



MINISTRY OF EDUCATION

Te Tāhuhu o te Mātauranga



Guidelines

*for principals and boards of trustees on
stand-downs, suspensions, exclusions and expulsions*

*Part I
Legal options and duties*



Part I of the Guidelines is designed to assist boards of trustees, principals, and teachers with their legal options and duties and meet their obligations under relevant statutory requirements. These legal options and duties guidelines are for the use of all state and state-integrated schools. Independent schools may also wish to adopt this guide.

These Guidelines replace those published by the Ministry of Education in June 2004 and the 2007 Supplement. The paragraphs have been numbered for ease of use and reference. Cross references to *Part II, Good practice* are given where relevant.

You should also read:

- Sections 13–18 of the Education Act 1989 (the Act) (see Appendix 2)
- Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999 (see Appendix 2).

These Guidelines are also available on the Ministry of Education website at www.minedu.govt.nz/sdsguidelines.

Contents

About these guidelines	1	During a stand-down	9
How they help you	1	Principal's obligations during a stand-down	9
Guidelines and legislation	1	Consider sending the student home	9
Getting further advice	1	Calculate the length of the stand-down	9
Definitions	1	Tell a parent.....	9
Overview: Being fair and flexible	3	Tell Ministry of Education	9
Summary	3	Provide stand-down pamphlet.....	9
Fair	3	Keep student on the roll.....	10
Flexible	3	Guidance and counselling.....	10
Natural justice.....	3	Consider attendance during stand-down....	10
Investigation.....	4	Stand-down meeting.....	10
Act fairly.....	4	Lifting a stand-down.....	10
Involve the student.....	4	Shortening a stand-down	10
Resolve major disputes and uncertainties if possible.....	4	During a suspension	12
Summary	4	Principal's obligations	12
Documenting the investigation.....	4	Tell a parent.....	12
Principal's decision	5	Tell the board.....	12
Was the student's behaviour gross misconduct?	5	Tell Ministry of Education	12
Is there continual disobedience?	5	Provide suspension pamphlet.....	12
Is there behaviour risking serious harm to the student or other students if the student is not stood-down or suspended?.....	6	Keep the student on the roll.....	12
What part have the student's individual circumstances played?	6	Guidance and counselling.....	12
What action is appropriate?	6	Consider attendance during suspension....	12
Documenting your decision.....	7	Report for board	13
Record what your decision is and why	7	Information about suspension meeting	13
		Timing of the suspension meeting	14

At the suspension meeting.....	16	Requesting a reconsideration	24
Board's authority.....	16	Principal's decision.....	24
Board's role	16	How to request a reconsideration.....	24
How to hold a meeting.....	16	Information about reconsideration	
Flexibility	16	meeting	24
Hearing from the student.....	16	At the reconsideration meeting	25
Adjournment to consider		The board's role	25
new information	16	How to hold a reconsideration meeting.....	25
Withdrawal	17	Flexibility	25
Understanding the board's options.....	17	Hearing from the student.....	25
Understanding conditions.....	17	Withdrawal	25
Understanding lifting the suspension		Understanding board's options.....	25
without conditions	17	When the student is excluded	27
Understanding lifting the suspension		Tell the parents	27
with conditions	17	Tell Ministry of Education	27
Understanding extending the suspension		Try to arrange for a new enrolment	27
with conditions	17	Tell Ministry of Education	27
Understanding exclusion	18	When the student is expelled.....	28
Understanding expulsion.....	18	Tell the parents	28
Making the decision	18	Tell Ministry of Education	28
Involving the student and parent.....	18	Re-enrolment of excluded student.....	29
Recording your reasons	18	The Ministry of Education's role.....	29
Communicating your decision	18	The board's role.....	29
When the suspension is lifted		Re-enrolment of expelled student.....	30
without conditions	20	The Ministry of Education's role.....	30
Tell Ministry of Education	20	The board's role.....	30
When the suspension is lifted		Appendix 1: The Education Act 1989.....	32
with conditions.....	21	Appendix 2: Education (Stand-down,	
Consider guidance and counselling	21	Suspension, Exclusion and Expulsion)	
Tell Ministry of Education	21	Rules 1999.....	33
Principal's role	21	Rules	33
When the suspension is extended		Appendix 3	40
with conditions.....	22	Incident report.....	40
Principal's obligations	22		
Keep the student on the roll.....	22		
Provide an educational programme	22		
Consider guidance and counselling	22		
Consider attendance during an			
extended suspension.....	22		
Monitor the student	22		
Tell Ministry of Education	22		
Board's obligations.....	23		
Help the student's return to school.....	23		
Monitor the student's progress	23		

About these guidelines

How they help you

- 1 These Guidelines:
 - a describe the processes for stand-downs, suspensions, exclusions and expulsions as set out in legislation
 - b take you through these processes from beginning to end; and
 - c incorporate guidance from courts.
- 2 These Guidelines are designed to help you:
 - a act legally
 - b make good decisions
 - c act fairly
 - d understand your options and duties; and
 - e minimise the risk of complaints, litigation or review by the Parliamentary Ombudsmen.

Guidelines and legislation

- 3 Part I of these Guidelines outlines the stand-down and suspension processes. This guidance is primarily based on the Education Act 1989 and the Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999. The legislation is included at the back. Part II of these Guidelines provides optional good-practice advice.

Getting further advice

- 4 Trustees, including principals, can access the NZSTA Trusteeship helpdesk for all matters relating to trusteeship. This service is funded by the Ministry and is available regardless of membership of NZSTA. The Helpdesk is staffed five days a week during office hours, 8:00am to 5:00pm. 0800 STA HELP (0800 782 4357) Fax (04) 473 4706. Email: helpdesk@nzsta.org.nz

Definitions

- 5 **Stand-down** means the formal removal of a student from school for a specified period. Stand-downs of a particular student can total no more than five school days in a term or ten school days in a year.
- 6 **Suspension** means the formal removal of a student from school until the board of trustees decides the outcome at a suspension meeting.
- 7 The board of trustees of a school is required to hold a meeting of the board, within seven school days of the suspension, to decide the outcome of a suspension (see Sections 15[4], 17[4] of the Act). Following a suspension, the board may decide to:
 - a lift the suspension without conditions
 - b lift the suspension with reasonable conditions
 - c extend the suspension with reasonable conditions for a reasonable period
 - d exclude or expel the student.
- 8 **Exclusion** means the formal removal of a student aged under 16 from the school and the requirement that the student enrol elsewhere.
- 9 **Expulsion** means the formal removal of a student aged 16 or over from the school. If the student wishes to continue schooling, he or she may enrol elsewhere.

Exclusion and expulsion are for the most serious cases only.



Overview: Being fair and flexible

Summary

- 10** When dealing with serious misbehaviour or serious risks to student safety you must be fair and flexible. This is a summary of what the legislation requires:

Fair

- 11** Being fair, at its simplest, involves treating people with respect. In part, that will mean taking account of people's knowledge, abilities and culture. Everyone should know what is happening and what is at stake.
- 12** Being fair also means both following the rules and considering the purpose and principles behind them. Some rules are very specific; for example, there are clear rules about when the board may meet and what information people must have. Other matters to consider are more general. They include your responsibility to maintain a safe and effective learning environment and guidance contained in your school's charter. Remember that the only process for removing a student from school for disciplinary reasons is for the principal to stand-down or suspend that student.

Flexible

- 13** Being flexible means considering all your options. Some situations will be more serious than others; you may respond to different situations in different ways.

You should consider all of the circumstances, and weigh up all of the factors before you make a decision.

Natural justice

- 14** The legislation requires you to follow the principles of natural justice – which means you must act fairly in the circumstances. Common expectations are that a person will have adequate notice of a situation that may affect them, they will have an opportunity to be heard and respond, and that a decision will be made by an unbiased decision maker. The stand-down and suspension processes will help you apply the principles of natural justice. You will find advice about those principles throughout the Guidelines. For the moment, note that:
- a** the Rules already incorporate the principles of natural justice. For example, they already establish procedures for giving adequate notice and having an opportunity to be heard. *Following the process carefully will help you to act, and be seen to act, fairly.*
 - b** parts of the process are very flexible; you have a lot of discretion about your decisions. Whatever decisions you make, they should be based on all of the facts, in their proper context and making allowance for individual circumstances. *Good decision-making will help you act fairly.*
 - c** records must adequately explain your decision. They do not have to be complicated, but must set out your conclusions on all the main issues. They must be clear and complete, showing what you did and why. *Keeping full and accurate records will help you to act fairly and show others that you did.*
 - d** your procedures do not need to be elaborate. The principles of natural justice have to be applied in schools by busy teachers, principals and board members. The emphasis is on a prompt, considered and fair resolution of problems.



Section 13 Education Act 1989

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 –

- (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.*



Rule 7 Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999

Principles applying to processes, practices and procedures

Every participant in the processes, practices, and procedures dealt with in Sections 14 to 18 of the Act and these rules should be guided by the following principles

- (a) The need for every participant to understand the processes, practices, and procedures:*
- (b) The need for every participant to treat every other participant with respect, which includes recognising and respecting New Zealand's cultural diversity:*
- (c) The need to recognise the unique position of Māori:*
- (d) The need for every participant to be guided by the charter of the student's school:*
- (e) The need for every participant to recognise that the Board has a responsibility to maintain a safe and effective learning environment at the student's school.*



Investigation

- 15** A staff member or the principal should look into an incident and ask:
- a** What happened?
 - b** How serious was it?
 - c** What needs to be done about it?
- 16** There is no set process, though the principles of natural justice apply. Set out below is a guide:

[Refer Part II, Section 2: 6 Investigation and interviewing]

Act fairly

- 17** Staff members should avoid overbearing behaviour or acting in ways that could be perceived as oppressive. In some circumstances, it might be necessary to involve a parent, or other suitable adult, in the interests of fairness (though this will not normally be necessary). Even if the staff member has no intent to act in such a way, claims of this nature can distract everyone from resolving the issues at hand.

Involve the student

- 18** The person investigating should put the facts as they understand them to the student and record the response. The student should be invited to comment on all the facts. He or she has the right to be heard. This is a requirement of natural justice.
- a** The student might admit responsibility or involvement in an incident.
 - b** Alternatively, the student might deny responsibility or involvement. Any denial should be fairly considered; staff members have the discretion to believe whether or not they are plausible.

***HINT** Silence does not stop a staff member forming a view about what happened and drawing inferences from what is known about an incident. If a staff member draws inferences, these should ideally be put to the student for comment.

Resolve major disputes and uncertainties if possible

- 19** An investigation must be fair and thorough. The principal will base his or her decision on the evidence it produces. The principal must have confidence in that evidence before standing-down or suspending (and cannot suspend on suspicion and leave the matter to the board to resolve). Errors at this stage might mean any decision by the principal is challenged. Staff members should try their best to come to a view regarding any significant disputes or uncertainties. If it is not possible to come to a view it will be important to record this so that the principal can take this into account when making any decision.

Summary

- 20** You will ideally be able to answer at least one of these questions with a “yes” before a decision to stand-down or suspend is considered:
- a** Was the student caught in the act? or
 - b** Was the incident seen by someone you think is credible? or
 - c** Was the student implicated by other significant circumstantial evidence? or
 - d** Did the student freely admit involvement or responsibility?

Documenting the investigation

- 21** Appendix 3 contains a sample incident report staff members might wish to use to document the investigation.

[Refer Appendix 3: Incident report]

Principal's decision

- 22 Only the principal,¹ may make the decision to stand-down or suspend.
- 23 You must ask these questions about the facts from the investigation:
- a Did the student's behaviour constitute gross misconduct, continual disobedience or behaviour risking serious harm? and
 - b If the incident was gross misconduct or continual disobedience, did it set a harmful or dangerous example to other students at school? and
 - c What part did the student's individual circumstances play? and
 - d What action is appropriate in these circumstances?
- 24 These questions will help you to understand your legal options and duties in Section 14 of the Education Act 1989.



Section 14 Education Act 1989

Principal may stand-down or suspend students –

(1) The principal of a state school may stand-down or suspend a student if satisfied on reasonable grounds that –

(a) The student's gross misconduct or continual disobedience is a harmful or dangerous example to other students at the school; or

(b) Because of the student's behaviour, it is likely that the student, or other students at the school, will be seriously harmed if the student is not stood-down or suspended

- 25 If the incident does not fit into one of the three categories (gross misconduct, continual disobedience or behaviour risking serious harm) then you may not stand-down or suspend.

Was the student's behaviour gross misconduct?

- 26 You should ask: Is any misconduct:
- a significantly blameworthy and remarkable? and
 - b serious enough to justify removing the student from school, even though it might damage the student's education?
- 27 Gross misconduct is never trivial. There is a high threshold. Whether an incident is gross misconduct will always depend on the particular situation. You must weigh up all the factors. A decision may never be pre-determined by school policies or breaking a school rule. The courts have established that you cannot automatically label a particular action or behaviour as gross misconduct.



GUIDANCE FROM THE COURTS

*The High Court has said that "gross misconduct" means misconduct that is "striking and reprehensible to a high degree"*²

- 28 You must also be satisfied that the gross misconduct is a harmful or dangerous example to other students at your school. You should ask: If other students were to know about it, would it undermine discipline and safety standards for that behaviour to go unpunished?

OR

Is there continual disobedience?

- 29 You should ask: Is there a pattern of entrenched misbehaviour?³

1 'Principal' also includes someone who is formally delegated by the board to act as the principal in your absence. Such a delegation can only take effect where the principal is absent eg, on sick leave, or there is a vacancy for the principal's position. This delegation should be in writing.

2 *M & Anor v S & Board of Trustees of Palmerston North Boys' High School* [2003] NZAR 705, 712 (decided 5 December 1990).

3 *J suing by his litigation guardian v Bovaird & Anor* [2007] NZAR 660, 669 (decided 7 June 2007).

- 30** You must be satisfied that the continual disobedience is a harmful or dangerous example to other students at your school. You may ask yourself: If other students were to know about it, would it undermine discipline and safety standards for that behaviour to go unpunished?

OR

Is there behaviour risking serious harm to the student or other students if the student is not stood-down or suspended?

- 31** You should ask: Because of the student's behaviour, it is likely that the student, or other students at the school, will likely be seriously harmed if the student is not stood-down or suspended?
- 32** This category is about the risk of serious harm, ie, distress or injury, to the student or other students. It is only concerned with student safety, in contrast with the more discipline-orientated categories of gross misconduct and continual disobedience.
- 33** You can only use this category where a stand-down or suspension is the only valid response to a safety concern. This ground is truly a last resort. If you can manage the safety concern in other ways you may not suspend or stand-down using this ground.

What part have the student's individual circumstances played?

- 34** You must consider also the student's individual circumstances and the context of the incident. This does not have to be exhaustive: the Act requires prompt action. If you only have limited information within your school, you might choose to consult a parent. You may ask yourself:
- a** does anything change my perception about the seriousness of the incident or the part the student played?
 - b** are there any pastoral concerns or mitigating factors? Is the behaviour out of character? If so, can you identify why and does this change your view of the situation?
 - c** are there any strengths or good factors to note about the student?

[Refer Part II, Section 2: 9 Special education needs]

- 35** Whether the student has been in trouble or been stood-down or suspended in the past is only one factor for you to weigh up; it cannot pre-determine what you decide to do.

***HINT** If you have a school rule or policy about something this can guide but not predetermine your response. You must think through each and every possible stand-down or suspension decision.

What action is appropriate?

- 36** Finally, you must weigh up all of the factors and decide on a course of action. Ask: What would be the right remedy in the circumstances?

***HINT** Even if you have decided that you could stand-down or suspend, you must still decide if you should. Considering all the circumstances, there may be a better solution.

[Refer Part II Section 2: 7 Behaviour management]

- 37** Consider that:
- a** the consequences are serious. Both stand-down and suspension interrupt the student's right to attend school. Suspended students might have their suspension extended by the board, or even be excluded or expelled
 - b** the student should already have received appropriate guidance and counselling or other pastoral support if problems were known to the school.⁴ A parent should already have been informed of matters affecting the student's relationships or progress.⁵ Stand-downs and suspensions remain a last resort
 - c** you must consider the student's individual circumstances as well as the facts of the particular incident. Both are important.

⁴ Section 77(a) Education Act 1989.

⁵ Section 77(b) Education Act 1989.



GUIDANCE FROM THE COURTS

“There may be cases where the severe consequences for a child of suspension..., and removal or potential removal, would be disproportionate... There might well be need for flexibility to cater for children with special individual problems, whether psychological or material. A child suddenly violent at school towards a teacher might simply be repeating violence at home, not his fault, and not be capable of control. A child who behaves destructively or irrationally might be calling for help, and deserve help rather than punishment. A child who steals might be from a disadvantaged background and be hungry or lack essential clothing items. The list could be prolonged. There is a statutory discretion conferred upon principals not to suspend, despite gross misconduct and harmful or dangerous example, most obviously exercisable where there are special circumstances, or a need for mercy and compassion.”⁶

Documenting your decision

- 38** If you decided to stand-down or suspend, your decision and the reasons for it should be accurately recorded in writing. 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.

[Refer Part II, Section 3: 11 Documenting processes]

Record what your decision is and why:

- a** If you stood-down, written reasons will help you explain the stand-down at a stand-down meeting. [Refer Stand-down meeting, para 52]
- b** If you suspended, it will help you prepare the principal's report. [Refer Report for board, paras 67–68]
- c** In both cases, good documentation will help show that you followed a fair process and lower the risk of challenge.

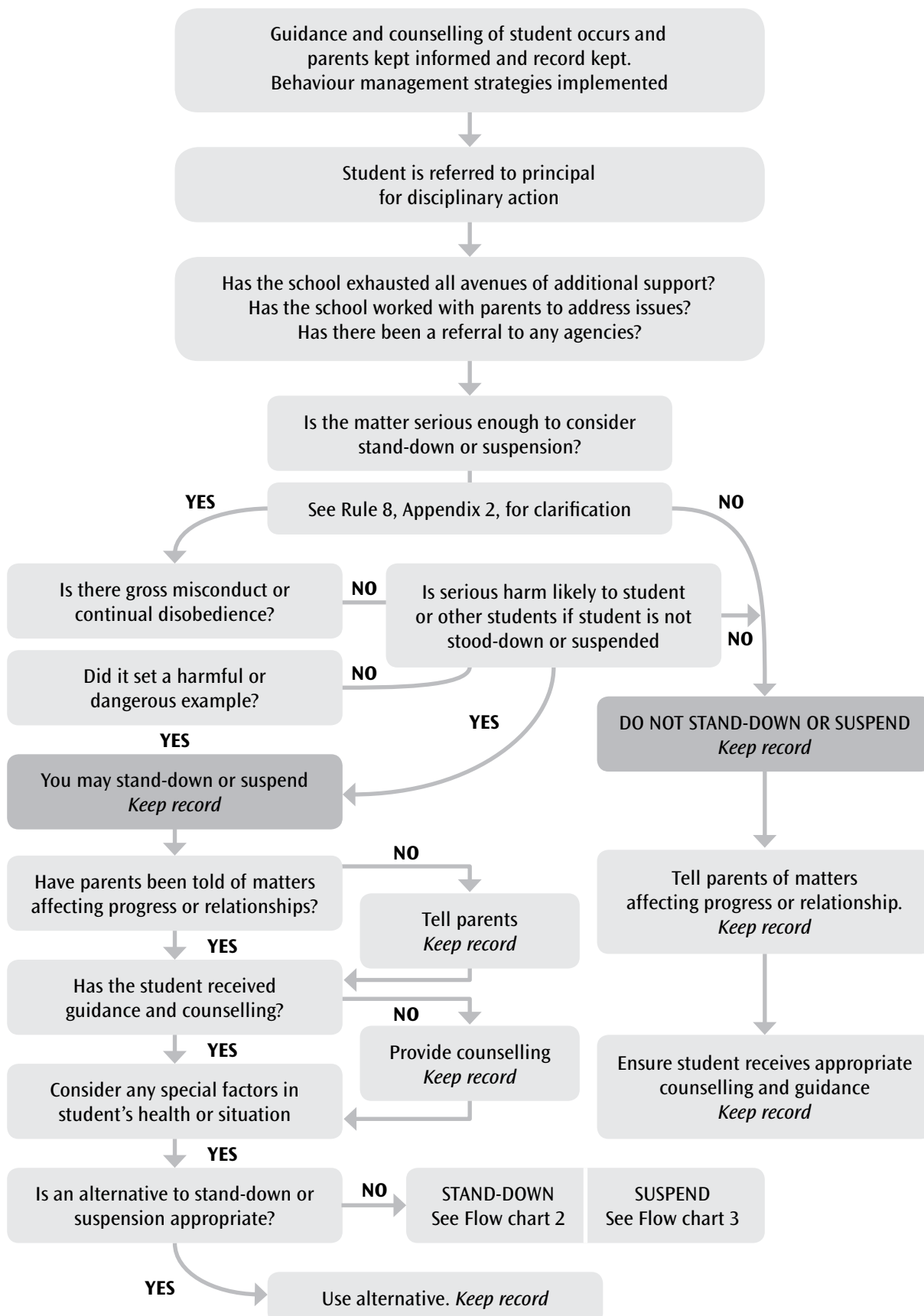
[Refer Part II, Section 3: 11 Documenting processes]

⁶ *M and R v S and Board of Trustees of Palmerston North Boys' High School* 2003 NZAR 705, 718 (decided 5 December 1990).

Flowchart 1

Principal considers possible stand-down or suspension

At all times, the principles of natural justice apply – act fairly and reasonably in the circumstances.



During a stand-down

Principal's obligations during a stand-down

Consider sending the student home

! Do this immediately

- 39 A stand-down starts on the day after the decision is made. You may decide to send the student home on the day the decision is made if it is reasonable to do so. If it is not advisable or possible to send the student home, they should be supervised at school until the end of the school day. Consider the age of the student and the circumstances of the parent/s when making this decision.
- 40 From the next school day, the student may only attend if you agree. [Refer Consider attendance during stand-down, paras 49–50]

Calculate the length of the stand-down

! Do this immediately

- 41 A stand-down may be for one or more specific periods. You must decide how long that will be. However, a stand-down may not exceed five school days per term. A student may only be stood-down for a total of ten school days in a year. Do not count the day you stood the student down or any day the school is closed in the stand-down.
- 42 To help you do this, ENROL records the number of days a student has been stood-down per term and per year (including previous schools in the current year).

[Refer Part II, Section 3: 11 Documenting processes]

Tell a parent

! Do this immediately

- 43 You must tell the student's parent:⁷
- a that the student has been stood-down
 - b the reasons for your decision to stand-down; and
 - c how long the student is being stood-down for.

To help you do this, you may wish to use a model letter template. [Refer Part II, Appendix, Model letters: Letter 1 Notifying parent/guardian of stand-down] You should also consider telephoning a parent.

[Refer Part II, Section 1: 1 School planning]

Tell Ministry of Education

! Do this immediately

- 44 You must submit the "advice of stand-down" electronic form in ENROL.

[Refer Part II, Section 3: 11 Documenting processes]

Provide stand-down pamphlet

! Do this as soon as practicable

- 45 You must **give** the student and a parent the Ministry of Education pamphlet: *I've been stood-down*.

⁷ Unless the student has turned 20.

Keep student on the roll

- 46 The student must remain on your roll. They may only be removed if they:
- a enrol at another school; or
 - b are granted an exemption from enrolment; or
 - c leave the school system altogether (if over 16).

Guidance and counselling

! Do this as soon as practicable

- 47 You must take all reasonable steps to ensure that the student gets guidance and counselling that is:
- a reasonable; and
 - b practicable in all the circumstances of the stand-down.
- 48 To help you do this, consider:
- a one of your aims must be to minimise the disruption to a student's attendance at school and facilitate the return of the student to school; and
 - b what will help reduce the chance of re-offending.

Consider attendance during stand-down

- 49 The student *may* attend school if the student or a parent asks you to allow that for whatever reason; *and* you consider that the request is reasonable.
- 50 The student *must* attend school if you reasonably consider that it is appropriate because:
- a of the student's educational programme (the student might need to fulfil course requirements for a qualification or sit an examination); or
 - b the student needs to receive guidance and counselling.
- 51 Otherwise, the student must not attend.

Stand-down meeting

- ! If a student or a parent asks you for a stand-down meeting, you must hold one as soon as is practicable for the student, a parent and you. You must make yourself available.

- 52 The purpose of a stand-down meeting is to discuss the stand-down and share information about what led to it and how to resolve the situation. It may also be useful to discuss expectations on the student returning to school. You may call a stand-down meeting, or the student or a parent may request one.

Lifting a stand-down

- 53 You may lift a stand-down at any time before it expires for any reason. This might be as a result of a stand-down meeting. You must lift the stand-down if you discover that reasonable grounds for the stand-down did not actually exist. To lift a stand-down, you must:
- a let the student return to school and attend full-time
 - b withdraw the stand-down in ENROL; and
 - c tell the student and a parent that stand-down has been withdrawn.

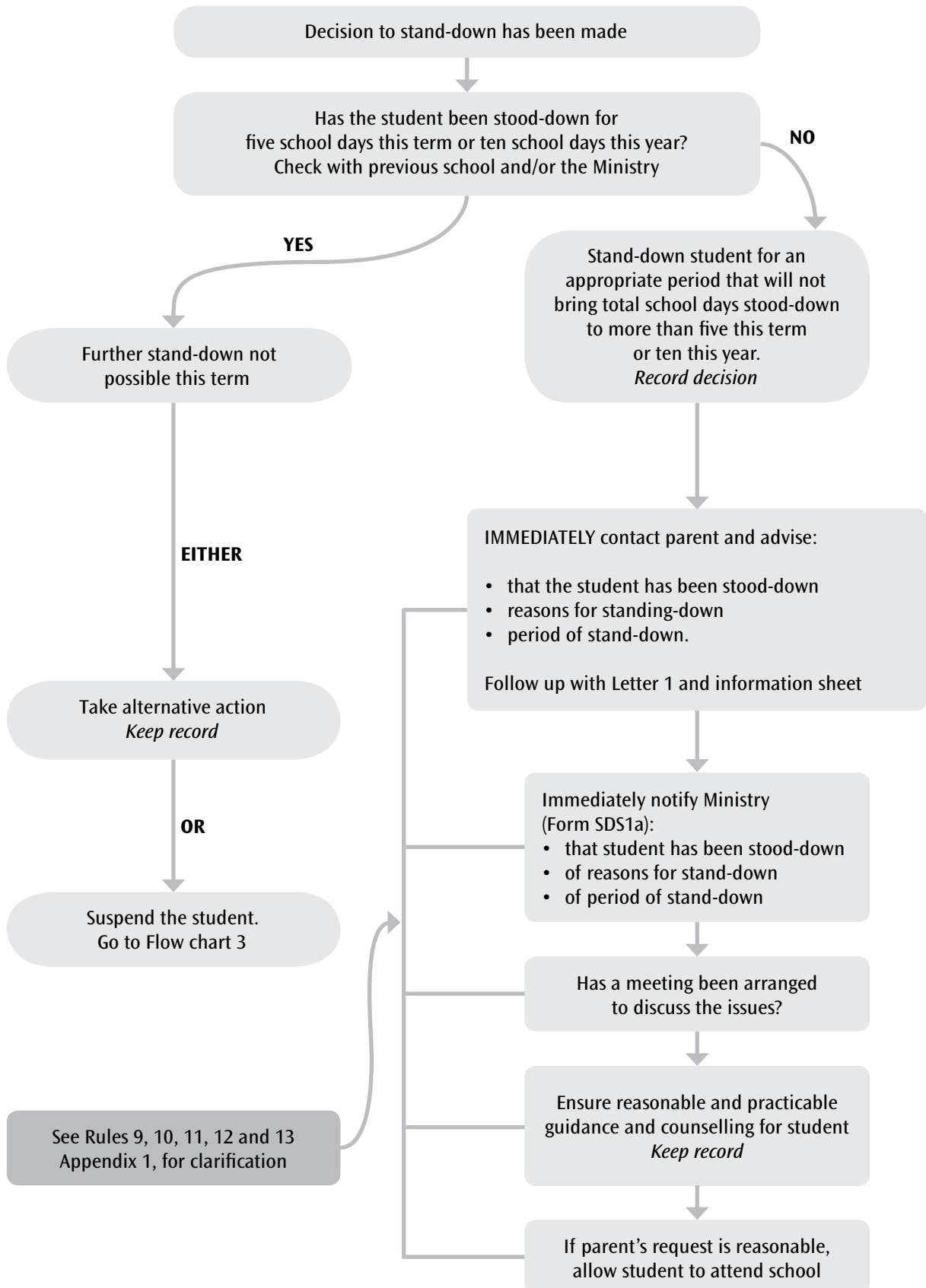
To help you communicate your decision to parents you may wish to use a model letter template. [Refer Part II, Appendix, Model letters: Letter 6 – Notifying parent/guardian of lifting of a stand-down] You should also consider telephoning a parent.

Shortening a stand-down

- 54 You may shorten a stand-down at any time before it expires for any reason. This is at the principal's discretion and depends on individual circumstances. This might be as a result of a stand-down meeting. You may shorten the stand-down if you discover that there are reasonable grounds to do so. To shorten a stand-down, you must:
- a shorten the stand-down through the ENROL process; and
 - b tell the student and a parent that stand-down has been shortened.

To help you communicate your decision to parents you may wish to use a model letter template. [Refer Part II, Appendix, Model letters: Letter 7 – Notifying parent/guardian of shortening of stand-down] You should also consider telephoning a parent.

Stand-downs: Action by principal following decision to stand-down





During a suspension

Principal's obligations

Tell a parent

! Do this immediately

- 55 You must tell the student's parent:⁸
- a that the student has been suspended; and
 - b the reasons for your decision to suspend; and;
 - c their options on how they can attend the suspension meeting

- 56 You may do this in any way that seems best.
- To help you do this, you may wish to use a model letter template. [Refer Part II, Appendix, Model letters: Letter 2 – Notifying parent/guardian of suspension] You should also consider telephoning a parent.

Tell the board

! Do this immediately

- 57 You must tell the board:
- a that the student has been suspended; and
 - b the reasons for your decision to suspend.
- 58 You may do this in any way that seems best.

Tell Ministry of Education

! Do this immediately

- 59 You must submit the "advice of suspension" electronic form in ENROL. [Refer Part II, Section 3: 11 Documenting processes]

Provide suspension pamphlet

! Do this as soon as practicable

- 60 You must give the student and a parent the Ministry of Education pamphlet: Information for Parents [www.minedu.govt.nz/sdsguidelines].

Keep the student on the roll

- 61 The student must remain on your roll. They may only be removed if they:
- a enrol at another school; or
 - b are granted an exemption from enrolment; or
 - c leave the school system altogether (if over 16).

Guidance and counselling

! Do this as soon as practicable

- 62 You must take all reasonable steps to ensure that the student gets guidance and counselling that is:
- a reasonable; and
 - b practicable in all the circumstances of the suspension.
- 63 To help you do this, consider that one of your aims must be to "minimise the disruption to a student's attendance at school and facilitate the return of the student to school when that is appropriate."

Consider attendance during suspension

- 64 The student *may* attend school if the student or a parent asks you to allow that for whatever reason; *and* you consider that the request is reasonable.
- 65 The student *must* attend school if you reasonably consider that it is appropriate because either:
- a the student's educational programme requires it (the student might need to fulfil course requirements for a qualification or sit an examination); or
 - b the student needs to receive guidance and counselling.
- 66 Otherwise, the student must not attend.

⁸ Unless the student has turned 20.

Report for board

- !** The principal must be able to give this report to the student and a parent at least 48 hours before the meeting.

- 67 You must write a report for the board that contains all information relevant to the suspension. Your report should be specific about:
- a what happened; and
 - b when and where it happened; and
 - c why it constitutes grounds for suspension under the Act.
- 68 To help you do this, consider that:
- a the language should be simple, factual and neutral;
 - b it should contain all relevant information:
 - i There can be no surprises for the board or student – your report will be the basis for the board’s discussion at the suspension meeting.
 - ii If there are significant disagreements over the facts it should make clear which version you prefer and why.
 - iii It must state why you decided to suspend; giving reasons and citing the ground for suspension (ie, you consider that there has been gross misconduct, continual disobedience or behaviour risking serious harm. [*Refer* paras 26–33 for an explanation of the thresholds])
 - iv The student and a parent should be able to understand it so they can comment and participate at the suspension meeting.
 - v It may include background information about the student’s history, including discipline and pastoral support, taking care not to confuse this background with your reasons for suspension.
 - vi It must be accurate, up to date, note the decision, be complete, be relevant and not be misleading.

Information about suspension meeting

- !** The board must do this as soon as practicable after the suspension.
- !** The board must ensure, however it gives this information, that it is able to reach the student and his or her parent at least 48 hours before the suspension meeting (allow for the post). If all the parties agree, this time may be reduced.

- 69 The board must give the student and a parent this information in writing:
- a when and where the suspension meeting will be (so they can make arrangements to attend); and
 - b what options the board has at that meeting for dealing with the suspension (so they know the possible serious consequences).
- 70 The board must give the student and his or her parents in writing:
- a information about the procedures that it follows at suspension meetings (so they know what to expect)
 - b advice that the student and his or her parents and their representative may attend the meeting and speak at it about the suspension (so that they know to prepare)
 - c the principal’s report to the board on the suspension (so they know the case they have to answer); and
 - d any other material about the suspension that the principal or board are going to present at the meeting (so there are no surprises).

***NOTE Giving a document**

If you have to give a document to a student or a parent, you must use the method below that you think will most likely cause the document to reach them. You must either

- personally deliver it to them; or
- post it to their usual address (it will be considered to be delivered at the time it would have been delivered in the ordinary course of post); or
- send it by fax or email (it will be considered to be delivered on the day after the day on which it was sent); or
- provide it to them in some other way that they approve.

Proving you gave a document is covered in Rule 4 (see Appendix 2). A telephone call to confirm receipt of the document can help prove this.

71 Information given to the student and parent must be as complete as possible. This is a requirement of natural justice. Nevertheless, the board might be concerned that some of the principal's report or other material might deal with the privacy of other people. For example, another student might have spoken in confidence to a staff member about an incident or be worried about bullying. In these cases, boards should seek professional advice about how to fairly withhold limited details while still disclosing as much as possible to the student and parent. Boards should be mindful of the Privacy Act 1993 and the Official Information Act 1982.

To help you communicate this information to parents you may wish to use a model letter template. [Refer Part II, Appendix, Model letters: Letter 2 – Notifying parent/guardian of suspension] You should also consider telephoning a parent.

Timing of the suspension meeting

! **The board must make sure that it holds a suspension meeting before the applicable date below. If it does not, the suspension expires, the student must return to school and the board loses the power to lift the suspension with conditions, extend it, exclude or expel the student.**

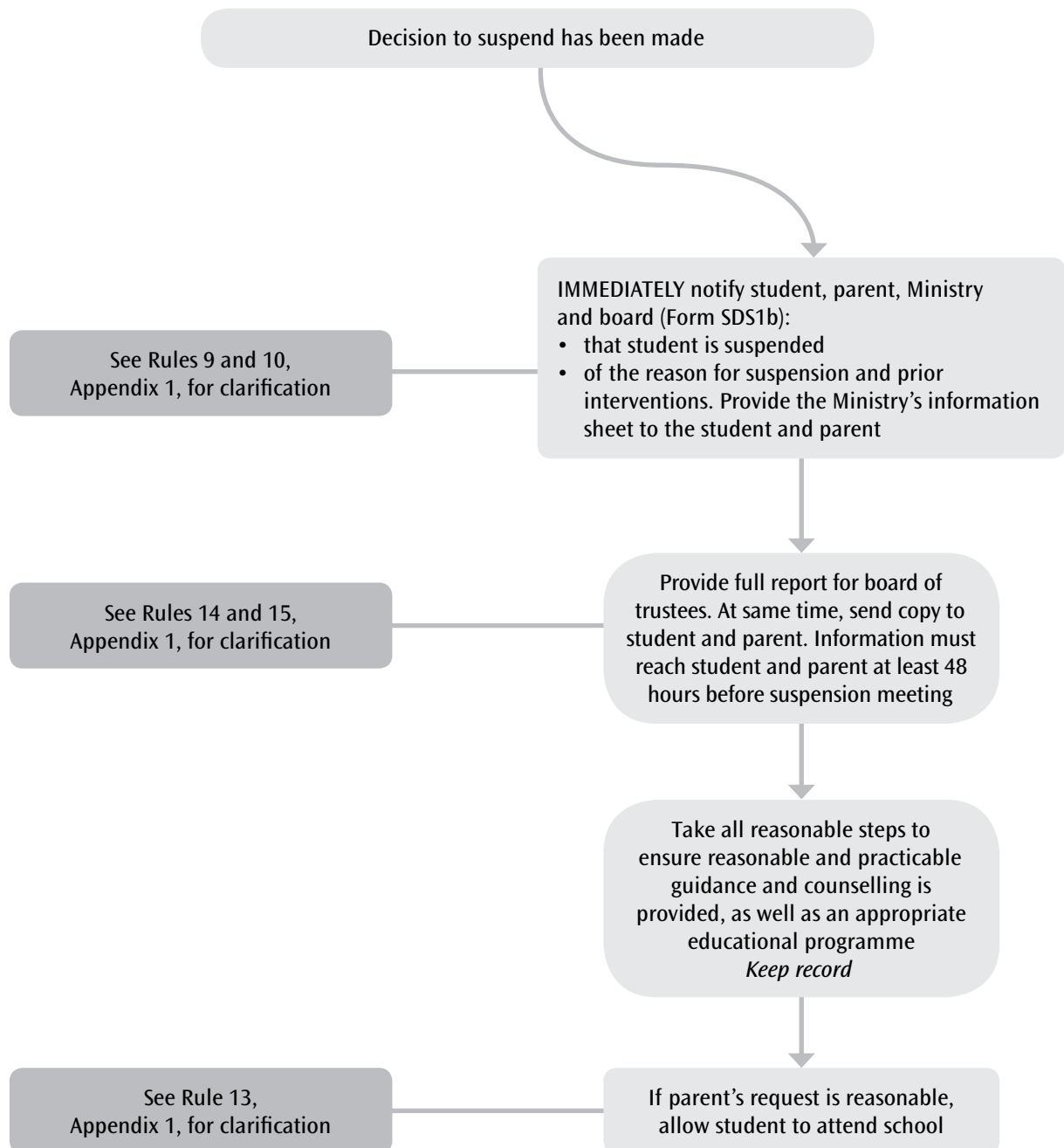
72 The board must have the suspension meeting before either:

- a** the close of the seventh school day after the decision is made to suspend the student; or
- b** if the end of term occurs less than seven school days after the suspension takes effect, then the meeting must be held by the end of the tenth calendar day after the decision is made to suspend the student.

***NOTE** The seven-day (or ten-day) rule is absolute. A suspension meeting cannot be delayed, even by agreement. It may proceed without the family being present. The Ministry of Education has no discretion to change the date. If a board wants to lift the suspension with conditions, extend it, exclude or expel it must hold the suspension meeting and make a final decision by the applicable date.

***HINT** You may wish to seek professional advice from the NZSTA Trustee helpdesk if you are uncertain about your options.

Suspensions: Action by principal following decision to suspend





At the suspension meeting

Board's authority

73 To hold a suspension meeting enough trustees must attend for the board to have a quorum. The principal has a different role and therefore is not counted when considering whether you have a quorum. Alternatively your board may have delegated the power to make decisions in suspension cases to a committee of at least two people. As with all committees, there must be a written board resolution establishing the committee and delegating the power to act on the board's behalf in suspension cases.

74 Decisions cannot be made in relation to prospective students, former students or students enrolled at another school.

Board's role

75 A board suspension meeting is an automatic review of the suspension process. At a suspension meeting, the principal has a completely different role from the rest of the board, which independently reviews the principal's decision to suspend. The board independently reviews the principal's decision. While the board may end up agreeing with the principal, it must be sure itself that the incident was fairly investigated, and was of a nature where suspension was an option (ie it amounted to gross misconduct, continual disobedience or behaviour risking serious harm). [Refer paras 26–33 for an explanation of the thresholds]

How to hold a meeting

Flexibility

76 How a suspension meeting is run is a matter for each board and the format does not have to be overly formal or court-like. The Act does not provide for the calling of witnesses at a suspension meeting: this is not appropriate. Significant disputes about facts should have already been raised, decided

upon and recorded by the principal in their report. Instead, the focus is on reviewing the principal's decision, hearing from everyone and finding a way forward.

[Refer Part II, Section 3: 10 Suspension conditions]

Hearing from the student

77 The student, the student's parents, and their representatives are entitled to attend the meeting, speak at it, and have their views considered by the board before it makes its decision.

78 You may, however, proceed with considering the suspension if they choose not to attend or participate.

Adjournment to consider new information

! In deciding how long to adjourn for, you must consider the amount of time that the person making the request needs, in his or her particular circumstances, to consider the new information.

! Even if you adjourn, you must still make a decision before the applicable date. [Refer Timing of the suspension meeting] If you do not, the suspension expires, the student must return to school and you lose the power to lift the suspension with conditions, extend it, exclude or expel.

79 You must adjourn the meeting if:

- a** a student, parent, principal or board member requests an adjournment; and
- b** the adjournment is to consider new information, which either:
 - i** was not given to the student and parent prior to the meeting; or
 - ii** is new to the student, parent, principal or board member for some other reason.

80 The purpose of the adjournment is to consider new information (not to create it).

Withdrawal

- 81 While you are deliberating and making your decision, you must either:
- a** require all the other parties to withdraw from the meeting; or
 - b** ask all the other parties to stay at the meeting.
- 82 If the student and parents are asked to withdraw from a meeting then the principal must withdraw too. The principal has a different role from other trustees at a suspension meeting and is not there as a decision maker. If board members deliberate in private with the principal or ask the principal questions in the absence of the student and parents, this may lead to accusations of bias.

Understanding the board's options

- 83 The board must make only one of the following four decisions:

If you think the student should:	then you must:
attend your school again full-time	lift the suspension without conditions
attend your school again full-time but have further specific responsibilities placed on them	lift the suspension with conditions
remain out of your school for a set period of time in order to fulfil specific responsibilities placed on them	extend the suspension for a reasonable period with conditions (aimed at facilitating the return of the student to school)
leave your school	exclude the student if he or she is under 16 or expel the student if he or she is over 16

Understanding conditions

- 84 Conditions allow you to formally manage the student's behaviour and provide pastoral assistance. You may impose any condition that is:
- a** reasonable; and
 - b** aimed at facilitating the return of the student to school (if you are extending a suspension).

- 85 To help you do this, you should ask: Is a condition:
- a** related to the incident or causes behind the incident?
 - b** achievable?
 - c** within the control of the student (ie, can the student comply with it)?

[Refer Part II, Section 3: 10 Suspension conditions]

- 86 There are consequences for not complying with conditions; the principal, if they think it is appropriate, may ask you to reconsider your decision at a reconsideration meeting. If that happened, you would be able to confirm, reverse or modify your initial decision. All of your options would be open. [Refer At the reconsideration meeting, paras 129–136]

Understanding lifting the suspension without conditions

- 87 This means the student must return to school and attend full time. The formal disciplinary process ends and the board is no longer involved. [Refer When the suspension is lifted without conditions, paras 99–100]

Understanding lifting the suspension with conditions

- 88 This means the student must return to school and attend full time. However, the student must still comply with ongoing conditions. If the student does not, the principal may request a reconsideration meeting. [Refer When the suspension is lifted with conditions, paras 101–104]

Understanding extending the suspension with conditions

- 89 This means the student must not attend school (unless permitted by the principal) and must comply with conditions aimed at facilitating their return to school. The student will return to school once either the conditions are met or the extended suspension expires (whichever occurs first).

- 90 While a student is out of school on an extended suspension the principal must provide appropriate guidance and counselling to the student. The principal must also provide an appropriate educational programme for the student to facilitate their return to school and minimise the educational disadvantages that occur due to absence from school. The principal may request a reconsideration meeting if the student fails to comply with the conditions.

- 91 The board must take appropriate steps to facilitate the students return to school. If the extended suspension is for four weeks or more you must monitor the progress of the student and must receive written updates about the student's progress at each regular board meeting. [Refer When the suspension is extended with conditions, paras 105–119]

Understanding exclusion

- 92 This means the student (under 16) must not attend your school (unless permitted by the principal) and must enrol at another one. The principal must try to arrange for the student to attend another reasonably convenient school. The board may refuse to re-enrol the student (unless the Ministry of Education lifts the exclusion). The board of any other state school may refuse to enrol the student (unless the Ministry of Education directs that school⁹ to enrol the student). [Refer When the student is excluded, paras 137–141] The decision to exclude a student is only to be made in circumstances that justify the most serious response.

Understanding expulsion

- 93 The student (16 or over) may try to enrol at another school, but does not have to. You may refuse to re-enrol the student. [Refer When the student is expelled, paras 142–144] The board of any other state school may choose not to enrol the student (unless the Ministry of Education directs that school¹⁰ to enrol the student).

Making the decision

Involving the student and parent

- 94 Before you make your decision, you may try to get all the parties at the meeting to agree on what the decision should be. You may suggest a possible outcome to the student and invite comment. Involving everyone increases the chances of achieving a fair and workable outcome. You do not, however, need agreement to make your decision.

- 95 When making your decision, you must apply exactly the same tests as the principal [Refer Principal's decision, paras 22–37]:
- a Was the incident gross misconduct, continual disobedience or behaviour risking serious harm? and
 - b If the incident was gross misconduct or continual disobedience, did it set a harmful or dangerous example to other students at school? and
 - c What part did the student's individual circumstances play? and
 - d What further action is appropriate?
- 96 This is a balancing exercise and you must take into account all relevant circumstances. To help you do this, you may consider:
- a how other students have been affected
 - b whether leniency would be appropriate
 - c your obligations regarding natural justice, and
 - d your obligations to provide a range of responses for cases of varying degrees of seriousness.

[Refer Part II, Section 2: 8 Effects on others]



GUIDANCE FROM THE COURTS

*The obligations to think through all your options and consider all the circumstances "...are designed for the protection of children. They are not to be sacrificed to administrative or disciplinary efficiency, or some supposed need for absolute certainty. Results must not be fixed: they must instead be fair."*¹¹

Recording your reasons

- 97 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.

[Refer Part II, Section 3: 11 Documenting processes]

Communicating your decision

- 98 To help you communicate your decision in writing, you may wish to use a model letter template. [Refer Part II, Appendix, Model letters: Letter 3 – Notifying parent/guardian of outcome of board meeting]

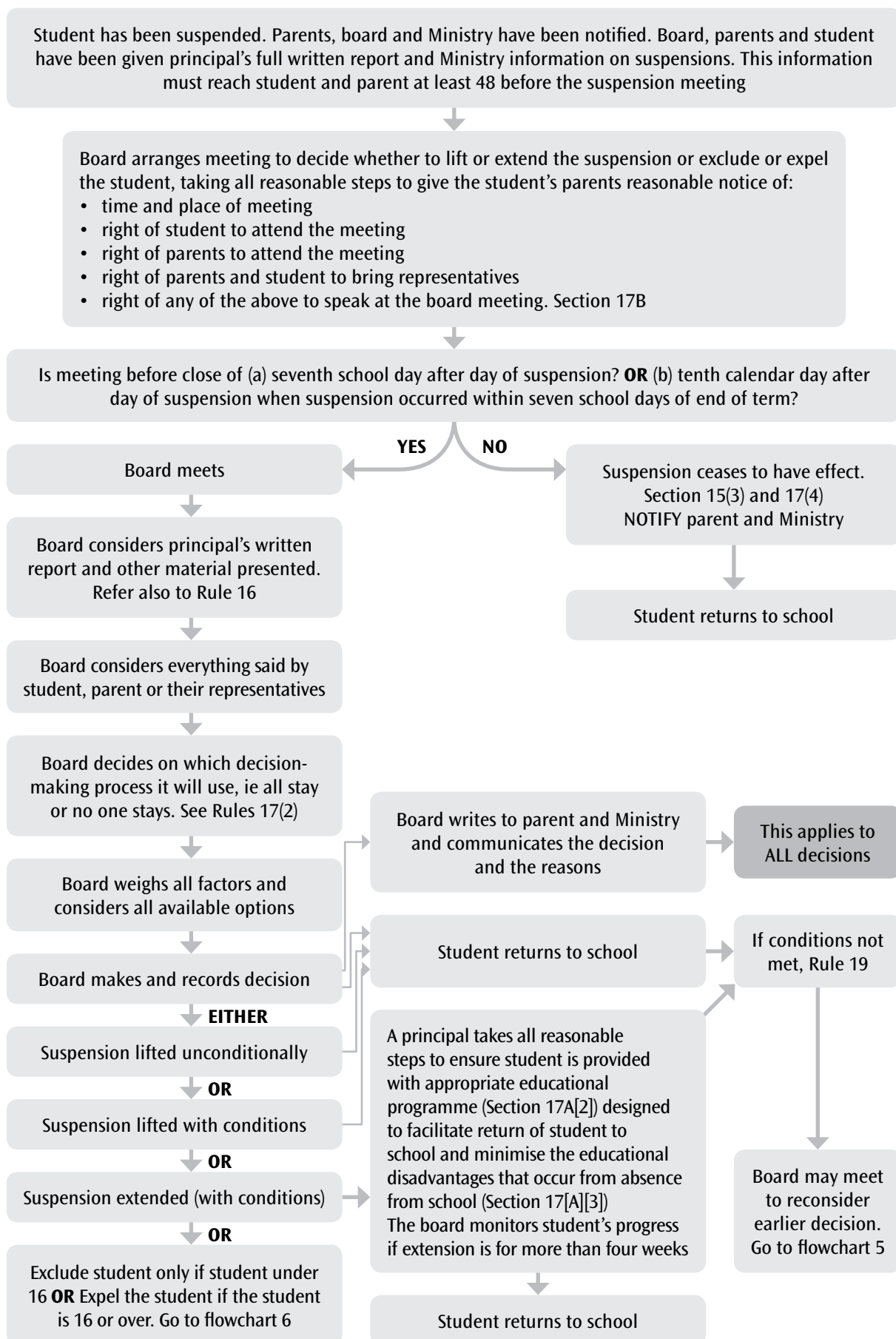
⁹ Unless the school is an integrated school.

¹⁰ Unless the school is an integrated school.

¹¹ *M and R v S and Board of Trustees of Palmerston North Boys' High School* 2003 NZAR 705, 718 per McGeachan J (decided 5 December 1990), p725.

Flowchart 4

Action by board following decision to suspend





When the suspension is lifted without conditions

- ❗ **The student must return to school on the first school day following the board meeting. The board cannot set another date for the student to return to school.**

99 The student returns to school immediately and attends full time. [*Refer* Part II, Section 2: 7 Behaviour management]

Tell Ministry of Education

- ❗ **Do this immediately**

100 You must submit the “advice of outcome of board of trustees suspension meeting” electronic form in ENROL.



When the suspension is lifted with conditions

- !** The student must return to school the day following the board meeting. The board cannot set another date for the student to return to school.

101 The student returns to school immediately and attends full time. The board has set reasonable conditions that the student must meet.

Consider guidance and counselling

102 You must provide guidance and counselling to the student as appropriate upon their return to school. This may be part of the conditions set by the board.

***NOTE** Under Section 77 of the Education Act 1989, the principal of a state school shall take all reasonable steps to ensure that students get good guidance and counselling.

[Refer to Part II, Section 3: 10 Suspension conditions]

Tell Ministry of Education

- !** Do this immediately

103 You must submit the “advice of outcome of suspension” electronic form in ENROL.

Principal’s role

104 While monitoring the conditions, if you believe the conditions are not being met you may request the board meet to reconsider its earlier decision.



When the suspension is extended with conditions

Principal's obligations

Keep the student on the roll

105 The student must remain on your roll.

They may only be removed if they:

- a** enrol at another school; or
- b** are granted an exemption from enrolment; or
- c** leave the school system altogether (if over 16).

Provide an educational programme

106 You must take all reasonable steps to ensure that an appropriate educational programme is provided to the student. The purpose of the programme is to facilitate the return of the student to school and to minimise the educational disadvantages that occur from absence from school.

Consider guidance and counselling

! Do this as soon as practicable

107 You must take all reasonable steps to ensure that the student gets guidance and counselling that are reasonable and practicable in all the circumstances.

108 To help you do this, consider that one of the aims of the suspension process is to “minimise the disruption to a student’s attendance at school and facilitate the return of the student to school when that is appropriate.”

Consider attendance during an extended suspension

109 The student *may* attend school if the student or parent asks you to allow that for whatever reason; *and* you consider that the request is reasonable.

110 The student *must* attend school if you reasonably consider that it is appropriate because either:

- a** the student’s educational programme requires it (the student might need to fulfil course requirements for a qualification or sit an examination); or
- b** the student needs to receive guidance and counselling.

111 Otherwise, the student must not attend.

Monitor the student

112 You must take steps to ensure that the student’s progress is monitored when conditions have been set. The purpose of the conditions is to assist and support the student to return to school.

113 If an extended suspension is for four weeks or more a report will need to be provided to the board at each regular board meeting. This report must comment on whether the student is meeting the conditions imposed and how they are progressing with the education programme you are providing for them.

114 You must allow the student to return to school once either they have met the conditions set by the board or the extended suspension expires (whichever occurs first).

***HINT** It is important to communicate timelines to the parent.

Tell Ministry of Education

! Do this immediately

115 Once the period of extended suspension has ended and the student has returned to school you must submit the “notification following extended suspension or following exclusion” electronic form in ENROL.

Board's obligations

- 116** The student remains the responsibility of the board of trustees while suspended.
- 117** The student may only be removed from the school roll if they enrol at another school, are granted an exemption from enrolment; or leave the school system altogether (if over 16).

Help the student's return to school

- 118** You must take appropriate steps to help the student return to school. What those steps are will depend on the particular situation. This is an obligation of the board, rather than individual trustees, and it is expected that in most cases your staff will carry out the required steps on your behalf.

***HINT** Other agencies may assist the board to take appropriate steps to help the student return to school.

Monitor the student's progress

- 119** If you extend a suspension for four weeks or more, you must monitor the student's progress. At each regular board meeting after the suspension, you must make sure you receive a written report (from a person nominated by the board) on whether the student is meeting the conditions imposed and progressing with any educational programme provided.

Requesting a reconsideration

Principal's decision

- 120** If a student fails to comply with any conditions imposed by the board, you may request the board to hold a meeting to reconsider its initial decision. You are not required to request a meeting if you do not wish to.
- 121** You may wish to investigate a possible failure to comply with conditions. [Refer Investigation, paras 15–21] In particular you should consider taking care to act fairly, consider involving the student and resolve major disputes and uncertainties (if possible).
- 122** The board must hold a reconsideration meeting about the student's case:
- a** within seven school days of the request; or
 - b** if the request is made within seven school days of the end of term, within ten calendar days of the request.
- 123** If you have requested a reconsideration meeting for a student whose suspension was lifted with conditions, the student must remain at school until the meeting.
- 124** If an incident has occurred that you think is sufficiently serious to justify a new suspension, you may choose to suspend the student rather than call a reconsideration meeting. In such cases you will need to take care to follow the suspension process from the beginning.

***HINT** Care will need to be taken to distinguish a reconsideration request from a new suspension. You may wish to seek professional advice from the NZSTA Trustee helpdesk if you are uncertain.

How to request a reconsideration

- 125** The request for a reconsideration meeting should be documented. You will also need to prepare a report for the board to consider which states why you believe specific conditions have not been complied with.

Information about reconsideration meeting

- !** **The board must notify the parents of the reconsideration meeting as soon as practicable after deciding to hold the reconsideration meeting.** [Refer Part II, Appendix, Model letters: Letter 4 – Reconsideration of suspension letter]
- !** **The board must ensure, however it gives this information, that it is able to reach the student and his or her parent at least 48 hours before the reconsideration meeting.** [Refer to “Giving a document” hint, page 13]
- 126** The board must tell the student and his or her parents in writing:
- a** when and where the reconsideration meeting will be (so they can make arrangements to attend); and
 - b** what options the board has at that meeting for dealing with the suspension (so the student and his or her parents know the possible repercussions of failing to meet the conditions and the options available for the board to decide upon).
- 127** The board must also give the student and his or her parents in writing:
- a** information about the procedures that it follows at reconsideration meetings (so they know what to expect)
 - b** advice that the student and his or her parents and their representative may attend the meeting and speak at it about the reconsideration of the suspension (so that they know to prepare)
 - c** the principal's report to the board on the reconsideration of the suspension (so they know the case they have to answer); and
 - d** any other material about the reconsideration of the suspension that the principal or board are going to present at the meeting (so there are no surprises).

- 128** Information given to the student and parent must be as complete as possible. This is a requirement of natural justice. Boards should seek professional advice about how to protect the privacy of other students when providing information to the student and parent.



At the reconsideration meeting

The board's role

129 At a reconsideration meeting, the board has a completely separate role from the principal. The board reviews the principal's report and decides whether the student has failed to comply with the conditions.

130 If the board agrees that the student has failed to comply with the conditions, it may then reconsider the original decision.

***NOTE** The reconsideration meeting relates to considering a possible failure to comply with conditions and finding a way forward. It is not a new suspension meeting or an appeal process. The original incident is not revisited.

[Refer Part II, Section 3: 10 Suspension conditions]

How to hold a reconsideration meeting

Flexibility

131 How a reconsideration meeting is run is a matter for each board and the format does not have to be overly formal or court-like. Also the Act does not provide for the calling of witnesses at a reconsideration meeting; this is inappropriate. Significant disputes about facts should have already been raised, decided upon and recorded by the principal in their report. Instead, the focus is on reviewing compliance with conditions, hearing from everyone and finding a way forward.

Hearing from the student

132 The student, the student's parents, and their representatives are entitled to attend the reconsideration meeting, speak at it and have their views considered by the board before it makes its decision.

133 You may, however, proceed with reconsidering the suspension if they choose not to attend or participate.

Withdrawal

134 While you are deliberating and making your decision, you must either:

- a** require all the other parties to withdraw from the meeting; or
- b** ask all the other parties to stay at the meeting.

135 If the student and parents are asked to withdraw from a meeting then the principal must withdraw too. The principal has a different role to other trustees at a suspension meeting and is not there as a decision maker. If you deliberate in private with the principal or ask the principal questions in the absence of the student and parents this may lead to accusations of bias.

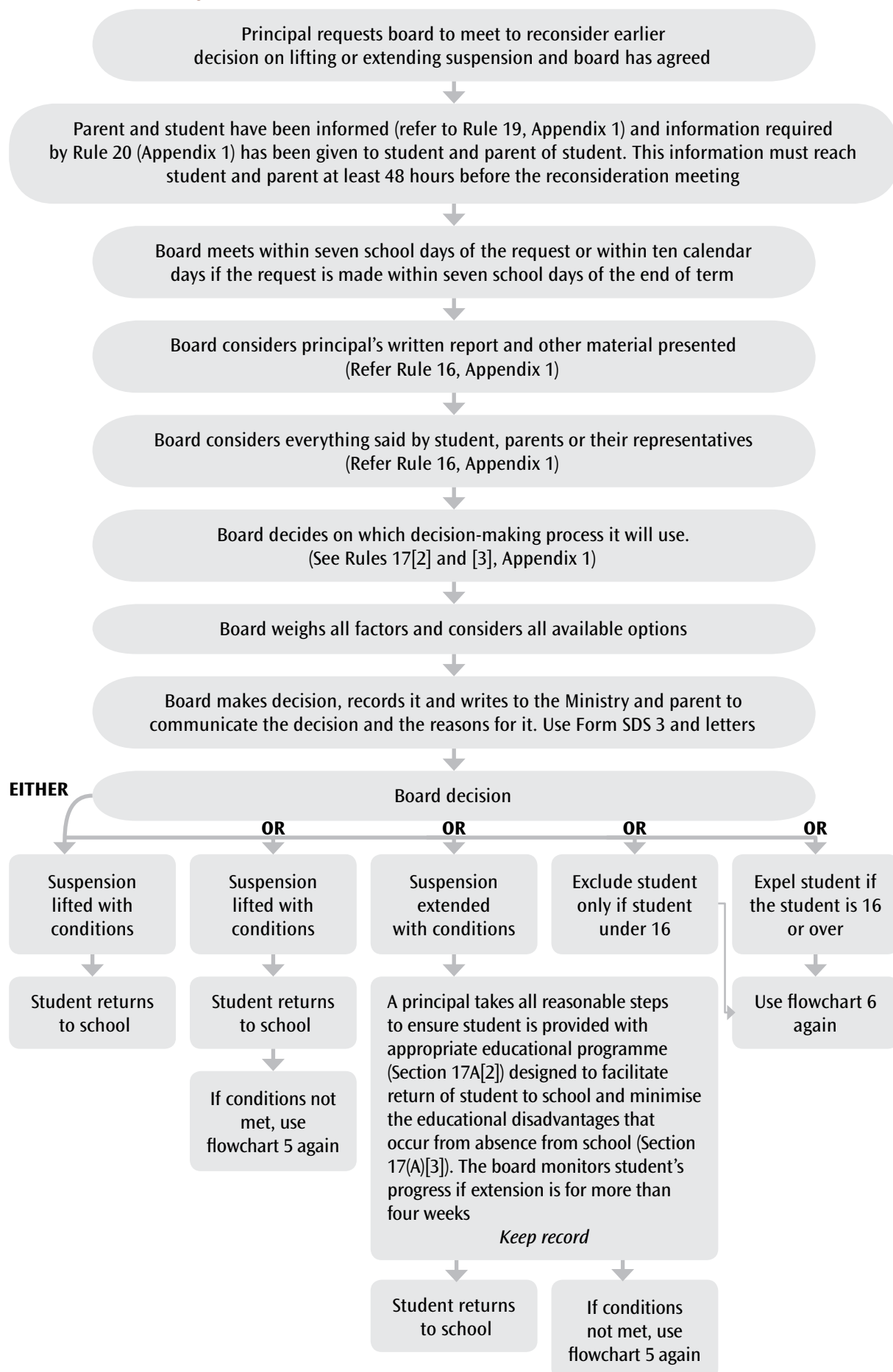
Understanding board's options

136 The board must make only one of the following four decisions:

If you decide the student should:	then you must:
attend your school again full time	lift the suspension without conditions
attend your school again full time but have further specific responsibilities placed on them	lift the suspension with conditions
remain out of your school for a set period of time in order to fulfil specific responsibilities placed on them	extend the suspension for a reasonable period with conditions (aimed at facilitating the return of the student to school)
leave your school	exclude the student if he or she is under 16 or expel the student if he or she is over 16

[Refer Part II, Appendix, Model letters: Letter 5 – Letter following reconsideration]

Reconsideration of suspension: Action by board





When the student is excluded

Tell the parents

! Do this immediately

137 You must tell the student's parent¹² that the student has been excluded and the reasons for your decision to exclude.

138 To help you do this, you may wish to use the model letter template. [*Refer* Part II, Appendix, Model letters: Letter 3 – Notifying parent/guardian of outcome of board meeting] You may also consider telephoning the parent.

Tell Ministry of Education

139 You must submit the “advice of exclusion” electronic form in ENROL.

Try to arrange for a new enrolment

! Do this as soon as possible.

140 You must try to arrange for the excluded student to be enrolled at another convenient school. If you arrange for a placement at another school and the student is ‘out of zone’, the Ministry can endorse the proposed enrolment and the student may then enrol.

***NOTE** Contact your local Ministry office to ask for an endorsement under Section 11D of the Education Act 1989 if the student is out of zone for the new school.

[*Refer* Part II, Section 3: 13 Placing excluded students]

Tell Ministry of Education

! Do this immediately

141 If you are unable to arrange for the student to enrol in another school within ten school days you must tell the Ministry of this and the steps taken in trying to arrange placement.

142 You should only remove an excluded student from the roll when a new school has been found. This is covered in Section 17C of the Education Act 1989 which states that excluded students must stay on the school roll until they enrol somewhere else.

¹² Unless the student has turned 20



When the student is expelled

Tell the parents

! Do this immediately

- 142** You must tell the student's parent¹³ that the student has been expelled; and the reasons for your decision to expel.
- 143** To help you do this, you may wish to use a model letter template. [*Refer* Part II, Appendix, Model letters: Letter 3 – Notifying parent/guardian of outcome of board meeting] You may also consider telephoning the parent.

Tell Ministry of Education

! Do this immediately

- 144** You must submit the “notification following exclusion” electronic form in ENROL.

¹³ Unless the student has turned 20.



Re-enrolment of excluded student

The Ministry of Education's role

145 If the principal of the excluding school has not been able to arrange enrolment, the Ministry will make all reasonable attempts to consult the student's parents, the board and any other person or organisation that may be interested in, or able to advise on or help with, the student's education or welfare.

146 The Ministry may:

- if satisfied that it is not inappropriate for the student to return to the excluding school, lift the exclusion; or
- arrange for enrolment and, if necessary, direct the board of any other state school (that is not an integrated school) to enrol the student; or
- arrange for the student to enrol at the Correspondence School.

The board's role

147 A board must comply with a direction to enrol a student from the Ministry of Education. A direction overrides the provisions of any enrolment scheme the school may have in place.

148 If the exclusion is lifted, or a direction to enrol is made, the student is able to enrol and attend school immediately.



Re-enrolment of expelled student

The Ministry of Education's role

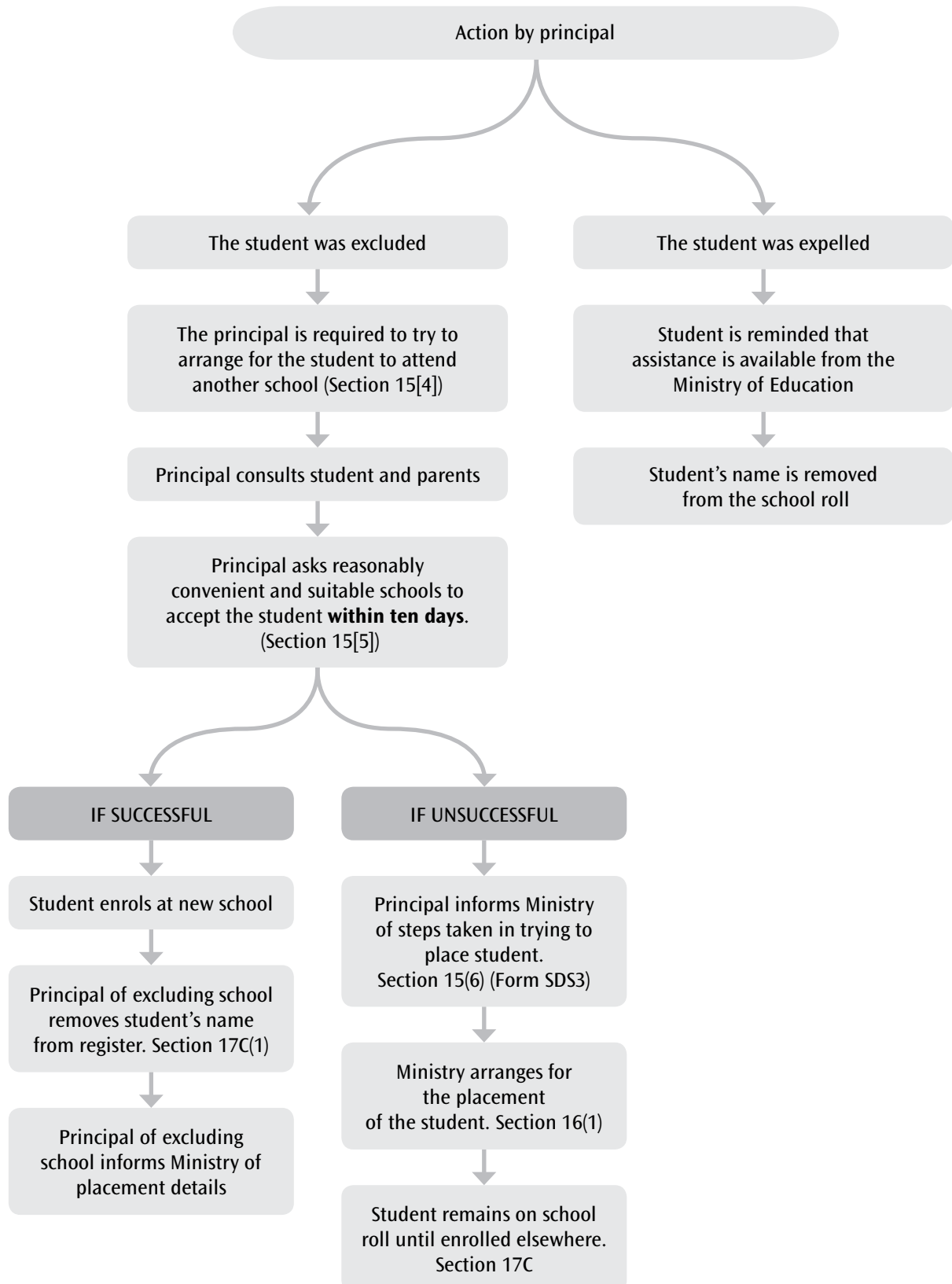
149 The Ministry may arrange for, and direct, the board of any state school (that is not an integrated school) to enrol an expelled student at their school. The Ministry must first take all reasonable attempts to consult the student's parents, the board, and any other person or organisation that may be interested in, or able to advise on or help with, the student's education or welfare.

The board's role

150 A board must comply with a direction to enrol a student from the Ministry of Education. A direction overrides the provisions of any enrolment scheme the school may have in place.

151 If a direction to enrol is made the student is able to enrol and attend a new school immediately.

Action by principal when student excluded or expelled





The Education Act 1989

Sections 13–18 of the Act provide the framework for stand-downs, suspensions, exclusions and expulsions. [Refer Appendix 2, which contains these sections] However, they need to be considered in the context of the broader philosophy of education, as expressed in other sections of the Act. The main references are:

(a) Right to education

Section 3 of the Act states that all New Zealanders are entitled to free enrolment and free education at any state school from the age of five until the end of the year in which they turn 19. This is subject to provisions arising from approved enrolment schemes and integration agreements.

(b) National education guidelines

Section 60A empowers the Minister of Education to publish statements of desirable achievements by the school system (National Education Goals) and desirable principles of conduct or administration (National Administration Guidelines). Boards of state schools are required to help all students realise their full potential by providing appropriate learning programmes and addressing barriers to learning and individual needs while respecting cultural differences.

(c) Right to counselling

Section 77 requires all principals of state schools to take all reasonable steps to ensure that all students get good guidance and counselling.

(d) Obligation to parents

Section 77 requires all principals of state schools to take all reasonable steps to ensure that parents are told of matters which, in the principal's opinion, are preventing or slowing the student's progress through school or are harming the student's relationships with teachers or other students.

Appendix 2



Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999

***HINT** Sections 13–18 of the Education Act 1989 are highlighted in boxes with these Rules.

Rules

Rule 1. Title and commencement –

- (1) These rules may be cited as the Education (Stand-down, Suspension, Exclusion and Expulsion) Rules 1999.
- (2) These rules come into force on 12 July 1999.

Rule 2. Interpretation –

- (1) In these rules, –
 - “the Act” means the Education Act 1989;
 - “Board” has the meaning given to it by rule 3;
 - “Given” has the meaning given to it by rule 4;
 - “Ministry” means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of Part II of the Act;
 - “Parent”, in relation to any person, means a person who is the person’s mother, father, or guardian;
 - “Reconsideration meeting” means a meeting to reconsider the action a Board took under section 15 or section 17 of the Act;
 - “Secretary” means the chief executive of the Ministry;
 - “Stand-down meeting” means a meeting to discuss a stand-down;
 - “Suspension meeting” means a meeting held under section 17B of the Act.
- (2) Words defined in the Act have the same meanings in these rules.

Rule 3. “Board” –

In these rules, “Board” means either –

1. A Board of Trustees constituted under Part IX of the Act; or
2. A special committee of a Board of Trustees constituted under Part IX of the Act, if the Board appointed the committee under section 66 of the Act and delegated to it the Board’s powers and functions under sections 14 to 18 of the Act and these rules.

Rule 4. “Given” –

- (1) Any document that these rules require to be given must be given by the method in subclause (2) that, in the opinion of the person giving the document, is most likely to ensure that the document reaches the person for whom it is intended.
- (2) The methods by which a document may be given are –
 1. Personally delivering it to the person; or
 2. Posting it to a usual address of the person; or
 3. Sending it to the person by fax or some other electronic means; or
 4. Providing it to the person in a manner approved by the person.
- (3) A document posted under subclause (2) (b) is deemed to have been delivered to the person at the time it would have been delivered in the ordinary course of post. For the purposes of proving delivery, –
 1. It is sufficient to prove that the document was properly addressed; and
 2. The document is presumed, in the absence of proof to the contrary, to have been posted on the day on which it was dated.

- (4) A document sent under subclause (2) (c) is deemed, in the absence of proof to the contrary, to have been delivered on the day after the day on which it was sent, and it is sufficient proof of sending that a correct machine-generated acknowledgement of receipt exists.

Rule 5. Purpose of rules –

- (1) These rules regulate the practice and procedure to be followed by Boards, principals, students, parents of students, and other persons, under sections 14 to 18 of the Act.
- (2) Sections 13 to 18 of the Act are set out in these rules so that readers can see how the sections and the rules fit together. (The sections are in boxes.)



Section 13 Education Act 1989

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 –

- (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.

Rule 6. “Standing-down,” “suspension,” “exclusion,” “expulsion” –

- (1) The processes dealt with in sections 14 to 18 of the Act are –
- 1. “Standing-down,” which is the process described in sections 14, 17A (1), and 18 (1) of the Act;
 - 2. “Suspension”, which is the process described in sections 14 (1) and (3), 15 (1) to (4), 17 (1) (a) and (b), 17 (2) to (4), 17A, 17B, 17C, and 18 (2) and (3) of the Act;
 - 3. “Exclusion”, which is the process described in sections 15 (1) (c), (5), and (6), 16, 17C, 17D (1) and (2), and 18 (3) of the Act;
 - 4. “Expulsion”, which is the process described in sections 17 (1) (c), 17C (2) (b), 17D, and 18 (3) of the Act.
- (2) The practices and procedures dealt with in these rules are in rules 8 to 21.

Rule 7. Principles applying to processes, practices, and procedures –

Every participant in the processes, practices, and procedures dealt with in sections 14 to 18 of the Act and these rules should be guided by the following principles:

- 1 The need for every participant to understand the processes, practices, and procedures:
- 2. The need for every participant to treat every other participant with respect, which includes recognising and respecting New Zealand's cultural diversity:
- 3. The need to recognise the unique position of Māori:
- 4. The need for every participant to be guided by the charter of the student's school:
- 5. The need for every participant to recognise that the Board has a responsibility to maintain a safe and effective learning environment at the student's school.

Stand-downs and suspensions, and notices about them



Section 14 Education Act 1989

14. Principal may stand-down or suspend students –

- (1) The principal of a state school may stand-down or suspend a student if satisfied on reasonable grounds that –
- (a) The student's gross misconduct or continual disobedience is a harmful or dangerous example to other students at the school; or
 - (b) Because of the student's behaviour, it is likely that the student, or other students at the school, will be seriously harmed if the student is not stood-down or suspended for an unspecified period.
- (2) A stand-down may be for 1 or more specified periods, and –
- (a) The period or periods may not exceed 5 school days in any 1 term:
 - (b) A student may be stood-down more than once in the same year but for not more than 10 school days in total in that year:
 - (c) In calculating the period of a stand-down, the day on which the student was stood-down, and any day on which the student would not have had to attend school in any event, must not be counted:
 - (d) The principal may lift the stand-down at any time before it is due to expire.



Section 14 Education Act 1989 continued

- (3) If a student has been stood-down or suspended, the following provisions apply in relation to the student's attendance at the school:
- (a) The principal may require the student to attend the school if the principal reasonably considers the student's attendance is appropriate for the purposes of section 17A:
 - (b) The principal must allow the student to attend the school if the student's parents request that the student be permitted to attend the school and the principal considers the request is reasonable:
 - (c) Otherwise the student does not have to, and is not permitted to, attend the school while stood-down or suspended.



Section 18 Education Act 1989

18. Notice requirements for stand-downs, suspensions, exclusions, and expulsions –

- (1) Immediately after a student is stood-down under section 14, the principal must tell the Secretary and (except in the case of a student who has turned 20) a parent of the student –
 - (a) That the student has been stood-down; and
 - (b) The reasons for the principal's decision; and
 - (c) The period for which the student has been stood-down.
- (2) Immediately after a student is suspended under section 14, the principal must tell the Board, the Secretary, and (except in the case of a student who has turned 20) a parent of the student –
 - (a) That the student has been suspended; and
 - (b) The reasons for the principal's decision.
- (3) Immediately after a Board lifts a suspension, extends a suspension, excludes a student, or expels a student (whether under section 15 or section 17), the Board must tell the Secretary and (except in the case of a student who has turned 20) a parent of the student –
 - (a) That the suspension has been lifted or extended, and the period of the extension (if any), or that the student has been excluded or expelled; and
 - (b) The reasons for the Board's decision.

Rule 8. No imposed absences –

A principal who wants a student to absent himself or herself from school for disciplinary reasons, or who wants a parent to remove a student from school for disciplinary reasons, may bring about the absence or the removal only by standing-down or suspending the student under section 14 (1) of the Act.

Rule 9. Information about stand-downs or suspensions –

A principal who has stood-down or suspended a student must ensure that the student and a parent of the student are, as soon as practicable, given the information on stand-downs or suspensions provided by the Ministry for the purpose.

Rule 10. Information for Ministry –

A principal telling the Secretary about a stand-down or suspension must ensure that the Secretary is given the information about the stand-down or suspension, under section 18 (1) or (2) of the Act, in the form that the Secretary requests.

Rule 11. Stand-down meeting –

- (1) A principal who has stood-down a student may cause a stand-down meeting to be arranged.
- (2) A principal who, having stood-down a student, is asked by the student or a parent of the student for a stand-down meeting –
 - 1. Must cause such a meeting to be arranged; and
 - 2. Must take steps to be available for the meeting as soon as is practicable for the student, the parent, and the principal.

Rule 12. Stand-down may be withdrawn –

As a consequence of a stand-down meeting, the principal may be satisfied that reasonable grounds for the stand-down did not exist under section 14 (1) of the Act. In that case, the principal must –

- 1. Ensure that the stand-down is withdrawn; and
- 2. Ensure that the student, and anyone told of the stand-down under section 18 (1) of the Act, is told that the stand-down has been withdrawn.

Rule 13. Attendance at school –

In exercising the discretion under section 14 (3) (a), the principal must take into account, for the purposes of section 17A (2) and (3), that an appropriate educational programme for the student may include the need for the student –

- 1. To fulfil course requirements for a qualification;
- 2. To sit an examination.

Suspension meetings



Section 17B Education Act 1989

(17B. Who may attend Board meeting concerning suspensions –

If a student has been suspended, the student, the student's parents, and their representatives are entitled to attend at least 1 meeting of the Board and speak at that meeting, and to have their views considered by the Board before it decides whether to lift or extend the suspension or exclude or expel the student (whether under section 15 or section 17).

Rule 14. Report for Board –

A principal who has suspended a student must ensure that a report that contains all information relevant to the suspension is written for the Board.

Rule 15. Information about suspension meeting –

- (1) The Board must ensure that a student who has been suspended, and the student's parents, are given the following as soon as practicable after the suspension:
 1. Written notice of the time and place of the suspension meeting; and
 2. Written information about the statutory options available to the Board to deal with the suspension at the suspension meeting.
- (2) The Board must ensure that the following material is given, in writing, to the student and the student's parents within the time described in subclause (3):
 1. Information on the procedures the Board follows at suspension meetings; and
 2. Advice that the student and the student's parents may attend the meeting and speak at it about the suspension; and
 3. Those parts of the following that, in the Board's opinion, it would have no ground to withhold if the student made a request for the following under the Privacy Act 1993:
 1. The principal's report to the Board on the suspension; and
 2. Any other material about the suspension to be presented by the principal or the Board at the meeting.
- (3) The material must be given to the student and the student's parents at a time that enables it to reach them at least 48 hours before the meeting (or within a shorter time agreed by all the parties).

Rule 16. Adjournments to consider new information –

- (1) The Board must allow an adjournment in a suspension meeting if the student, a parent of the student, or any member of the Board asks the Board to do so because the person making the request needs time to consider new information.
- (2) In subclause (1), "new information" means information –
 1. That is referred to at the suspension meeting; and
 2. That is either –
 1. Information that was not given, under rule 15, to the person making the request; or
 2. Information that is new to the person making the request for some other reason.
- (3) In deciding on the period of the adjournment, the Board must have regard to the amount of time that the person making the request needs, in his or her particular circumstances, to consider the information.

Rule 17. Board's decision –

- (1) Before deciding at a suspension meeting whether to lift or extend the suspension or exclude or expel the student, the Board must –
 1. Have due regard for each circumstance relevant to the suspension; and
 2. Consider each statutory option available to it.
- (2) The Board may –
 1. Require the principal, the student, the student's parents, any representative of the student, and any representative of the parents to withdraw from the meeting while the Board makes its decision; or
 2. Ask the principal, the student, the student's parents, and any representatives of the student and the parents to stay at the meeting while the Board makes its decision.
- (3) Before making its decision, the Board may try to get all the parties at the meeting to agree on what the decision should be.
- (4) The Board must record its decision, and the reasons for it, in writing.

Monitoring of extended suspensions



Section 15 Education Act 1989

15. Board's powers when suspended student younger than 16 –

- (1) If a student younger than 16 has been suspended from a state school, the school's Board may –
 - (a) Lift the suspension at any time before it expires, either unconditionally or subject to any reasonable conditions the Board wants to make;
 - (b) Extend the suspension conditionally for a reasonable period determined by the Board when extending the suspension, in which case subsection (2) applies;
 - (c) If the circumstances of the case justify the most serious response, exclude the student from the school by extending the suspension and requiring the student to be enrolled at another school.
- (2) If the Board extends a suspension conditionally, the Board must impose reasonable conditions aimed at facilitating the return of the student to school and must take appropriate steps to facilitate the return of the student to school.
- (3) If a student fails to comply with any condition imposed under this section in respect of the lifting or extension of his or her suspension, the principal may request the Board to reconsider the action it took under this section in that case and the Board may confirm or reverse its earlier decisions or may modify its earlier decisions by taking any action specified in any of paragraphs (a) to (c) of subsection (1).
- (4) If the Board has not sooner lifted or extended it or excluded the student under subsection (1) (c), the suspension of a student younger than 16 ceases to have effect –
 - (a) At the close of the 7th school day after the day of the suspension; or
 - (b) If the suspension occurs within 7 school days before the end of a term, at the close of the 10th calendar day after the day of the suspension.

- (5) If the Board of a state school excludes the student under subsection (1) (c), the principal must try to arrange for the student to attend another school (which school is a suitable school that the student can reasonably conveniently attend).
- (6) If the principal is unable, by the 10th school day after the day of the Board's decision to exclude a student, to arrange for the student to attend another school, the principal must tell the Secretary what steps the principal took in trying to do so.



Section 17 Education Act 1989

17. Board's powers when suspended student 16 or older –

- (1) If a student who is 16 or older has been suspended from a state school, the Board may –
 - (a) Lift the suspension at any time before it expires, either unconditionally or subject to any reasonable conditions it wants to make; or
 - (b) Extend the suspension conditionally for a reasonable period determined by the Board when extending the suspension, in which case subsection (2) applies; or
 - (c) Expel the student.
- (2) If the Board extends a suspension conditionally, the Board must impose reasonable conditions aimed at facilitating the return of the student to school, and must take steps to facilitate the return of the student to school.
- (3) If a student fails to comply with any condition imposed under this section in respect of the lifting or extension of his or her suspension, the principal may request the Board to reconsider the action it took under this section in that case and the Board may confirm or reverse its earlier decisions or may modify its earlier decisions by taking any action specified in any of paragraphs (a) to (c) of subsection (1).



Section 17 Education Act 1989 continued

- (4) If the Board has not sooner lifted or extended it or expelled the student under subsection (1) (c), the suspension of a student who is 16 or older ceases to have effect –
- (a) At the close of the 7th school day after the day of the suspension; or
 - (b) If the suspension occurs within 7 school days before the end of a term, at the close of the 10th calendar day after the day of the suspension.

Rule 18. Extended suspension under any of sections 15 (1) (b), 15 (3), 17 (1) (b), or 17 (3) of the Act –

- (1) This rule applies when a Board extends a suspension under any of sections 15 (1) (b), 15 (3), 17 (1) (b), or 17 (3) of the Act for a period of 4 weeks or more.
- (2) The Board must monitor the progress of the suspended student by ensuring that it receives, at each regular Board meeting after the suspension, a written report on whether the student is meeting the conditions imposed and progressing with any educational programme provided.
- (3) The principal must ensure that the student and a parent of the student are given a copy of any such report as soon as practicable.

Rule 19. Student failing to comply with conditions –

- (1) If the Board agrees to a request made by the principal under section 15 (3) or section 17 (3) of the Act, the Board must hold a reconsideration meeting about the student's case.
- (2) The meeting must be held –
 - 1. Within 7 school days of the request; or
 - 2. If the request is made within 7 school days of the end of term, within 10 calendar days of the request.

Rule 20. Information about reconsideration meeting –

- (1) The Board must ensure that a student who has been suspended, and a parent of the student, are given written notice of the time and place of the reconsideration meeting as soon as practicable after the Board decides to hold the meeting.

- (2) The Board must ensure that the following material is given, in writing, to the student and the parent within the time described in subclause (3):
 - 1. Information on the procedures the Board follows at reconsideration meetings; and
 - 2. Advice that the student and a parent of the student may attend the meeting and speak at it about the reconsideration of the suspension; and
 - 3. Those parts of the following that, in the Board's opinion, it would have no ground to withhold if the student made a request for the following under the Privacy Act 1993:
 - 1. The principal's report to the Board on the reconsideration of the suspension; and
 - 2. Any other material about the reconsideration of the suspension to be presented by the principal or the Board at the meeting.
- (3) The material must be given to the student and the parent at a time that enables it to reach them at least 48 hours before the meeting (or within a shorter time agreed by all the parties).

Rule 21. Information for Ministry – As soon as practicable after the Board has made a decision on its reconsideration of the suspension under section 15 (3) or section 17 (3) of the Act, the principal must ensure that the Secretary is given the information about the decision, under section 18 (3) of the Act, in the form that the Secretary requests.

Guidance and educational programmes



Section 17A Education Act 1989

17A. Duties of principal when student stood-down or suspended –

- (1) When a student is stood-down or suspended from a state school, the principal must take all reasonable steps to ensure that the student has the guidance and counselling that are reasonable and practicable in all the circumstances of the stand-down or suspension.
- (2) If a student's suspension is subject to conditions (whether under section 15 or section 17), the principal must take all reasonable steps to ensure that an appropriate educational programme is provided to the student.
- (3) The purpose of the programme referred to in subsection (2) is to facilitate the return of a student to school and to minimise the educational disadvantages that occur from absence from school.

Excluded students



Section 16 Education Act 1989

16. Secretary's powers when excluded student younger than 16 –

- (1) If the Secretary is satisfied that the Board of a state school has excluded a student who is younger than 16 from the school under section 15 (1) (c), and that the principal has not arranged for the student to attend another school, the Secretary must either, –
 - (a) If satisfied that it is not inappropriate for the student to return to the school from which the student has been excluded, lift the exclusion; or
 - (b) Arrange for and, if necessary, direct the Board of any other state school (that is not an integrated school) to enrol the student at the other school; or
 - (c) Direct a parent of the student to enrol the student at a correspondence school.
- (2) The Secretary may not give a direction under subsection (1) (b) or lift an exclusion under subsection (1) (a) unless the Secretary has also made all reasonable attempts to consult the student, the student's parents, the Board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or able to advise on or help with, the student's education or welfare.
- (3) If the Board of the school from which the student has been excluded also controls another school, the Secretary (in exercising the power conferred by subsection (1) (b)) may direct the Board to enrol the student at that other school.
- (4) A Board must comply with a direction under subsection (1) (b), and the direction overrides the provisions of any enrolment scheme the school may have in place.

School register



Section 17C Education Act 1989

17C. Effect of suspension on school register –

- (1) The name of a student younger than 16 who has been suspended from a school under section 14 or excluded from a school under section 15 (1) (c) must stay on the school's register until the earliest of the following days:
 - (a) The day the student is enrolled at another registered school:

- (b) The day the student is given an exemption under section 21 or section 22.

- (2) The name of a student who has turned 16 and is suspended from a school under section 14 must stay on the register of the school until the earliest of the following days:

- (a) The day on which the student is enrolled at another registered school:

- (b) The day on which the student is expelled from the school:

- (c) The day on which the student leaves school:

- (d) The 1 January after the student's 19th birthday.

- (3) Subsection (2) applies to a student who is younger than 16 when suspended from a school under section 14 or excluded from a school under section 15 (1) (c), and turns 16 while subject to the suspension or exclusion.



Section 17D Education Act 1989

17D. Re-enrolment of excluded or expelled student –

- (1) The Board of a state school from which a student has ever been excluded or expelled (whether under section 15 or section 17) may refuse to enrol the student at the school (unless, in the case of an exclusion, the Secretary has lifted the exclusion under section 16 (1) (a)).

- (2) Subject to section 16 (1) (b), the Board of a state school may refuse to enrol a student who is for the time being excluded or expelled (whether under section 15 or section 17) from another state school.

- (3) The Secretary may, in the case of a student who has turned 16, direct the Board of another state school (that is not an integrated school) to enrol a student at the school if –

- (a) The student has been expelled under section 17; and

- (b) The Secretary has made all reasonable attempts to consult the student, the student's parents, the Board, and any other person or organisation that, in the opinion of the Secretary, may be interested in, or able to advise on or help with, the student's education or welfare.

- (4) A Board must comply with a direction under subsection (3), and the direction overrides the provisions of any enrolment scheme the school may have in place.

(use extra pages if needed)

GUIDELINES | *Stand-downs, suspensions, exclusions and expulsions* | 2009

Significant disagreements
Were there any significant disagreements over facts? <input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, what version do you prefer and why?
Evaluating the facts
Can you answer yes to at least one of these questions? <input type="checkbox"/> Yes <input type="checkbox"/> No
Was the student caught red-handed? or
Was the incident seen by someone you think is credible? or
Was the student implicated by other significant circumstantial evidence? or
Did the student freely admit involvement or responsibility?
Summary and recommendation
Is there sufficient evidence for the principal to consider a stand-down, suspension or to request a reconsideration meeting? <input type="checkbox"/> Yes <input type="checkbox"/> No
Are there alternative options? Comment

