



## Omission by school board to consider behavioural support prior to exclusion of student

<b>Legislation</b>	Ombudsmen Act 1975, Education and Training Act 2020
<b>Agency</b>	School Board
<b>Ombudsman</b>	Peter Boshier
<b>Case number(s)</b>	560447
<b>Date</b>	27 June 2022

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*Complaint made about a decision by School Board to exclude a student under the Education and Training Act 2020 – investigation found the decision was not unreasonable but Board’s omission to examine whether the student provided with adequate support in relation to behavioural concerns was unreasonable – Ombudsman recommended the Board amend the School’s practices, policies, and guidelines.*

### Summary

In term three, a School Board (the Board) excluded a student for ‘*continual disobedience*’ under the Education and Training Act 2020 (the Act).<sup>1</sup> The Chief Ombudsman found the Board failed to properly examine the level of support offered to the student before excluding them. However, on the facts of the case, this omission was not enough for the Ombudsman to conclude that the suspension and exclusion itself was unreasonable. The Ombudsman recommended the Board improve the School’s suspension and exclusion policy and practice, to ensure that it specifically examines the support offered to students before making a decision.

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<sup>1</sup> Sections 80 and 81 of the Education and Training Act 2020. The authority to suspend then exclude a student under 16 years of age was previously found in sections 14 and 15 of the Education Act 1989.

## Background

The student's behaviour had been an issue at the School since the start of the school year. The student's pastoral records contained multiple entries each month regrading behavioural concerns, including not doing homework, acting up in class, disrespecting teachers, being involved in vaping, and not bringing required gear to school. The student had received multiple detentions for these behaviours, and there had also been a number of unexplained absences.

Senior staff called and spoke to the student's parent several times about the behaviour. The School also sent several letters home about the behaviour. After one particular incident, the School gave the student and his parent a 'Final Warning' letter stating:

*In relation to matters such as smoking and truancy and repeated disobedience or non-adherence to school rules the policy of the [School] is, on the first occasion, for a senior staff member to interview the student concerned and provide a final warning. If there is a further breach of the school rules following the final warning it is likely that the [Principal] would consider suspension as a disciplinary option.*

Several weeks after receiving the Final Warning, the student was caught vaping by a school staff member. The Principal suspended the student on the grounds of 'continual disobedience' after meeting with the student and their parents. As required by the Act, the Board met to consider the suspension (the suspension hearing). The Board then decided to exclude the student from the School.

## The Education and Training Act 2020

The Education and Training Act 2020 came into effect on 1 August 2020. It incorporates and replaces the Education Acts 1964 and 1989. It also incorporates the Education (Pastoral Care) Amendment Act 2019, the Education (Vocational Education and Training Reform) Amendment Act 2020, and parts 7, 7A and 7B of the State Sector Act 1988. The Act retains large parts of existing education legislation, subject to various updates, including those that relate to school discipline.

Sections 78-88 of the Act cover stand-downs, suspensions, exclusions and expulsions. The *Education (Stand-Down, Suspension, Exclusion and Expulsion) Rules 1999* (updated on 1 December 2020) regulate the practice and process to be followed by boards, principals, students, and parents (and other persons) concerning school discipline.

Section 80(1)(a) of the Act states that a principal can suspend a student if they are satisfied on reasonable grounds that the student's continual disobedience is a harmful or dangerous example to other students at the school. The board must then meet within a seven day period to consider the suspension (section 81(5) of the Act). Under section 81(1)(c) of the Act, if the circumstances of the case 'justify the most serious response', then the board may exclude the student from the school, thus requiring the student to enrol at another school.

## Investigation

The Ombudsman investigated whether the Board followed a reasonable process in relation to the suspension hearing and whether the decision to exclude the student was sound. This included the level of support provided by the School to the student in the months leading up to the suspension and exclusion.

### Decision to suspend and exclude

As noted above, the student's pastoral record showed their behaviour had been an issue since the first term. The student had received repeated warnings about behaviour, and there was contact several times with his parent, including a Final Warning letter (in keeping with the School's policy). The School had made it clear that repeated disobedience and further non-adherence with the required standard of behaviour may result in suspension being considered. (It is important to bear in mind that a breach of school rule or policy is not in itself grounds for suspending a student, but rather a relevant factor to take into consideration). However, the student was then caught vaping despite a Final Warning letter about this type of behaviour. Overall, the Ombudsman was satisfied that this was a case of '*continual disobedience*', consistent with section 80 of the Act.

Having considered all the circumstances, the Ombudsman formed the opinion that the Board's decision to suspend, then exclude, the student was not unreasonable.

### Board's consideration of support provided to student

The Ombudsman was however concerned about the lack of evidence in the pastoral record that the School tried to proactively engage with the student and their family about the student's behaviour before the suspension – and the extent to which the Board had turned its mind to this issue before making its decision.

The legislative and policy framework makes it clear that schools are under a positive obligation to actively support students, and that exclusion (or expulsion in the case of a student over 16) is a last resort. For example:

- Section 103 of the Act states that principals must take 'all reasonable steps' to ensure that students receive 'good guidance and counselling'.<sup>2</sup>
- Ministry of Education *Guidelines for principals and boards of trustees on stand-downs, suspensions, exclusions and expulsions* advise principals and boards to explore any

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<sup>2</sup> Section 17A of the Education Act 1989 required the principal to take of reasonable steps to ensure the student had guidance and counselling in relation to the stand-down or suspension.

pastoral concerns or mitigating factors when considering a suspension, as well as trying to identify why the student is behaving in the manner they are.<sup>3</sup>

In addition, the *Education (Stand-Down, Suspension, Exclusion and Expulsion) Rules 1999* requires boards to have 'due regard' for each circumstance relevant to the suspension and to consider each statutory option available.<sup>4</sup>

The records showed that, despite being repeatedly in trouble over several months, the student was only referred to the guidance counsellor shortly before the suspension. None of the School's disciplinary letters sent to the student and their parents suggest that it was prepared to work with the family on a behaviour management plan or some other strategy to address the student's behaviour at school. For example, there was nothing to suggest the School considered the option of a referral to the School's Resource teacher or its Learning and Behaviour teacher.

School staff provided information to the Ombudsman during his investigation about the support that was provided, but which was not noted in the student's pastoral record. In his final opinion, the Ombudsman said it was perhaps understandable that not every instance of support was recorded, given the expectations and pressures on teachers. The Ombudsman did not reach a conclusion about whether the School took reasonable steps to support the student. However, he noted that the Board would not have been in a good position from the available documentation to understand how the School had tried to support the student in the lead-up to their suspension.

The Principal's records of his suspension decision were brief, and contained no indication he had considered what the School had done to support the student. Regrettably, the Principal omitted to provide the Board with a written suspension report that contains all the relevant information, as required by Section 14 of the *Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999*.

Although the minutes from the Board's exclusion decision were relatively comprehensive, the Board did not specifically examine the support offered to the student before it made the decision to exclude the student. As there was no written suspension report, in terms of the background documentation, the Board were reliant on the pastoral records and the Principal's letter of suspension. However, it appears that the pastoral records provided an incomplete record of the level of support provided by the School. The Board could potentially have sought more information on this issue before making its decision, but did not.<sup>5</sup>

Overall, the Ombudsman concluded that the Board failed to identify the support the student received from the School as a relevant factor before deciding to exclude the student. The level

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<sup>3</sup> Ministry of Education 2009 *Guidelines: for principals and boards of trustees on stand-downs, suspensions, exclusions and expulsions, Part I: Legal options and duties*, point 34. (References to the Education Act 1989 in the guidance have yet to be replaced with the relevant sections in the Education and Training Act 2020.)

<sup>4</sup> Section 17(1)(a) of the *Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999*.

<sup>5</sup> Section 16 of the *Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999* allow the board to adjourn the meeting if it needs time to consider new information, such as the school's efforts to support the student if this is not evident from the documentary record and/or the principal's report.

of support should have been evaluated alongside the concerns about ongoing disobedience. This constituted a circumstance relevant to the exclusion, in terms of the *Education (Stand-Down, Suspension, Exclusion and Expulsion) Rules 1999*, and inclusion would have made the Board's decision more robust. To that extent, the Ombudsman considered that the Board acted unreasonably. However, as noted above, the Ombudsman considered that the decision to exclude the student was justified in all the circumstances, and not unreasonable.

## Outcome

The Ombudsman formed the final opinion that:

- The Board's decision to exclude the student was not unreasonable; but
- The Board's omission to examine whether the student had been provided with adequate support in relation to the behavioural concerns was unreasonable.

The Ombudsman recommended that the Board amend the School's practices, policies, and guidelines, to ensure that the Principal and the Board expressly examine the support provided to a student by the School when considering suspensions and exclusions.

The Board accepted the opinion and made the changes the Ombudsman recommended. The Board also reviewed its processes in relation to the provision of a written suspension report by the Principal. Board advised that in a recent suspension the Principal explicitly examined the support offered to the student when suspending them for '*continual disobedience*', and noted this information in the report for the Board.

## Disclaimer

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