

# School Board decision to exclude student unreasonable

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<b>Legislation</b>	Ombudsmen Act 1975 Education and Training Act 2020, s 71, s 80(1) Public Records Act 2005, s 17
<b>Agencies</b>	St Peter's College School Board (Auckland)
<b>Ombudsman</b>	Peter Boshier
<b>Case numbers</b>	595185
<b>Dates</b>	September 2023

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*Investigation into St Peter's College School Board's decision to exclude a student under the Education and Training Act 2020—Chief Ombudsman investigation identified significant issues around decision making and record keeping—Ombudsman recommended the Board apologise to student and parents, update the student's record and amend relevant procedures*

## Background

X was a Year 11 student at St Peter's College when the school became aware of an alleged marijuana trade at the school.

X was interviewed by staff and admitted to having bought marijuana both inside and outside of school, and smoking marijuana outside of school. The Principal considered that X's actions were a harmful and dangerous example to other students and that his actions amounted to gross misconduct. X was suspended.

Following X's suspension, the St Peter's College School Board (the Board) met to consider the matter, as required by the Education and Training Act 2020 (the Act). The Board determined that X's actions amounted to gross misconduct. It was concerned about the impact X's behaviour had on other students and the reputation of the school. The Board decided to exclude X. Other students were expelled or excluded, or returned to school with conditions.

After X was excluded, X's parents complained to the Board. They were concerned that the decision had not been made in accordance with the Ministry of Education's Guidelines for Principals and Boards of Trustees on stand-downs, suspensions, exclusions and expulsions (the Guidelines). In response, the Board acknowledged that the process and outcome had been upsetting, but said that it stood by its decision.

X's parents made a complaint to the Ombudsman about the Board's decision to exclude X.

## Investigation

The Ombudsman's investigation focused on the Board's decision to exclude X.

The Act sets out the three options that are available to School Boards when considering the appropriate disciplinary response:

- lift the suspension before it expires, either unconditionally or subject to any reasonable conditions a Board wants to make;
- extend the suspension conditionally for a reasonable period determined by a Board when extending the suspension; and
- if the circumstances of the case justify the most serious response, a Board may exclude the student from the school by extending the suspension and requiring the student to be enrolled at another school.

Expulsion or exclusion are serious decisions which have lasting consequences for the student. The Guidelines state *'the decision to exclude a student is only to be made in circumstances that justify the most serious response.'*<sup>1</sup> *Exclusion should be proportionate to the behaviour in question.*

Before deciding which option is appropriate, pursuant to the Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 (the Rules), Boards must:<sup>2</sup>

*... have due regard for each circumstance relevant to the suspension and consider each statutory option available to it.*

The Guidelines reinforce this, stating *'this is a balancing exercise and [the Board] must take into account all relevant circumstances.'*<sup>3</sup> Rule 17(4) also requires Boards to record their deliberations in writing. The Guidelines go on to explain:<sup>4</sup>

*You must record your decision, and the reasons for it, in writing. You must **explicitly** consider each option open to you. Your records need to be complete. There should be enough information in the report to show that you turned your mind to the criteria you had to apply. Document why you made the decision and how you arrived at the decision [emphasis added].*

The Board provided the Ombudsman with its decision-making records in X's case, along with anonymised versions of the records for the other students involved.

While the Board was aware of the statutory options available to it, the records failed to show that the Board explicitly considered each statutory option in X's case, nor why it decided that a more lenient option was not possible. The only factors that the Board demonstrated it

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<sup>1</sup> [Guidelines for principals and boards of trustees on stand-downs, suspensions, exclusions and expulsions Part I Legal options and duties](#) at paragraph 92.

<sup>2</sup> Rules 17(1) of the Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999, refers.

<sup>3</sup> [Guidelines](#) at paragraph 96.

<sup>4</sup> [Guidelines](#) at paragraph 97.

considered, were that it considered X's actions to be gross misconduct, and that X's behaviour had an impact on other students and the school's reputation.

Overall the records lacked detail and did not show that the Board considered a number of relevant factors that the Ombudsman would expect any Board to explicitly consider and record when making a serious decision about a students' education. This includes their disciplinary record, any early admission of the behaviour in question, apology or remorse, and any steps taken to change their behaviour. The Board did not demonstrate that it considered that some of the incidents took place outside school. Further, the Board did not demonstrate that it considered how its decision was consistent with the relevant school policies.

For the other students suspended, the Board made notes that show it more clearly considered the mitigating and aggravating factors in each of their cases before making a decision on the appropriate disciplinary response, as it is required to do. This included any evidence of early admission of the behaviour and genuine remorse, and mitigating factors either for or against exclusion.

In X's case, there was a notable absence of any such notes. The Board was unable to explain why it explicitly noted the factors it considered when deciding with the appropriate disciplinary response for each of the other students, but not for X.

The Ombudsman was further concerned by potentially misleading information given to X's parents. The Board's letter to them, which explained the reasons for the decision stated:

*The Board of Trustees found that [X]'s actions, as set out in the Headmaster's report, did constitute gross misconduct and therefore we have no reasonable option but to exclude [X] from St Peters College.*

It is incorrect to say that the only reasonable disciplinary response to a finding of gross misconduct is exclusion. Determining whether a student's actions constitute gross misconduct is only one step in the disciplinary process; a Board must then determine the appropriate disciplinary response. As per the Guidelines, the decision to exclude a student is only to be made in circumstances that justify the most serious response, not in just any case where there has been gross misconduct.

During the course of the Ombudsman's investigation, the Board acknowledged the Ombudsman's concerns about the adequacy of the Board's decision-making records, and accepted that it needed to make improvements in this area. However, the Board stated that deliberations on the statutory options available to it took place, and consideration was given to a number of factors, despite there being no records of these discussions.

Ultimately, the Ombudsman found that the records in this case showed that the Board failed in its obligations to '*have due regard for each circumstance relevant to the suspension*' and that the Board failed to properly '*consider each statutory option available to it*'.

## **Outcome**

The Ombudsman formed the opinion that the Board's decision to exclude X was unreasonable.

The Ombudsman recommended that the Board:

- apologise to X and X's parents for the errors the Ombudsman identified in his investigation;
- attach a copy of the Ombudsman's opinion to X's disciplinary record; and
- record in writing, at future suspension meetings for students at the School, the aggravating and mitigating factors that have been identified, the Board's consideration of each statutory option, and the reasons for its decision. The Board should also ensure relevant policies and guidance are amended to reflect this requirement within one month of receiving the Ombudsman's final opinion.

### **Failure to implement one recommendation**

Following the Ombudsman's final opinion and recommendations, the Board indicated that it would not comply with the Chief Ombudsman's recommendation that it apologise to the complainants. However, the Board implemented the other recommendations.

### **Resources available to School Boards**

The Chief Ombudsman has a number of resources available to assist school boards in good decision making. The following guides are available on the Ombudsman's website:

[Good complaints handling by school boards](#)

[The OIA and school boards](#)

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*