



SECTION 29 – AND THE SHORT-TERM SUSPENSION OF STUDENTS

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Solicitors, have prepared
updated advice on that
thorniest of sections of the
Education Act, 1998**

Note *This article is of necessity general, and represents the views of the authors only. It is no substitute for actual legal advice on an individual situation. While every effort has been made to ensure that the information given in this article is accurate, no legal responsibility, however is accepted by the authors for any errors or omissions contained in this article or the consequences to any party relying on this article's contents.*

Care needs to be taken in relation to certain assumptions in relation to the periods of suspension of students which are contained in the National Education Welfare Board (NEWB) guidelines. These assumptions are, firstly, that a suspension for 3 days is an ordinary disciplinary action and is not subject to review by the courts, and, secondly, that a suspension of less than 20 days cannot be dealt with by the Department of Education under the S.29 Appeals Procedures.

The minimum period of suspension for a permitted appeal to the Department of Education for an aggrieved student is governed by S.29 (1) (b) of the Education Act 1998. This contemplates a prescription of that period by the Minister. It would appear that this prescription has not occurred to date. Pending such a prescription by the Minister, any suspension, however short, is eligible for appeal, and by extension, arguably eligible for review by the courts.

Although always good practice, it is therefore most important that proper procedure is followed when considering the suspension of a student. It is more likely that successful challenges through the courts will be based on unfair procedure rather than issues of substance (the merits of the decision itself). The following general guidelines should assist in observing fair procedures.

1. Read your school rules and set out the steps you are required to follow to meet their requirements.
2. Read chapter 10 and 11 of the NEWB guidelines (but do not rely on the minimum period advice contained therein) and add any additional steps to the proposed procedure which the NEWB guidelines advise or require.
3. Where there is conflict between the guidelines and your school rules, get advice.
4. Consult the Board where required by the School Rules. (We would recommend you notify them even if not required.)
5. Make sure the student and student's parents (or guardians) have a copy of the current edition of the school rules. Enclose a copy with the notice of grounds to be on the safe side.
6. Set clear but reasonable time limits for any required responses by the school, teachers, and the student. Do not allow the process become a hostage to delay but allow reasonable requests for extensions.

7. Avoid the appearance of bias or actual bias in the process. Step down or ask Board members to step down if there is a connection which might give rise to an appearance of bias.
8. Make sure the student and student's parents have notice of the grounds for considering a suspension in the student's case.(in writing if possible)
9. Make sure the student and student's parents have an opportunity to consider the grounds and prospect of a possible suspension and stipulate a reasonable time to respond.
10. Consider the merits of their response before reaching a decision.
11. Do not take into account any adverse behaviour by the student, since the issue of the notice of the grounds, when reaching a decision.
12. Do not take adverse behaviour by the student during the suspension process into account when reaching a decision.
13. Do not take the parents' or any third parties' adverse behaviour into account when reaching a decision.
14. Consider whether a decision to suspend is proportionate to the student's behaviour (as stated in the notice) and objectively justified in the circumstances.
15. Advise the parents of your decision and give your reasons for the decision. These reasons can be brief, but they should be stated clearly, even when they are blatantly obvious.
16. Make sure your decision is clearly stated.

If the decision is to suspend:

We would suggest you allow the student or parents an opportunity to respond to your decision as made, as this might assist in any future consideration of whether to modify the sanction, e.g. if there was an undertaking of good behaviour etc.

Advise the student and parents, in writing if possible, of the decision and their right of appeal to the Board or otherwise such as exists under the school rules, or to the Department of Education, if the school rules do not permit such an appeal. We would suggest the period of commencement of the suspension be delayed for a short period if possible, in case the decision is appealed to the Board of Management.

Ensure throughout the process that the Board of Management and the school do not cause the process to be unnecessarily delayed.

The most important advice is to approach the decision with patience, common sense and a clear head. A suspension should be seen as a step up from normal discipline and keeping order, where the student's rights to Education are being modified, and treated accordingly.

Behaviour which might have been regarded as cheeky or disrespectful in a disciplinary setting, may be within the bounds of tolerance in a student's response to a possible decision to suspend.

In emergency or extreme situations, such as where the safety of other students is at stake, an immediate suspension may be considered, but these should be short and temporary, and followed by the procedure as set out above.

It should also be remembered it is the student's behaviour that is being punished, not the parents. What may be perceived to be misguided opposition to the School's disciplinary regime by the Parents is not the student's responsibility. The parents future behaviour should only be relevant to mollifying or dispensing with a suspension that has already been imposed, e.g. in the event that the parents procure a written apology from their student to a teacher or student affected by the student's actions, the Principal or Board of Management may decide to not impose the entire period of suspension on the student. A collaborative approach to a solution to the student's actions is encouraged.

While the decision should not be irrational on its face, and should be proportional to the behaviour of the student, its merits should be unlikely to attract criticism so long as any Principal (or Board) acting reasonably in similar circumstances could potentially have come to the same decision.

It should also be remembered that there is Educational value in a student understanding a semi-formal process where the student's rights are at stake, and observing adults implement fair procedures.