

School Board of Trustees and Principal's decision to suspend student not consistent with principles of natural justice

Legislation	Ombudsmen Act 1975
Ombudsman	Anand Satyanand
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Suspended student's parents complained about the conduct of his suspension—Ombudsman's jurisdiction confined to the process followed by the Board—parties disputed duration of Principal's interview with student, ability of Principal to contact parents about suspension and comments allegedly made to the student by the Principal during the interview—Ombudsman's investigation unable to resolve these issues and no determination as to reasonableness of Board's actions able to be made—Ombudsman satisfied that Principal's request for student to write down his account of incident in accordance with principles of natural justice—however Ombudsman found Board acted unreasonably by dismissing parents' concerns about Principal's decision to interview student in absence of parents—Board acknowledged Principal's decision not consistent with principles of natural justice and agreed to review its 'Interviewing of Students' policy—no formal recommendation made

A student was suspended from an intermediate school after he allegedly indecently assaulted another classmate on a school camp. The incident was dealt with at the time by the student's teacher who apparently considered that it had been resolved satisfactorily and therefore saw no need to report it to the Principal or advise the student's father who was attending the camp as a parent helper. However, the following week a parent whose child was at the camp contacted another teacher at the school to report her concerns about the incident. The Principal subsequently interviewed the student and decided to suspend him. The parents were dissatisfied with the Principal's decision and instructed their solicitor to write to the Principal to state their objections and request that their son be allowed to return to school. The letter was referred to the Board of Trustees and the Chairman declined the request.

At a special meeting held a week later to consider the student's suspension, the Board decided to lift the suspension on the condition that he write a letter of apology and attend a meeting with the Deputy Principal. Notwithstanding the Board's decision, the parents wrote to the Board to complain about the Principal's handling of their son's suspension. In particular, they believed that the suspension was unjustified and unwarranted and the manner in which their son was treated was 'grossly unfair and illegal'. The Board disagreed with this assessment and declined to take any further action.

The parents were not satisfied with the Board's response and duly complained to the Office of the Commissioner for Children, which forwarded the complaint to the Ombudsman.

The Ombudsman advised the complainants that his investigation would not extend to making a judgment on what exactly occurred when the incident leading to the suspension of their son took place, nor could he make any finding as to what was said by either party during the Principal's interview of their son. Rather the focus of his investigation would be whether the Board's processes were in accordance with the law relating to school suspensions; and whether it was carried out in a fair and unbiased way. The Ombudsman therefore asked the parents for further submissions regarding their particular complaints. The parents advised that they had a number of specific issues concerning the Principal's conduct towards their son: they believed that their son was interviewed for 2 hours alone by the Principal with no opportunity given to have his family or another independent person present for support; neither parent was informed of the allegations against their son until after the decision to suspend him had been made; they believed the Principal used unacceptable and intimidating tactics when interviewing their son; and they believed it was unfair for the Principal to ask their son to implicate himself by instructing him to write down his version of the incident.

The parents considered that all of these actions breached their son's rights by being contrary to the principles of natural justice. They contended that it was therefore unreasonable for the Board to accept the Principal's actions as appropriate.

The Ombudsman accepted these matters as falling within his jurisdiction and wrote to the Board advising of his intention to investigate. As a first step, he requested a report from the Board commenting on the issues raised by the parents and a copy of the minutes of the Board meeting at which the parents' letter was discussed together with copies of any other relevant correspondence, reports or memoranda.

In response, the Board maintained that there had been no breach of Board Guidelines or natural justice. It said that the student was interviewed for only five minutes by the Principal and spent the rest of his time completing his afternoon studies in a room beside the main office. The Board disputed that the Principal had used intimidating tactics when interviewing the student, saying that the comments relied upon by the parents to support this view had been taken out of context. The Board also maintained that the Principal's request for the student to write down his version of events was in accordance with its 'Guidelines on Interviewing Students', as written in the school Staff Handbook. The Board provided the Ombudsman with a copy of these Guidelines. He considered its contents and noted that one of the Guidelines appeared to be of particular relevance in this instance, namely: *'Should it become necessary to interview a student regarding a concern, it is desirable to ask the student*

to write their account of what happened to supplement the statement written by the teacher/Principal.'

After considering the Board's comments and reviewing the documents he had been provided with, it seemed to the Ombudsman that the emphasis in this particular Guideline was on offering the student an opportunity to give their view of an incident, rather than trying to compel a 'confession' from the student. Viewed this way, the Ombudsman considered that the Principal's actions could be seen to embody one of the principles of natural justice, namely the requirement to give each person the opportunity to adequately state their case. In any event, the student's statement was only one part of the information available to the Board when it reviewed his suspension and decided to lift it with conditions. The Board hearing also provided an opportunity for the student or his representatives to amend, explain or supplement the statement should that have been considered necessary.

The Board also advised the Ombudsman that the Principal had tried to inform the parents of the incident but had not been able to make contact until after school. The Ombudsman sought the parents' further comment and was advised that the student's mother worked nearby and had been available by telephone on the afternoon in question. As a result, the Ombudsman was unable to make a determination as to what exactly had happened.

The primary issue for the Ombudsman's consideration therefore turned to whether it was reasonable for the Board to support the Principal's decision to proceed with his interview with the student, despite not having been able to contact his parents to advise them of the situation and provide them with the opportunity to be present at the interview. The Ombudsman noted that both the Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999 and provisions of the Education Act 1989 relating to the suspension of students are silent on the question of whether a student must be asked whether they want to have a parent or support person present when being interviewed about an alleged misdemeanour. However, it was the Ombudsman's view that this did not mean the principles of natural justice could be disregarded by schools with respect to interview procedures, or that they could not be taken into consideration in the Ombudsman's evaluation of the Board's response to the complaint. Rather, it simply meant that the Ombudsman's determination would be based on what seems reasonable as opposed to what is required to satisfy a specific law pertaining to the conduct of interviews. The Ombudsman considered the following factors to be relevant.

- Section 13 of the Education Act, which refers to the principles of natural justice by stating:

'13 Purpose The purpose of the provisions of this Act concerning the standing-down, suspension, exclusion or expulsion of a student from a state school is to

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(a) Provide a range of responses for cases of varying degrees of seriousness; and

(b) Minimise the disruption to a student's attendance at school and facilitate the return of the student to school when that is appropriate; and

(c) Ensure that individual cases are dealt with in accordance with the principles of natural justice.'

- The documentation provided to the Ombudsman about the incident, which set out the teacher's response when the incident was initially reported. This included hearing the victim's complaint, interviewing the student who took part, obtaining an admission, discussing with the student the effects of his behaviour and instructing the student to apologise. It did not include advising the student's father, who was also at the camp, of the incident.
- The submission made to the Board on the student's behalf that the student had informed his father of what had taken place after his father saw him talking with the teacher after the incident. The father considered the matter at an end, particularly since the teacher did not then raise it with him.

In the circumstances, it was difficult for the Ombudsman to see why the eliciting of any further information from the student could not have waited until his parents had been informed, given the student had previously admitted to the alleged assault.

Given the disagreement between the parties as to the facts, the Ombudsman's investigation was not able to resolve the issues of whether attempts had been made to contact the student's parents prior to his interview with the Principal, the length of the interview itself and the Principal's comments during the interview. As a result, the Ombudsman advised the parents he was unable to form a view as to whether the Board's response to the complainants was unreasonable in this respect.

With regard to the student being asked to write a 'statement', the Ombudsman was satisfied that the school had treated the student's behaviour as 'serious misconduct' in terms of the Education Act provisions for suspension of students rather than as a possible criminal/illegal offence and that the student was being asked, not to incriminate himself, but simply to give his side of the story. As a result, it was the Ombudsman's view that it was not unreasonable for the Board to decide that the Principal had not breached the principles of natural justice by asking the student to write down his version of the incident.

However, while the Ombudsman accepted that in the case of minor misdemeanours, it may be appropriate for teachers to speak to the student immediately without the presence of a support person, he did not consider this provided grounds for the Board to overlook the need to ensure that a pupil facing an allegation of serious misconduct is given the opportunity to have a support person present at the interview. In this particular case, it was the Ombudsman's view that the Principal's decision to interview the student in the absence of his parents was contrary to the principles of natural justice. As a result, he formed the view that it was unreasonable for the Board to dismiss this aspect of the original complaint.

After considering the Ombudsman's view, the Board accepted that the Principal's decision was not consistent with the principles of natural justice and that a support person should have been present. The Ombudsman therefore did not consider it necessary to make any formal recommendation. However, he was aware that the Board had received correspondence from the Ministry of Education recommending that it review its policy on the interviewing of

students *'to see that the policy is aligned with the principles of natural justice'* and he commented that having a support person present with a student during any future interviews would ensure fairness and minimise the risk of complaints about the process. Also, as the incident which led to the student's suspension was alleged to have been provoked by an episode of bullying, the Ombudsman suggested to the Board that it may be appropriate for it to consider whether the school has adequate measures in place for dealing with such behaviour.

The Ombudsman made it clear that his view was not intended to query the validity of the suspension imposed on the student. While there are occasionally situations where the unfairness of the process renders a suspension invalid, he did not consider that to be the case in this instance. In any enquiries an Ombudsman may undertake, the focus is on whether the school correctly followed the applicable legislative provisions and whether the principles of natural justice were observed. The object of the investigation is to enable the Ombudsman to form a view as to whether the exclusion process was carried out fairly, and whether the decision to exclude appears to have been lawful and reasonable. An Ombudsman will generally not substitute his decision for that of a School Board of Trustees as to whether a particular decision should have been made, but if it should appear that any unlawful or unreasonable actions on the part of the Board or its employees may have invalidated a decision to suspend, the Ombudsman can make a recommendation that the Board reconsider the matter. However that is the extent of his powers. He has no power to enforce the recommendation or direct that the Board make a particular decision.

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