 1980, ss 3-5

Trespass Act 1980, s 3

Trespass Act 1980, s 4

If the school intends to warn you to stay off rather than simply warning you to leave, they should be clear that this is what they mean. If they simply say "You have to leave", this probably isn't enough to ban you from returning to the school for two years. It is best if they advise you in writing, but they could also say something like: "You must leave and you are not welcome back."

Russell v Police (1981) 1 NZCPR 349.

What are the penalties for breaching the trespass laws?

If you're convicted in court of staying on the school grounds after being warned to leave, or of coming back to the school within two years after being warned to stay off, you can be fined up to \$1,000 or jailed for up to three months.

Trespass Act 1980, ss 3, 4, 11(2)(a)

However, you won't be convicted if it was necessary for you to be on the school grounds because there some emergency, or for your own protection or to protect someone else.

FIXING PROBLEMS AND MAKING COMPLAINTS



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It's usually a good idea to try to resolve your problem within the school first, as there's likely to be an ongoing relationship between you, your child and the staff.

It can be helpful to discuss your issue with someone else – a friend, family, or someone from the Student Rights Service (0800 499 488).

If you're unhappy with the school's response, you may want to take your complaint to an outside organisation – see page 132.

How to resolve disputes at school

Dispute resolution is when two parties try to resolve an issue between them. For example, when a parent wants to talk to a teacher about classroom bullying, or when a principal organizes a meeting with a student about a stand-down.

There are many ways to approach these kinds of disputes. This section will give some tips for getting the best result at school.

Get to the heart of the issue

What's important to you?

Before meeting with the other person, you should try to think about what is really important to you. Is it staying in school? Feeling safe? Getting more help?

For example, you might feel very angry at a teacher and want to make a formal complaint. However, try to get to the heart of the issue. Why are you angry? Are you feeling bullied by the teacher? Do you not feel heard? Sometimes making a complaint is not the best way to resolve these kinds of issues. Perhaps you could speak to the teacher and explain how you or your child is feeling. Try to think about what is best for the student-teacher relationship.

What's important to the other side?

Also, try to think about what is important to the other side. You might even want to ask them why they are taking a position. For example, if the principal wants to punish your child for bullying, you could ask them: "What's your basic concern in wanting to stand my child down?" Perhaps the principal is mainly concerned about keeping other kids safe. You might be able to think of ways to ease this fear. For example, if your

child is willing to go to anger management counseling, the principal might not think a stand-down is necessary.

Foster relationships

Remember that there is an ongoing relationship between parents, students and the school. The way that problems are dealt with can have an effect on these relationships going forward, and might have consequences for the way problems are treated in the future. It’s best if you can deal with issues in a way that helps, rather than hinders, these relationships.

When meeting with a teacher or principal, it’s a good idea to build a good relationship as soon as possible. For example, you could call them before the meeting and ask if there’s anything you can bring or do to help the meeting to run smoothly.

Don’t blame

When talking about a problem, try to separate the symptoms from the person you’re talking with. Try not to blame the other side for the problem. This can be very difficult. But even if blame is justified, it’s usually not very productive in getting to a solution. Try to stay focused on the result you want.

For example

NOT	INSTEAD
“You’re not protecting our child from bullying. You’re failing your duties.”	“Our child has been bullied three times this week. We want your advice on how we can stop it. Do you have any ideas?”
“You’ve been mistreating our family, and now we can’t trust you.”	“We feel very upset. We’re worried that an agreement won’t be kept even if we reach one. Rational or not, that’s our concern. Do you feel the same way?”

Acknowledge emotions

With school issues, you're likely to be dealing with difficult and frustrating situations, where emotions are running high on all sides.

If you become emotional in a meeting, it can help to ask to take a break. You can call someone, go for a quick walk, or sit outside until you feel better. For this reason, it can be very helpful to have a support person with you, who can remain calm and take control if you need them to.

If the other side is becoming emotional or frustrated, you could also suggest a break. Even though it's hard, it is also helpful to try to listen quietly while they describe their grievances. It helps to keep frustration from building, and hopefully they'll do the same for you.

Educate

If the principal, teacher or board has the wrong idea about something, you can look for ways to educate them. Their fears, even if mistaken, are real and can influence their decision. It's good if you can get them on the right track.

For example, if your child has ADHD, the board might be worried about the effects. It could be useful to bring information from your doctor, so that they have accurate information.

Make decisions easy

After you've tried to get to the heart of what the other side wants, it's very helpful to make your suggestions consistent with their values. They might be worried about being inconsistent with past actions, so it's a good idea to show them that the decision is good for them.

For example, a school might be known for its zero-tolerance policy on bullying. It also has a duty to keep other students safe. In a meeting, recognize this and make suggestions that will ensure other students' safety while keeping your child in school.

Making a complaint to an outside organisation

Note that many of these organisations will only look at complaints if you have tried to resolve the issue through the school but are unhappy with the outcome. If you haven't talked to your school first, they're likely to send it back to you (unless you've got a good reason why you can't talk to the school, like a safety concern).

Many will also not respond to anonymous complaints.

Office of the Ombudsmen

Complaints about decisions by boards of trustees and official information complaints

The Ombudsman can investigate complaints about decisions made by your board of trustees. If the Ombudsman decides the board acted unfairly, it can make a recommendation to the school. The Ombudsman can't make the school accept its recommendation, but most are accepted.

This is also who you can complain to if a school denies your request for official information.

Education Review Office (ERO)

Complaints about the running of the school

ERO reviews the running of each school about once every three years. Generally, ERO doesn't deal with individual complaints. However, if several parents make similar complaints, ERO will make a note and look at the issue when they next visit. In extreme cases, they can bring the next review forward or organise a special review.

All complaints are noted, and could affect the school's ERO report, which is a public record.

If your problem involves	Who can help
A serious issue with a teacher	Education Council
The curriculum or teaching and learning	Ministry of Education or the Education Review Office
Safety of school equipment or school buildings	Ministry of Education or the Education Review Office
Decisions of the board of trustees	Office of the Ombudsmen
Privacy complaints and breaches	Privacy Commissioner
Official information complaints	Office of the Ombudsmen
Counsellor issues	New Zealand Association of Counsellors
Discrimination	Human Rights Commissioner
Legal issues affecting children and young people under 25	YouthLaw
Education law issues (like the ones in this book)	Student Rights Service
General issues concerning the welfare of children and young people	Children’s Commissioner
Safety or protection or children and young people	Child, Youth and Family
Physical or sexual harm at school	New Zealand Police

Sample letters

Letter to principal requesting reasons for suspension and copy of principal's report

[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

[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]

Always keep a
copy of each letter
for yourself!

Some key terms

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.

Student Rights Service (formerly the Parents Legal Information Line)

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 follow 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.

Sources and further reading

We found the following websites, books and articles very useful when we were preparing this book:

- YouthLaw website: www.youthlaw.co.nz
- Privacy Commission website: 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

Community Law

Your local Community Law Centre can provide free initial legal advice and information.

www.communitylaw.org.nz

Advocacy Centre IHC National Office

PO Box 4155

Wellington 6140

Tel: (04) 472 2247

Free Phone: 0800 442 442

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

Human Rights Commission

PO Box 12411

Wellington 6144

Tel: (04) 473 9981

Infoline: 0800 496 877

www.hrc.co.nz

Ministry of Education

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

www.minedu.govt.nz

New Zealand Association of Counsellors

PO Box 165

Hamilton 3240

Tel: (07) 834 0220

www.nzac.org.nz

New Zealand Teachers Council

PO Box 5326

Wellington 6145

Tel: (04) 471 0852

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

140 PROBLEMS AT SCHOOL

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

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

Student Rights Service

PO Box 24005
Wellington 6142
Free Phone: 0800 499 488
www.communitylaw.org.nz

Special Education

Special Education Information Line: 0800 622 222

YouthLaw

0800 UTHLAW (884 529)
Level 1, 145 St George Street, Papatoetoe
PO Box 200020
Auckland 2156
www.youthlaw.co.nz