



27 March 2020



Thank you for your email of 15 February 2020 to the Ministry of Education requesting the following information:

1. *The number of complaints which the Ministry has received over the last five years (2014-2019) relating to student discipline issues at secondary schools.*

2. *The research which you carried out in relation to the establishment of dispute resolution panels. This is referred to on page 3 of 'The Regulatory Impact Assessment: Establishing Dispute Resolution Panels'*

(<https://www.education.govt.nz/assets/Documents/Ministry/Legislation/ETB/Establishing-dispute-resolution-panels-.pdf>)

On 25 February 2020, you clarified part one of your request number of complaints which the Ministry has received since 2017 relating to stand-downs and suspension.

Your request has been considered under the Official Information Act 1982 (the Act).

Part one - The number of complaints which the Ministry has received over the last five years (2014-2019) relating to stand-downs and suspension at secondary schools.

Below are the number of complaints which the Ministry has received since 2017 relating to stand-downs and suspensions:

School Year	Complaints
2017	64
2018	109
2019	104
2020	7
Total	284

NB: The data is live and therefore subject to change. It was extracted on 4th of March 2020 and includes incidences recorded up to this date.

Please note the following caveats in relation to the table provided:

1. **Each complaint is recorded separately.** Multiple complaints may have been received by the same person or different people, which could be about the same or different events.
2. **Schools are independent crown entities, and manage their own complaints received.** While they have some reporting requirements (annual reports, serious teacher misconduct, etc.) under various pieces of legislation, they are not required to report to the Ministry on complaints received.
3. **The complaints captured in the data only represents the complaints received by the Ministry.** They do not represent all complaints about schools, as individual schools will hold their own information about complaints they have received directly. Where letters of complaint have been addressed to the Minister of Education, the complaints may not have been entered into the Ministry's database.
4. **A complaint's inclusion does not mean that the complaint was proven or upheld.**
5. **Difference in figures between 2017 and other years.** In 2017 a new system for recording complaints was implemented. Additional checks were required to ensure the accuracy of the data.

The Ministry takes the reporting of complaints seriously and our regional offices work closely with schools where it is identified that extra support might be required to manage and resolve complaints.

Part two - The research which you carried out in relation to the establishment of dispute resolution panels. This is referred to on page 3 of 'The Regulatory Impact Assessment: Establishing Dispute Resolution Panels'

(<https://www.education.govt.nz/assets/Documents/Ministry/Legislation/ETB/Establishing-dispute-resolution-panels-.pdf>)

Set out below is what research has been conducted as per the Regulatory Impact Statement:

International examples of dispute resolution in the education sector. This research focused on similar jurisdictions to New Zealand;

- Document One: Disputes resolution: summary of selected schemes
- Document Two: Legal framework for suspensions and exclusions from school in NZ, Australia, the UK and selected States and countries in Canada and Europe

The impact of the use of restorative practices in New Zealand schools; and

- Document One also has relevant information relating to New Zealand schools
- Document Three: Restorative practice in New Zealand schools
- Document Four: Research on the use of restorative practices in schools

The life-long impact of removals on students in New Zealand.

- Document Five: Research summary: conclusions on the impact of school exclusions

- Document Six: United States case study : a widespread reform of law, policy and practice on school discipline approaches

These documents have been attached as **Appendix A**.

Please note, the Ministry now proactively publishes OIA responses on our website. As such, we may publish this response on our website after five working days. Your name and contact details will be removed.

Thank you again for your email. You have the right to ask an Ombudsman to review this decision. You can do this by writing to info@ombudsman.parliament.nz or Office of the Ombudsman, PO Box 10152, Wellington 6143.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. Schöllmann', with a stylized, cursive script.

Dr Andrea Schöllmann
Deputy Secretary
Education System Policy

Appendix A – Research papers

No.	Documents or articles	Decision on release
1.	Disputes resolution: summary of selected schemes	Release in full.
2.	Legal Framework for suspensions and exclusions from school in NZ, Australia, the UK and selected States and countries in Canada and Europe	Release in full.
3.	Restorative Practices in New Zealand Schools	Release in full.
4.	Restorative Justice paper	Release in full.
5.	Research summary on impacts of exclusions	Release in full.
6.	United States case study: a widespread reform of law, policy and practice on school discipline approaches	Release in full.

Disputes resolution: summary of selected schemes

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
Independent Office For School Disputes Resolution Victoria, Australia https://www.schoolresolution.vic.gov.au/Pages/default.aspx?Redirect=1 Third tier in tiered dispute resolution for government schools (not Catholic school system).	<p>Consensual, "alternative disputes resolution"¹ – a flexible approach to help people find a workable solution.</p> <p>Does not provide advocacy.</p> <p>Support everyone – parents, principal, child – to problem solve.</p> <p>Deals with issues about decisions by government schools that are complex and intractable, but where parties are open and willing to work through the issue in good faith.</p> <p>Some matters are outside scope, e.g. Department of Education and Training's (the Department) policy decisions (e.g. eligibility for funding, staff disciplinary action).²</p>	<p>Final step in the DR process, parents need to try working through issue with schools first. Schools are required to have policies about this. Then if this fails, go to the Department's Central Complaints Team who will either work to resolve it or refer it to the Independent Office for SDR. Parents can also lodge directly.</p> <p>https://www.education.vic.gov.au/parents/going-to-school/Pages/school-complaints.aspx</p> <p>Each matter treated individually according to the needs presenting. Office contacts people within 10 days of receiving the matter, timeframes to resolve disputes varies. The Independent Office can collect information, and may arrange a meeting at a mutually agreeable location. Someone from the Office may also help participants prepare separately for the meeting. At this meeting, also called a conciliation conference, a support person can help you discuss the matter. Subject matter experts can help to problem solve the issues.</p>	<p>DR provided by the Independent Office, oversight by the Department.</p> <p>The Independent Office also works with the Department to improve its overall complaints management. When workable solutions are reached to complex problems, these can help make improvements across the whole system.</p>	Free.	Parties can have support people at conciliation conferences.	<p>The Independent Office is overseen by an independent Chair and two Deputy Chairs, appointed by the Minister for Education. The Chair and Deputy Chairs are experts in ADR. The Office can draw upon two pools of experts depending upon the needs of each matter:</p> <p>Experts in school education</p> <p>Experts in the potential topics of dispute (e.g. child development, cultural liaison, disability, family disputes, mental health, and bullying prevention).</p>	No.	<p>Various outcomes can be achieved through having the dispute handled by the Independent Office. Primarily, the Independent Office strives to assist students, parents and principals to reach an agreed outcome. Where it is not possible to resolve a matter, the Independent Office can then assess the information it has and make recommendations to the Department about what to do. The Independent Office will not have authority to impose or apply an outcome.</p>	<p>This is the last tier of disputes resolution connected to the Department. Rights to contact other avenues (such as the Victorian Ombudsman, the Victorian Equal Opportunity and Human Rights Commission, the Victorian Civil and Administrative Tribunal (VCAT) or the courts) are not extinguished, but if other processes happening the Independent Office will step back.</p>

¹ Alternative dispute resolution means any means of resolving a dispute outside the classroom. ADR typically includes early neutral evaluation, negotiation, conciliation, mediation, and arbitration.

² Other outside scoop examples are: decisions or actions about School Councils (governance body supporting the principal), taken by a Student Attendance Officer (e.g. issuing of a warning notice), decisions made by the Principal as occupier of the school land (e.g. conditions of entry, issuing of Trespass Warning Notice).

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
Ontario Ombudsman \$18.5 million Canada Deals with complaints about public sector bodies, including school boards among other matters.	Determinative.	<p>Must attempt to resolve the complaint with the school board first. Most cases are resolved without need for formal investigation. The Ombudsman can decide to launch a formal investigation if an individual complaint cannot be resolved, or if he identifies what appears to be a systemic problem potentially affecting a large number of people. Investigations can arise from a trend in complaints or just one complaint – and the Ombudsman also has the power to launch an investigation on his “own motion,” without a complaint. After the issue is assessed and the decision is made to investigate, a notice of investigation is sent to the appropriate organization. Investigators then gather evidence (by reviewing documents, interviewing people involved in the matter, etc.), upon which the Ombudsman bases his findings and recommendations. The organization has a chance to respond before the Ombudsman’s recommendations are finalized and made public. Most complaints resolved within two weeks.</p>	<p>DR provided by Ombudsman, overseen by</p> <p>It is an offence under the <i>Ombudsman Act</i> to mislead the Ombudsman or to obstruct an Ombudsman investigation. All provincial government organizations and municipalities, universities and school boards must co-operate with the Ombudsman’s investigations.</p>	Free.	N/a.	<p>The Ombudsman is an impartial officer of the Ontario Legislature, independent of the government and all political parties, who is appointed by an all-party committee of the Legislative Assembly every five years.</p> <p>Results of major investigations and notable cases are reported on in annual report. Complainants identities kept private.</p>	<p>Focus is on investigating public sector body.</p>	<p>The Ombudsman Act sets out the Ombudsman’s powers of investigation, which include the authority to issue summonses, request documentation from public sector bodies, require evidence under oath, and inspect premises.</p> <p>The Ombudsman and staff can help people navigate the bureaucracy, cut through red tape, identify and rectify unfair administrative conduct, and prompt broad reforms affecting millions of people.</p> <p>When the Ombudsman’s recommendations are accepted, he also asks the public sector body in question to report to him on its progress in implementing them. The Office monitors this progress, as well as any new complaints that might indicate recurring issues, and publish updates in Annual Reports. The Ombudsman can also reopen an</p>	<p>The Ombudsman cannot enforce his recommendations, nor can he overturn decisions. However, most of his recommendations are accepted, and the Ombudsman and staff follow up to ensure they are implemented.</p> <p>If a complainant is unhappy with the service provided they can complain to the Ombudsman’s office.</p>

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
Student Allowance Appeal Authority	Determinative by experts/specialists	The Authority hears appeals of StudyLink decisions on student allowances.	DP provided by a statutory body Oversight by MoE and MSD	No lodging fees	Appeals are heard on the papers (there is no formal hearing, decisions are based on written evidence).	The Authority consists of a paid Chairperson, appointed by Minister, who deals with all appeals. Term is up to 5 years, appointment recorded in the NZ Gazette, not personally liable. Decisions available at http://www.nzlii.org/nz/cases/NZSAAA/	No.	Authority can confirm decision or substitute a new decision which has the same effect as if Secretary had made the decision. When substituting new decision the Authority can order the Secretary to pay a sum fixed by the Authority (all or part of the costs incurred by the Authority in hearing the appeal); paid to Ministry of Justice.	Decisions are final, no appeal.
Ministry of Education complaints process in early learning The Ministry receives, assesses and investigates complaints about licensed or certificated early learning services.	Determinative	Early learning services required to have their own process. Parents are encouraged to go through services process first. If unsatisfied can complain to Ministry (anyone can complain). Ministry will assess (according to risks e.g. child health, safety, wellbeing) and investigates if necessary. Then the Ministry will make a judgement if it finds that regulated standards have not been met by the service, and takes action. A range of actions are available including placing the service on a provisional licence. Investigations and when problem is rectified, or if they don't find regulatory non-compliance.	Provided and overseen by MoE.	No fees	n/a	n/a	Focus on compliance of early learning services.	When it is identified that a service is failing to meet one or more regulatory requirements, the service may be required to complete an action plan or be placed on a provisional licence. In more serious cases, this may result in the service having their licence suspended or cancelled.	Complainants or services unhappy with the process can complaint to their regional office of the Ministry of Education. If still unhappy they can complain to the Ombudsman.
iStudent Complaints	Consensual, tiered	New Zealand (current and former) international students and their parent	DP provided by nominated/authorised provider Fairway Ltd	Free (funded by the Export	Representation for mediation is not necessary but parties can choose	Outcome is confidential to the parties.	Provider is bound by the decision if	Adjudicator make binding decisions with the following remedies: the	If student is unsatisfied they can take the complaint to the Disputes Tribunal,

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
iStudent Complaints (International Student Contract Dispute Resolution Scheme) is administered by FairWay and provides mediation services to international students who are in contractual disputes with their education provider in New Zealand.	Negotiation, mediation are offered, then if unsuccessful it goes to arbitration.	or legal guardian can initiate a dispute against a provider by making a claim to iStudent Complaints). Students need to go through their provider's complaints process first. Where mediation is unable to facilitate a settlement matters go before an adjudicator who issues a binding decision. Complaints about the Education (Pastoral Care of International Students) Code of Practice are referred to NZQA.	Oversight by MoE.	Education Levy)	a lawyer or other support person if they want.	Student Complaints appoints mediators and adjudicators who are independent of the parties to the dispute. They are accredited or a member of a relevant dispute resolution professional body – Arbitrators' and Mediators' Institute of New Zealand (AMINZ), Resolution Institute, or the NZ Law Society.	student accepts it.	provider pays the student an amount not exceeding \$200,000; the provider takes any other action directed by the adjudicator to remedy the matter complained about; the provider provides non-monetary redress for any loss or damage suffered; The provider ceases the conduct that has given rise to the claim.	through the court system or any other complaint resolution body. If the student accepts the final decision, the provider is bound by that decision and must carry out all of the actions – including payments – that are in the decision.
Disputes Tribunal \$9 million You can use the Disputes Tribunal to settle small claims up to \$15,000 or, if everyone agrees, \$20,000.	Consensual, experts/specialists (When claimed against, respondents can contact applicants and try to settle, or go to hearing, or counterclaim)	Applicants file a claim online, by post, or at local court. A hearing is held either in person or by phone. Hearings are managed by a referee who either helps parties come to settlement or makes a decision. Doesn't deal with matters that have their own process (e.g. tenancy, employment). CAB and Community Law can help with making a claim. Both parties explain their side of the dispute. When both have spoken there's a discussion about the points that are in disagreement. The referee tries to help you both agree how to	Tribunal provided by Courts, overseen by Ministry of Justice.	Fees scaled by amount of claim (under \$2,000 = \$45, between \$2,000 and \$5,000 = \$90, more than \$5,000 = \$180)	You usually represent yourself in a hearing - a lawyer can't represent you, and there are no judges. In rare cases you can be represented (e.g. if under 18, or have a disability that stops you making your own case). You can call witnesses and bring support people. If you need interpreter (e.g. if you find English difficult) these are provided free.	Hearings are informal and private. Referees are not judges but their decisions are legally binding. They're usually legally qualified. Referees are chosen because they can make common sense decisions and help people to reach their own agreement. Decisions are reported on and publically available (names etc kept private):	No. The applicant goes first (when presenting their claim).	Legally binding decisions. A referee can order, for example that one party must pay the other an amount. ³ The tribunal does not award costs except in a small range of exceptional circumstances (e.g. frivolous or vexatious claims). ⁴ This is to make it accessible to most people.	Either party can apply (within 28 days of original decision) for a rehearing in the tribunal or to lodge an appeal to the District Court if they believe they have grounds to do so. However, the circumstances in which this can be done are limited (see below). Forms can be obtained from the District Court. Usually, the tribunal will only grant a rehearing of the dispute if one party can show that not all the relevant information was available, or that a

³ Referees can also order: one party is not liable to pay money to the other party; work must be done to a satisfactory standard and what happens if that is not done; an agreement will be altered or cancelled; certain goods must be handed over by one party to the other party or that money be paid for the goods; the claim be dismissed; or the claim be struck out because it is not one of the types of dispute the Tribunal can help you with.

⁴ There are four exceptional situations where the Referee has discretion to award costs against a Tribunal party. 1. If an applicant makes a "frivolous or vexatious" claim. Such a claim is clearly without merit or has been taken in order to annoy or harass the other party. . 2. If an applicant lodged a claim knowing it is not within the jurisdiction of the Disputes Tribunal. 3. If a party has unnecessarily prolonged proceedings by engaging in conduct intended to impede the prompt resolution of the proceedings. 4. If a claim is transferred to the Disputes Tribunal from the District Court, the respondent could be ordered to pay the applicant the cost of the District Court filing fee and their Application type Payable under Disputes Tribunals (Fees) Amendment Rules 2013 if the total amount sought under the claim is less than \$2,000 \$45 if the total amount sought under the claim is \$2,000 or more but less than \$5,000 \$90 if the total amount sought under the claim is \$5,000 or more \$180 Fees: lawyer's fee for preparing the claim. This would only happen if the respondent led the applicant to believe that the debt was undisputed (as undisputed debts are pursued in the District Court and not in the Disputes Tribunal), but then decided to dispute the debt after the claim had been filed.

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
		<p>settle the dispute. If you reach an agreement and it's approved by the referee, it's binding (you must follow the agreement).</p> <p>If you can't agree, the referee makes a decision. This decision may be given at the hearing or be posted to the parties later.</p>				https://www.disputestribunal.govt.nz/disputes-decision-finder/?Filter_Jurisdiction=26			<p>mistake was made, or that something else went wrong that prevented a proper decision from being made. Can only appeal if the referee conducted the proceedings (or a tribunal investigator⁵ carried out an inquiry) in a way that was unfair and prejudiced the result of the proceedings.</p>
Tenancy Mediation \$12.5 million MBIE mediates tenancy disputes.	Consensual, tiered	Parties talk about the issues together to try and reach a fair and reasonable agreement. The mediator will make sure that everything is lawful under the Residential Tenancies Act. Can be done by telephone or face to face.	Provided and overseen by MBIE	No fees	<p>Parties can bring a support person (the mediator has to agree, and may ask the other person if they agree).</p> <p>The support person can't say anything, (unless everyone involved in the mediation agrees that they can).</p>	Mediators are very experienced in tenancy issues and can help with questions about tenancy law. They aren't lawyers, judges or counsellors.	No.	The mediator is there to discuss the problem, and help parties come up with a workable solution. They are not there to tell parties what to do and won't decide anything.	Sealed mediation orders can be enforced by the Ministry of Justice.
Tenancy Tribunal \$6 million The Tenancy Tribunal adjudicates disputes about residential tenancies.	Adjudicative, tiered	When mediation or other dispute resolution methods fail, tenants or landlords can apply to the Tribunal.	DP provided by statutory board, overseen by MoJ.	\$20.44 (inc GST) application fee	<p>Parties can bring support people. Hearings are public. People normally represent themselves. Legal representation allowed in limited circumstances (e.g. if the dispute is for more than \$6,000, or if it is a complex case).</p> <p>You must attend if you want your side to be heard.</p>	Adjudicators are appointed by the Ministry of Justice.	No.	Issues orders that are legally binding, and which explain who has to do what to resolve the dispute. The most common types of orders are those ordering tenancies to end, money to be paid or work to be done. For example, the Tribunal can order a tenant to pay overdue rent, or a landlord to repair a property. The Tribunal can award	<p>Tribunal orders can be enforced by the Ministry of Justice.</p> <p>Apply for a re-hearing or appeal to District Court (must apply within 10 working days). Re-hearings only available if the decision was substantially wrong, or a miscarriage of justice has or is likely to occur. Can't appeal interim orders or orders less than \$1,000.</p>

⁵ Sometimes, if there is not enough information available at the hearing, the referee may seek other evidence, make a site visit or order an independent investigation to take place. This is usually at the party's cost. In rare cases, where there is conflicting expert evidence, the referee can order an independent investigation at the Tribunal's cost to assist the referee in making his or her decision.

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
								compensation or order work to be done up to a value of \$50,000.	
Human Rights Commission The HRC receives complaints about behaviour that constitutes discrimination on one of the grounds protected under the Human Rights Act 1993.	Consensual – experts/specialists	Mediation The HRC attempts to resolve the issue through informal mechanisms including phoning the parties, provision of information and mediation. Mediation includes explaining the Human Rights Act and working through possible solutions.	DP provided by statutory board, overseen by MoJ.	No fees	n/a	Process is confidential.	No.	Most complaints are sorted out by informal intervention or mediation. Resolution can include an apology, an agreement not to do the same thing in the future, a training programme or compensation.	Unresolved complaints can go to the Human Rights Review Tribunal.
Human Rights Review Tribunal The Tribunal hears claims relating to breaches of the rights contained in the Human Rights Act 1993, Privacy Act 1993 and Health and Disability Commissioner Act 1994. Claims could relate to discrimination, sexual harassment and racial harassment, privacy principles, and the Code of Health and Disability Services Consumers' Rights.	Adjudicative	The Tribunal hears matters that have been unable to be resolved by the Human Rights Commission, Privacy Commissioner and/or Health and Disability Commissioner. Individual cases are heard by a chairperson and 2 panel members.	DP provided by statutory board, overseen by MoJ.	No fee to claim	Legal representation not mandatory but it's highly recommended. You can apply for free legal representation. If you don't attend the hearing the Tribunal can still conduct the hearing without your side of the story.	Tribunal members are appointed by the Governor-General on the recommendation of the Minister of Justice. The Minister maintains a panel of up to 20 members. Appointments are based on knowledge or experience of issues likely to come before the Tribunal, such as: human rights law, public administration, economic, employment or social issues, cultural issues. Decisions case law searchable https://www.justice.govt.nz/tribunals/human-rights/decisions/?Filter_Jurisdiction=27	No.	The tribunal can award compensatory damages for losses suffered. Awards are typically for injury to feelings, humiliation and loss of dignity. There is a \$350,000 limit on the money the tribunal may award. This is the same as the District Court.	Appeal to High Court.

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
Employment Mediation service \$6.6 million Parties to an employment dispute may refer their dispute to MBIE's employment mediation scheme or may be referred to mediation by the Employment Relations Authority or the Employment Court.	Consensual (If a party declines the other party can take the matter to the Employment Relations Authority (ERA) which can require you to attend mediation.)	Mediation Mediator first attempts to sort out problem through email and telephone conversations. A mediation meeting is held if this fails, where parties meet with a mediator in a semi-formal environment. If parties agree to a solution at the meeting this will be written down in a record of settlement. If no agreement, mediator assists parties to work through other available options. If no agreement, the mediator can arrange an adjournment or extend the process if more information or assistance could lead to a settlement. You can agree on a time to meet again with the mediator, or make a commitment to work things through yourselves and contact the mediator for help or to record an agreement.	Provided by and overseen by MBIE.	Free	Parties can choose to have either a support person and/or a professional advisor (employment advocate or a lawyer). Parties are encouraged to get some advice before signing a record of settlement.	Starts low level, ramps up.	No.	A record of settlement is legally binding and final. Once it is signed by the mediator, the parties can't go to the Employment Relations Authority (ERA) or the Employment Court if they don't like what they agreed to. Parties can give the mediator the power to make a written recommendation (both parties have to agree). This becomes binding by a certain date unless you reject it.	If one party does not do what the record of settlement says, for example, make a payment, the other party may apply to the ERA or the Employment Court to enforce the agreement. Parties are encouraged to contact the mediator first for help with getting parties to comply with the agreement before going to the ERA or the Employment Court. If you have a legal claim, you still may take the matter to the ERA or the Employment Court. These institutions can direct you to try mediation again.
Employment Relations Authority \$2.3 million The Employment Relations Authority helps to resolve employment relationship problems. It does this by looking into the facts and making a decision based on the merits of the case, not on	Adjudicative	A case is begun by lodging a statement of problem. A response is given through a statement in reply. If the matter has not been to mediation when it is lodged in the Authority, an Authority Officer may refer the parties off to mediation before the file is put before a Member. Once an Authority Member has considered the information provided by the parties in their statements, a preliminary case management conference	DP provided by statutory board, overseen by MBIE.	\$71.56 fee to lodge application \$153.33 to re-open or remove to Employment Court. \$153.33 meeting fee (for first day	Legal representation allowed (does not have to be lawyer). Representation is not compulsory.	Investigation meetings are public, as are Authority determinations, which are published by MBIE: https://www.employment.govt.nz/elaw-search The Authority aims for oral determinations where possible, done at investigation meeting if possible.	No. Authority Members will not usually deal with one party or representative, whether in person or by telephone, without the other party or their representative being present.	Decisions are legally binding, known as determinations, notified orally and in writing. Parties can be directed to mediation at any point, even if been before. A range of remedies are available depending on the nature of	General appeal either de novo or on specified error(s) of law or fact to Employment Court. Second appeal (questions of law only) to Court of Appeal.

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
technicalities. It is an independent body set up under the Employment Relations Act 2000		(by phone if possible) will be held with the parties. Investigation meeting is arranged. Mediation offered if not settled.		and per half day after that) Tariffs for costs: \$4,500 daily tariff for first day of investigation meeting, and \$3,500 per day for any day thereafter.				the claim, e.g. reinstatement, reimbursement of lost wages, compensation, compliance (e.g. require either party to comply with terms of employment agreement), costs. Costs and compensation awards published by MBIE https://www.employment.govt.nz/elaw-search	
ACC (Fairway) \$16 million	Consensual, tiered. In review the decision is legally binding.	Fairway mediates/facilitates disagreements during course of application for cover and can appoint a reviewer to affirm or overturn decision not to provide cover. Facilitation: Improves communication between you and ACC by clarifying the issues at dispute. Mediation: Seeks to find an agreement between you and ACC. The Mediator acts as a conduit through which the parties can raise their views without providing advice. Review: This is the statutory dispute resolution process that consists of a hearing followed by a legally binding decision. You apply through ACC.	DP provided by Fairway, overseen by MBIE. FairWay Resolution Limited is a Crown company.	ACC pays Fairway for costs, individual s must pay their own expenses incurred.	Review – customer can appoint a lawyer or advocate to represent them, although this is not a set requirement.	Reviewers are independent from ACC and their decisions are legally binding.	No.	Review - an ACC Review is heard by an independent reviewer who considers all evidence provided in the case and makes a legally binding decision to uphold or reject ACC's position. Reviewer can award costs to applicant (you have to request that the reviewer considers your costs in their decision.)	An ACC review is a legal process where ACC's decision is independently reviewed. You can ask ACC for a review instead of mediation or facilitation, or after these were unsuccessful.

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
Utilities Disputes \$3.7 million Utilities Disputes Ltd (formerly The Office of the Electricity and Gas Complaints Commissioner) receives complaints that have not been resolved to the satisfaction of a complainant by their utility provider's internal complaints process.	Consensual The Commissioner can also consider disputes about actions of staff or contractors, as well as access to and use of land/property on which there is electricity, gas, water, or broadband equipment.	Private provision of DP, overseen by MBIE.	Uses a wide range of dispute resolution techniques, including mediation and conciliation. Complaints are submitted to mediation or other forms of dispute resolution in the first instance (there might be phone calls, meetings, and conciliation conferences). Then if not resolved, the dispute is referred to the Commissioner, who will investigate and make a recommendation as to resolution that is binding on the provider (but not the complainant).	No fees	N/a	Commissioner are appointed by the Board	Yes Commissioner's determination is binding on providers but not consumers.	Energy: If the complaint is not resolved, the Commissioner can make a proposed recommendation. If parties accept the proposed recommendation, it becomes binding. If either party don't accept it, you can submit comments. Then Commissioner makes final recommendation. If customer doesn't accept it the file is closed. If customer accepts but the provider doesn't, the Commissioner will make a determination. This means the provider must comply with the Commissioner's recommendation.	No right of appeal however customers not accepting the Commissioner's recommendation could possibly be able to take the matter to another forum, e.g. Disputes Tribunal, District Court.
Health and Disability Commissioner \$10.6 million The HDC resolves complaints about infringements of health and disability rights by service providers. More serious complaints may be formally investigated by HDC.	Expert determination, tiered	Complaints are investigated, independent expert advice is sought and a report is sent to the complainant and the provider for comment. Comments are reviewed and the Commissioner makes a final decision on the complaint. Complainants have access to an advocacy service throughout the process and may be referred to mediation prior to the reporting stage. HDC refers most complaints to the advocacy service, where they are resolved through an informal facilitation process. As of 2012 the	DP provided by statutory board, overseen by MoH.	Free	n/a	The Commissioner is a crown entity	No.	After an investigation, the Commissioner or Deputy Commissioner forms an opinion on whether the provider has breached the Code, and notifies the parties of his or her findings. Recommendations to providers vary from case to case, but may include a written apology to the consumer; undertaking specific training; and implementing and	Where an investigation suggests that there may be concerns about the competence of a registered health practitioner, HDC may recommend to the registration authority (for example, the Medical Council for a doctor) that it consider whether a review of the practitioner's competence is warranted. The Commissioner or Deputy Commissioner may refer the matter to the Director of Proceedings, to consider whether to bring

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
		HDC also receives complaints about mental health services previously received by the Mental Health Commission.						reviewing systems to prevent further breaches of the Code.	disciplinary and/or other proceedings. The Director can then begin a claim before the Human Rights Review Tribunal; and/or disciplinary proceedings before the Health Practitioners Disciplinary Tribunal.
Ombudsman \$14.3 million Focus on public sector conduct and official information. Handles complaints against government agencies, but is as much concerned with the longer-term improvement of administrative systems as it is with the resolution of individual disputes.	Determinative, experts/specialist service The remedies offered by the Ombudsman often have greater potential for 'putting right' the specific maladministration that gave rise to the particular grievance in the first place. As a result, they can effect a degree of future prevention as well as retrospective cure.	Complaints must be made in writing. Complaints are assessed, and the Ombudsman may try to deal with the complaints informally first. If they decide an investigation is necessary, they tell the agency about your complaint, and seek its explanation, and other relevant information. After investigating, the Ombudsman will form a provisional opinion on whether the agency has acted unreasonably or unfairly. Anyone adversely affected by that opinion will have an opportunity to comment before a final decision is made.	DP provided by a statutory board overseen by the Office of the Chief Ombudsman	No fees.	n/a	Ombudsman publishes case notes and opinions. No one is identified without their consent.	No. Focus is on accountability of the agencies.	The Ombudsman has the power to recommend solutions or remedies. These will frequently extend beyond the sort of redress that a complainant could normally expect to obtain from the court and tribunal process. For example, an Ombudsman can determine best practice standards and recommend systemic change. Sometimes an agency will change its decision or offer a remedy during the investigation. Where that resolves the complaint, further investigation by the Ombudsman may be unnecessary.	The Ombudsman is unable to enforce their recommendations. However, almost all the Ombudsman's recommendations made over the past 50 years have been accepted and implemented by New Zealand's state sector agencies.

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	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
Benefits Review Committee The Benefits Review Committees reviews decisions by Work and Income where a complainant is unhappy with the result of an internal review. The Committee holds a hearing and subsequently provides the complainant with a report detailing whether the decision has been overturned or not and why.	Experts/specialist service	Work and Income will formally review any of their decisions, on application. Work and Income reports all decisions they wish to uphold to the Benefits Review Committee. The Committee will then take a fresh look at the case. An informal meeting or hearing is held; the complainant is encouraged to attend.		No fees.	Complainants can bring a support person, advocate or lawyer, or be represented by a lawyer.	The Benefits Review Committee is made up of two people from the Ministry of Social Development who weren't involved in the decision being reviewed, and one other person appointed by the Minister for Social Development.	No.	Complainants get a report from the Committee letting them know what the final outcome is. If the Committee agrees with complainant and the decision needs to be overturned, the Work and Income have to put things right.	Appeal available to the Social Security Appeal Authority.
Social Security Appeal Authority The Social Security Appeal Authority reviews decisions made about eligibility for benefits and veteran's pensions. Appeals to the authority may either be of decisions by the Secretary for War Pensions about veteran's pensions or of decisions by Work and Income that have been confirmed or varied by a Benefits Review Committee	Experts/specialist service	Apply for appeal within 60 days of earlier decision. Authority sends you a report, then a hearing is held (which can be 'on the papers' if both parties agree).	DP provided by statutory committee, overseen by MSD.	No fee. MSD pays your travel and accommodation if needed.	You can present your own case or have a lawyer, or advocate, present it for you. Person representing you doesn't have to be a lawyer. Legal aid is available.	The Social Security Appeal Authority has 4 members appointed by the Governor-General on the recommendation of the Minister of Social Development, after consultation with the Minister of Justice. Hearings are not public. Decisions are reported on and can be found at https://www.justice.govt.nz/tribunals/social-security-appeal-authority/decisions/ssaa-decisions/?Filter_Jurisdiction=275	No.	When it hears an appeal, the Authority has all the powers, duties, functions and discretions that MSD had in relation to the same matter. If an appeal is successful, the Authority may state that an amount of money be paid to the appellant, to reflect the cost of arguing the appeal or part of it.	You can appeal to High Court but only on a question of law. Get legal advice before trying to appeal.

	Consensual or determinative	Process	Dispute resolution provider, oversight agency	Fees	Representation	Appointment process, public reporting	Differential treatment of parties?	Remedies available	Enforcement and appeal rights available
Catch History Review Committee Hears and determines appeals against decisions by the Ministry for Primary Industries in relation to allocations of fishing quotas.	Experts/specialist services: administrative review tribunal	A person can appeal decisions about: eligibility to receive provisional catch history or fishing quota; allocation of provisional catch history or quota based on catch history; quantum of reported eligible catch.	DP provided by statutory committee, overseen by MPI.	Details unavailable.	-	Minister appoints by notice in the Gazette, appoints members of the Catch History Review Committee. Term 5 years max. Must have held a practising certificate as a barrister and solicitor for at least 7 years, and are not employees of MPI.	-	-	No appeal rights.

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Legal frameworks for suspensions and exclusions from school in NZ, Australia, the UK, and selected states and countries in Canada and Europe

Summary table

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
New Zealand Legislation: Education Act 1989 (the Act) Secondary legislation: Education (Stand-down, Suspension, Exclusion, and Expulsion) Rules 1999. Statutory Guidance: Guidelines for principals and boards of trustees on stand-downs, suspensions, exclusions and expulsions, Part 1: Legal options and duties Applies to: state schools and state integrated schools. Secretary refers to the Secretary for Education (the Chief Executive of the Ministry of Education) Responsible government department: the Ministry of Education	<p>Principal (or someone acting as the Principal) may stand-down or suspend a student if satisfied on reasonable grounds that: (a) the student's gross misconduct or continual disobedience is 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.</p> <p><u>Stand-down</u> 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.</p> <p><u>Suspension</u> means the formal removal of a student from school until the board of trustees decides the outcome at a suspension meeting.</p> <p><u>Exclusion</u> means the formal removal of a student aged under 16 from the school and the requirement that the student enrol elsewhere. Most serious cases only.</p> <p><u>Expulsion</u> 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. Most serious cases only.</p>	<p>Section 13 of the Act states that individual cases must be dealt with in accordance with the principles of natural justice, and in a way that minimises the disruption to a student's attendance at school and facilitates the return of the student to school when that is appropriate.</p> <p>Rule 8 states that a Principal may only bring about absence or removal of student only by standing-down or suspending the student under section 14(1) of the Act.</p> <p><u>Stand-down:</u> Principal makes decision to stand-down a student if satisfied that there was gross misconduct or continual disobedience or behaviour risking serious harm. The Principal must consider the student's individual circumstances and the context of the incident. The student should already have received appropriate guidance and counselling or other pastoral support if problems were known to the school. A parent should already have been informed of matters affecting the student's relationships or progress. Stand-downs and suspensions should be a last resort. Principal must tell the student's parent (unless the student has turned 20) that the student has been stood-down, the reasons and how long for (the Principal also has to give the student and parent the Ministry of Education pamphlet). If the student asks for a stand-down meeting, Principal must hold one as soon as is practicable for the student, parent and Principal. Principal may call a meeting, or parent may request it. Principal may lift or shorten a stand-down at any time before it expires for any reason. Principal must keep records (so that their decision can be adequately explained). At the end of the stand-down student can return to school.</p> <p><u>Suspension:</u> Principal makes decision to suspend a student if satisfied that there was gross misconduct or continual disobedience or behaviour risking serious harm. The Principal must consider the student's individual circumstances and the context of the incident. The principal should also consider what information parents and/or carers can give, but there is no legal requirement to involve parents and/or carers before a suspension. Once the decision is made the Principal must tell the student's parent about the suspension (reasons for it, prior interventions, provide Ministry's information sheet), and the board (who is suspended and why), and the Ministry of Education immediately. The Principal must write a report for the board that contains all information relevant to the suspension.</p>	<p><u>Stand-down:</u> During the stand-down period the Principal must take all reasonable steps to ensure that the student gets guidance and counselling that is reasonable and practicable in all the circumstances of the stand-down. The student must be kept on the roll.</p> <p>During stand-downs and suspensions the student may attend school if the student or parent asks the principal for whatever reason and the principal considers the request reasonable.</p> <p><u>Suspension:</u> During a suspension a student must attend school if the principal reasonably considers that it is appropriate because the student's educational programme requires it or needs guidance or counselling. If the suspension is extended the Principal must provide an appropriate education programme for the student.</p> <p><u>Exclusion:</u> If Board excludes a student (younger than 16, under section 15(1)(c)) the Principal must try to arrange for the student to attend another school (a suitable school that the student can reasonably attend). If the principal fails to do this (by the 10th school day), they must tell the Secretary. The Secretary must either lift the suspension, or direct another school to enrol the student.</p> <p><u>Expulsion:</u> The Principal does not have to try to find another school for the student but will tell the Ministry of Education if the student wants to continue with their schooling. Parents can try to enrol the student in another school, or can also ask the Ministry to help to find another school, but schools don't have to accept a student expelled from</p>	<p>A student/parent can ask the board to reconsider, being clear about what was done incorrectly.</p> <p>The Secretary has the power to lift (section 16 of the Act) exclusions for students under 16 where they have been excluded and the Principal has not arranged the student to attend another school. The Secretary must either lift the exclusion, or arrange for and if necessary direct another school to enrol the student (or direct the parent to enrol them in correspondence school). In carrying out these powers the Secretary must make all reasonable attempts to consult the student, their parents, the Board and anyone else able to advise/help. Boards must comply when directed to enrol.</p> <p>The Ombudsman handles complaints about how the school conducted the process. This is free and can be done over the phone or in writing, but tends to take a long time. The Ombudsman can recommend to the board that it reconsiders its decision, but cannot overturn it.</p> <p>The Human Rights Commission handles complaints involving discrimination.</p> <p>The Education Review Office handles complaints about a schools overall disciplinary system.</p> <p>Decisions can also be challenged in the High Court (requires a lawyer; legal aid not available). Courts will focus on whether the legal rules have been applied correctly rather than</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
		<p>The board of trustees of a school is required to hold a meeting to decide the outcome of a suspension. The board must hold the suspension meeting by the close of the 7th school day after the decision to suspend the student (or within 10 calendar days if end of term comes before 7 school days are up). This timeframe must be adhered to; the meeting can proceed without the family present. The student and parents must be told the time and place of the board meeting at least 48 hours in advance, and be given information about the procedures that the board follows at suspension meetings. The student and parents must be advised that they and/or their representative may attend the meeting and speak at it, and they must also be given the Principal's report to the board on the suspension, and any other material about the suspension that the Principal or board are going to present at the meeting. When giving a document to a student or parent the method most likely to reach them must be used. Information given to students and parents must be as complete as possible while considering privacy of other students.</p> <p>A board suspension meeting is an independent review of the Principal's decision.</p> <p>Following a suspension, the board may decide to: lift the suspension without conditions; or lift the suspension with reasonable conditions; or extend the suspension with reasonable conditions for a reasonable period; or exclude or expel the student. If the board's decision was to lift the suspension with conditions or extend the suspension with conditions, and your child doesn't comply with the conditions the principal can ask the board to reconsider its decision and consider other options. If this happens the whole process starts again.</p> <p><u>Exclusion:</u> In circumstances that justify the most serious response, the board (at the suspension meeting) may exclude the student if they are under 16, meaning they cannot attend that school anymore. The student must enrol at another school.</p> <p><u>Expulsion:</u> In circumstances that justify the most serious response, the board (at the suspension meeting) may expel the student if they are 16 or over), meaning they cannot attend that school anymore. The student can enrol at another school, but does not have to.</p>	<p>another school. Ministry can lift exclusion to allow student to attend school they excluded or expelled from, or can direct another school to enrol the student.</p>	<p>substituting their own view for the boards. This is an expensive process (in both time and money).</p>
<p>Australia – Queensland</p> <p>Legislation: Education (General Provisions) Act</p>	<p><u>Suspension:</u> A student can be suspended by a Principal (or by the Chief Executive) from a state school for: disobedience or misbehaviour; conduct that</p>	<p><u>Suspension:</u> Under section 281(1) of the Act Principals of state schools have authority to suspend if "reasonably satisfied a ground exists". The Chief Executive also has authority to suspend (when the Principal and the Chief Executive reasonably believes it would be appropriate).</p>	<p><u>Suspensions and exclusions:</u> The Principal or Chief Executive must take reasonable steps to arrange access to an educational programme for the student during the suspension or exclusion period.</p>	<p>All rights of appeal that students have also apply to their parents.</p> <p><u>Suspension:</u></p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>2006, chapter 12, part 3, division 2</p> <p>Chief Executive: the Director General of the Department of Education. The Director-General can delegate decisions to appropriate officers, including the Principal's supervisor.</p> <p>Applies: to state schools</p> <p>Compulsory school age: 6 years, 6 months, until complete year 10 or turn 16 (whichever comes first)</p>	<p>adversely affects or is like to adversely affect other students or the good order and management of the school; posing an unacceptable risk to the safety or wellbeing of other students or staff; or a charge-related ground: being charged by police with any offence (if the offence is not serious the Principal must also be reasonably satisfied it would not be in the best interests of other students or staff for the student to be at school while the charge is pending).</p> <p><u>Exclusion:</u> If suspension is inadequate to deal with the issues the Principal or the Chief Executive can exclude a student for: persistent disobedience; misbehaviour; conduct that is, or is likely to, adversely affect other students or the good order and management of the school; the student's attendance being an unacceptable risk to the safety or wellbeing of other students or staff; or the student is convicted of an offence and the Principal is reasonably satisfied it would not be in the best interests of the staff or other students for the student to remain in the school.</p> <p>Exclusion may be for a period of time up to a year, or permanently. It can't be longer than the period specified in the exclusion notice.</p> <p><u>Cancellation of enrolment:</u> Students who are over the age of compulsory education may have their enrolment cancelled if they refuse to participate in the education programme.</p> <p><i>Note: Conduct does not have to occur at school or during school hours.</i></p>	<p>Suspensions can be for: 1 to 10 days; 10 to 20 days if the grounds are considered serious enough; or if charge related until a charge is dealt with (charge-related grounds) and the Principal has decided whether to exclude student (must decide as soon as practicable once charge is dealt with).</p> <p>The suspension starts when the Principal tells the student about it. As soon as is practicable after telling the student the Principal must provide them with written notification.</p> <p>The Principal must take reasonable steps to arrange for the student to have access to an educational programme that allows them to continue with their education during the suspension.</p> <p><u>Charge-related suspensions:</u> The Principal can decide to end a charge-related suspension before the charge is dealt with (if no longer in best interests of other students or staff for the student to remain suspended). The Principal must decide whether to propose to exclude a student as soon as practicable after the charge is dealt with.</p> <p><u>Exclusion:</u> Principals of state schools have authority to exclude if "reasonably satisfied a ground exists". The student must be given a written notice of the proposal to exclude them. The Principal must make a final decision about whether to exclude within 20 school days after giving the student notice. Students are suspended until final decision about exclusion is made.</p> <p>The Chief Executive may also exclude from certain schools or from all state schools. The process for the Chief Executive is the same as for Principal except the Chief Executive has 30 school days in which to make a final decision. Also when excluding from all state schools, the notice to the student must comply with the QCAT Act, section 157(2), which sets out procedure for decision-makers of reviewable decisions.</p> <p>If the Chief Executive excludes someone from all state schools who is in the compulsory education age-group, the Chief Executive must take reasonable steps to arrange for the student's access to an educational program that allows the student to continue the student's education during the exclusion.</p>		<p>If the suspension is for misbehaviour or conduct that adversely affects other students, then the written notice must also notify the student that they may make a written submission against the suspension to the Chief Executive. This submission must state fully the grounds for the submission and the facts relied on. The Chief Executive must, as soon as practicable after receiving the submission, review the Principal's decision and either confirm it, vary it, or set it aside and substitute another decision. After telling the student and the principal about the decision, the Chief Executive must give them each written notification (as soon as practicable).</p> <p><u>Exclusion:</u> If excluded for up to a year the student may make a written submission against the decision to the chief executive. Someone who has been permanently excluded may make a periodic written submission to the Chief Executive.</p> <p>Someone who has been excluded also has the right to make a submission against their exclusion to the Chief Executive within 30 days of notice of the decision. This submission must state fully the grounds for the submission and the facts relied on. The Chief Executive must, within 40 school days after receiving the submission, consider the exclusion decision and either confirm or amend the decision, or set it aside and make a new one. Verbal notification of the Chief Executive's decision to the student and the principal is required as soon as practicable and written notification within 7 days. If the original decision is made by the Chief Executive or delegate then that same person cannot review it.</p> <p><u>Permanent exclusion:</u></p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
				<p>A person who is permanently excluded from a school, certain schools or all schools may write to the Chief Executive each year up until they turn 24 years of age, asking for the decision to be revoked. Only one application can be made per year. The chief executive has 40 days to consider these submissions and must revoke an exclusion if reasonably satisfied that the behaviour/problem won't happen again, there is no risk of harm or safety concerns, and that it's not in the best interests of other students or staff that the person not be enrolled.</p> <p>A person whose enrolment has been cancelled may also apply for a review from the Chief Executive.</p> <p>The Act also provides that where you are not satisfied with a Chief Executive review decision you may apply to the Queensland Civil and Administrative Tribunal (QCAT) under the QCAT Act for a review of the review decision.</p> <p>In all matters that are not reviewable by the Queensland Civil and Administrative Tribunal, it is open to the student to complain to the Queensland Ombudsman or make an application to the Supreme Court for judicial review. However, both of these relate to complaints about procedural issues rather than the merit of the decision.</p>
<p>Australia – New South Wales</p> <p>Legislation: Education Act 1990 No 8 (the Act)</p> <p>Statutory Guidance: Suspension and Expulsion of school students procedures 2011: Student Discipline in government schools PD 2006 0316</p>	<p><u>Short suspensions:</u> Principal may suspend a student for up to 4 school days for continued disobedience or aggressive behaviour</p> <p><u>Long suspensions:</u> Principal may suspend a student for up to 20 school days if short suspensions have not resolved the issue, or for: physical violence; use or possession of prohibited weapons, firearms or knives; possession, use or supply of a</p>	<p><u>Suspension:</u> For both short and long suspensions the decision to suspend must be taken by the Principal, or in the Principal's absence, the person performing the Principal's role (relieving Principal). In exercising their authority Principals are required to have regard to their responsibilities to the whole school community and to the principles of procedural fairness.</p> <p>Principal <i>must</i> suspend in some circumstances (e.g. the behaviour threatens the safety of students and/or staff), and <i>may</i> suspend for continued disobedience or aggressive behaviour.</p>	<p><u>Suspension:</u> The principal must convene a suspension resolution meeting of personnel involved in the welfare and guidance of the student, including the parents, to discuss the basis on which the suspension will be resolved.</p> <p>Where it is not possible to resolve a suspension by the due date, the Director Public Schools NSW (the Director) must be notified. The Principal must then take</p>	<p>Students and parents may appeal in writing (stating the grounds on which the appeal is being made) to the Director Public Schools NSW, if they consider that correct procedures have not been followed, and/or that an unfair decision has been reached. Director has a range of responsibilities in considering an appeal, e.g. must deal with it within 20 school days of its lodgement.</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Applies to: public schools</p> <p>Government department: Department of Education and Communities</p> <p>Compulsory school age: 6 to 17 years (if year 10 completed before turning 17 then a student may choose from several more flexible education participation options, see section 21B Education Act 1990)</p>	<p>suspected illegal substance; serious criminal behaviour related to the school; use of a weapon; or persistent or serious misbehaviour.</p> <p><u>Expulsion</u> (permanent): In serious circumstances of misbehaviour the principal may expel a student of any age from their school.</p> <p><u>Expulsion over 17:</u> The Principal may also expel a student who is over 17 years of age for unsatisfactory participation in learning. This will generally be where a student has failed to apply themselves with diligence and sustained effort to set tasks and experiences and the lack of application is impacting on the good order of the school and learning of other students.</p> <p><u>Admission refusal:</u> Under section 34(4)(a) and (b) of the Act the Minister may refuse the admission of a child to all or any government schools if the child has been expelled from any government school, or if there is other sufficient reason to do so.</p> <p><i>Note: The rules apply to the behaviour of students at school, on the way to and from school and while away from the school site on school endorsed activities. They can also apply outside of school hours and off school premises where there is a clear and close connection between the school and the conduct of students. These include the use by a student of social networking sites, mobile phones and/or other technology to threaten, bully or harass another student or a departmental staff member for school related issues.</i></p>	<p>Parents must be notified in writing within 24 hours (Principal must indicate if expulsion is being considered as possible next step), and provided with the rules guiding suspensions, the school's discipline code and information about appeal rights.</p> <p>The Principal should convene a meeting (also referred to as a 'formal disciplinary interview') during which the student is informed of the grounds for the suspension. Student must be given the opportunity to consider and respond to this information. The student's response must be considered before a decision to suspend is made.</p> <p>Where long suspension is being considered, the student must be able to have an appropriate observer of their choosing present at the formal disciplinary interview.</p> <p><u>Expulsion:</u> Expulsion cannot be considered until other strategies have not been successful (except when a serious incident has occurred). Student's and parents must be given 7 days to respond to written notification of decision (which must inform of their appeal rights). Principal must consider their response, and following that formal notification of expulsion must go first to the Director Public Schools NSW, then to the student and parents.</p> <p><i>Note: Procedural rules state that in implementing the procedures, the Principal must ensure that no student is discriminated against on the following grounds (among others): race, including colour, nationality, descent, and ethnic, ethno-religious or national origin.</i></p>	<p>alternative steps in consultation with the Director, to facilitate return to school.</p> <p><u>Expulsion:</u> Alternative education arrangements must be made within 10 days of notification of decision to student and parents. If not possible to arrange alternative, the Minister of Education (on receipt of submission from the Director Public Schools NSW) can decide the student may not be admitted to any government school.</p>	<p>When upholding all or part of an appeal, the decision maker must decide on the new appropriate course of action.</p> <p>Notification of appeal rights required at several stages in the process.</p>
Australia – Victoria	<p><u>Suspension:</u> Principal may suspend for a maximum of 5 school days. Longer periods have</p>	<p><u>Suspension:</u> Principal must ensure that suspending the student is appropriate to the behaviour, their educational needs, disability, age, and their</p>	<p><u>Expulsion:</u> Principal must ensure student is provided with other educational and development</p>	<p><u>Expulsion:</u> A student can appeal a Principal's decision to expel them. Appeal goes</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Legislation: Education and Training Reform Act 2006</p> <p>Secondary legislation: Ministerial Order 625 (Procedures for Suspension and Expulsion)¹</p> <p>Applies to: Government schools</p> <p>Government department: Department of Education and Training</p> <p>Secretary: Secretary of that Department (above)</p> <p>Regional Director: head of a regional office of the Department of Education (the Department has four regional offices)</p> <p>Relevant person: (defined by Ministerial Order 625) when a student is under 18 and is not considered a mature minor² then relevant person is a parent or an adult nominated by the parent. It can also be an adult nominated from a list of suitable people.³</p>	<p>to be approved by the Regional Director. No more than 15 school days of suspension allowed a year (without Regional Director approval).</p> <p>A Principal may suspend a student if while at school the student: behaves in such a way as to pose a danger actual or perceived or threatened to the health, safety or wellbeing of any person; causes significant damage to or destruction of property; possesses, uses or sells or assists another person to possess use or sell illicit substances or weapons; fails to comply with any clear and reasonable instruction of a staff member so as to pose a danger (actual, perceived or threatened) to the health, safety or wellbeing of any person; consistently engages in behaviour that vilifies, defames, degrades or humiliates another person based on age, breastfeeding, gender identity, disability, impairment, industrial activity, lawful sexual activity, marital status, parental status or status as a carer, physical features, political belief or activity, pregnancy, race, religious belief or activity, sex, sexual orientation, personal association (as a relative or otherwise) with a person who is identified by reference of any of the above attributes; or consistently behaves in an unproductive manner that interferes with the wellbeing safety or educational opportunities of any other student.</p> <p><u>Expulsion:</u> A Principal may expel a student if their behaviour falls under any suspension category and the behaviour is of such magnitude that (balancing right of</p>	<p>residential/social circumstances. Principal must ensure that the student has had the opportunity to be heard, information or documentation from the student or their relevant person has been taken into account, and other forms of action to address the behaviour have been considered. Principal must verbally notify student and relevant person, provide meaningful work if suspension less than three days or develop learning and return to school plan if more than three days, provide written notice (documentation required e.g. learning plan, a brochure on procedures), and fulfil record keeping requirements.</p> <p>Suspension may have immediate effect if behaviour puts health, safety or wellbeing at risk (themselves or others).</p> <p><u>Expulsion:</u> Principal must inform the Department that expulsion being considered.</p> <p>Principal must convene a behaviour review conference before decision made. Purpose of conference is to advise student and their relevant person that expulsion being considered, outline the grounds and evidence, ensure student and relevant person have the opportunity to be heard, and given them the procedure brochure.</p> <p>Conference must be attended by someone selected from an approved list. This person ensures that alternative discipline has been considered, that appropriate education or other training or employment option has been considered, and assist in implementing the course of action decided on at the conference. Conference can proceed if not attended by student and relevant person (notification and record keeping requirements of principal).</p> <p>Principal should get an interpreter if needed, and the meeting must be conducted as informally as possible.</p> <p>Decision must be made properly, fairly and without bias. Principal must determine whether expulsion is appropriate compared to the behaviour and the student's educational needs, disability, age, and their residential/social circumstances. Any information or documentation provided by the student must be taken into account. Notification within 48 hours of decision. Notice of expulsion (requirements include must state right of appeal among other things). This notice and a report (for a list of requirements for this</p>	<p>opportunities as soon as practicable after expulsion. If student is of compulsory school age, the Principal and the Department regional office must ensure the student is enrolled at another school or training organisation or is employed. These obligations do not apply if the Minister has exempted the student from enrolment under section 2.1.5 of the Education and Training Reform Act 2006.</p>	<p>to Secretary. Student has 10 school days to appeal (sends it to the Principal who must provide to Secretary along with documentation within 24 hours of receiving it). Appeal can be on process, grounds, or if not enough prior interventions or extenuating circumstances.</p> <p>Secretary can uphold or overturn decision. Can delegate. Can appoint Expulsion Review Panel (role for hearing student and report to Secretary with recommendation). Secretary must "best endeavour" to make a determination within 15 school days. Written and verbal notification required. Requirements e.g. re-enrolment etc. if decision overturned.</p>

¹ Order is made under authorising sections of the Act: Division 4 Discipline of students 2.2.19, 5.2.12 Minister's powers to make orders, 5.10.4 Ministerial Orders – general provisions, and clause 4 Schedule 6 Ministerial Orders, Discipline in Government Schools.

² If the student is a mature minor, then a relevant person is an adult nominated by them or from the suitable persons list. Students can also be in out of home care, in which case their relevant person can be a parent, an adult from their care arrangement, or from the suitable persons list.

³ A suitable people list is created by an SS Network, which is a group of schools working together to provide student support services. People on the list are employed by the Department of Education and have done specific training.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
	<p>student to education with need to maintain health, safety and wellbeing of other students and staff and to maintain the effectiveness of the educational programme), expulsion is the only option.</p> <p><i>Note: School includes attending school, or travelling to or from school, or engaged in any school activity away from the school (including travel to and from those activities).</i></p>	<p>report see section 15 of Order) goes to Regional Director within 24 hours.</p> <p><i>Reference to Principals should get an interpreter if necessary (when arranging behaviour review conferences, a necessary step prior to expelling a student).</i></p>		
<p>Australia – Tasmania</p> <p>Legislation: Education Act 2016 (the Act)</p> <p>Secondary legislation: Secretary's Instructions No 4 for Suspension, Exclusion, Expulsion or Prohibition of State School Students (power provided by section 128 of the Act)</p> <p>Applies to: state schools</p> <p>Government department: Department of Education</p> <p>Secretary: Chief Executive of the Department of Education</p>	<p><u>Suspension, exclusion and expulsion:</u> are a last resort response to unacceptable behaviour. Unacceptable behaviour is defined partly by the school itself – section 129 of the Act requires schools to have a policy that sets out what constitutes unacceptable behaviour at that school and how it will be managed – and partly by the Secretary's instructions. The Secretary's instructions lists the following behaviours that constitutes unacceptable behaviour of a student and which must be included in a State school's behaviour management policy: refusal to participate in the education program; disobedience of instructions which regulate the conduct of students; contravening school rules and policies (e.g. a student's failure to comply with the school dress code where the Principal determines that the failure is taken to be unacceptable behaviour); behaviour that is likely to impede significantly the learning of the other students of that school; behaviour that is detrimental to the health, safety or welfare of the staff or other students of that school; behaviour or actions that cause, or are likely to cause, injury to persons or damage to property; behaviour that is likely to bring that school into disrepute; behaviour that is likely to put a person at risk of harm; harassment or stalking; threatening behaviour; discrimination; online</p>	<p><u>Suspension:</u> Before resorting to disciplinary action, Principals must, on a case by case basis as appropriate, attempt to resolve the behaviour by, for example: a). seeking to understand the issues contributing to the student's unacceptable behaviour, whether they be school-based issues or issues outside of the school that are impacting on the student's behaviour (e.g. family or relationship problems); b). providing assistance or referral to appropriate supports; c). talking to the student about acceptable and unacceptable behaviour at school, and the process if the unacceptable behaviour continues; and d). involving parents/carers in discussion on how to address the student's unacceptable behaviour. Notification in writing required.</p> <p>Attempting to resolve the behaviour first is not required if there is a health and safety risk to another person.</p> <p>If the Principal is satisfied that the unacceptable behaviour of the student justifies a suspension of more than 2 weeks, then the Principal may refer the matter to the Secretary. The Secretary (if satisfied that the unacceptable behaviour of a school student justifies it), may either (a) suspend the student, full-time or part-time, from attending the school for a period of 2 weeks or less; or (b) exclude the student, full-time or part-time, from attending the school for a period exceeding 2 weeks; or expel the student from the school, or (c) expel the student from the school and prohibit the student from enrolling at a specified State school or at any State school. The Secretary also may revoke any suspension, exclusion, expulsion or prohibition if satisfied that the school student is willing to behave in an acceptable manner.</p>	<p>If suspended the Principal is to arrange for and ensure the student is provided with appropriate education during the period.</p> <p>If expelled the Secretary may determine the educational instruction of the student.</p> <p>Under the Secretary's instructions, a Principal must have in place a process for the return of students to school after a period of suspension, exclusion or expulsion.</p>	<p>Student or their parent may apply in writing to the Secretary for a review or periodic reviews. Secretary can agree or refuse. On determining Secretary must notify the applicant in writing of the decision and reasons for it. The Secretary may confirm or rescind the original decisions.</p> <p>If aggrieved by Secretary's decisions a person may apply to the Magistrates Court (Administrative Appeals Division) if the decision is in regards to an expulsion, confirmation of expulsion or of a refusal to conduct a review of an expulsion.</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
	<p>harassment; bullying; illegal behaviour; unsociable behaviour (e.g. offensive language); sexualised behaviour; occupational violence; any other behaviour that a Principal determines to be unacceptable behaviour.</p> <p>A Principal may suspend a student (full-time or part-time, from the school for a period of 2 weeks or less), once they are satisfied the behaviour management policy has been ineffective.</p> <p>If the behaviour posed or poses a risk to the health or safety of another person at the school the Principal may suspend immediately the school student, full-time, for a period of 2 weeks or less, as the Principal considers appropriate.</p> <p><u>Exclusion or expulsion:</u> If the Secretary is satisfied the unacceptable behaviour of a student justifies it they may exclude full or part time for more than 2 weeks, or expel student, or expel and prohibit student from enrolling at another school or at any state school.</p>			
<p>Australia – South Australia</p> <p>Legislation: Education Act 1972 (the Act)</p> <p>Secondary legislation: Education Regulations 2012 – regulation 44 suspension of students</p> <p>Applies to: Government schools</p> <p>Government department: Department for Education</p>	<p><u>Suspension:</u> Students may be suspended (under regulation 44) when the Head Teacher believes on reasonable grounds that: the student has threatened or perpetrated violence; the student has acted in a manner which threatens the good order of the school by persistently refusing to follow the school's behaviour code; the student has acted in a manner which threatens the safety or wellbeing of a student, member of staff or other person through sexual or racist harassment, verbal abuse, bullying or any other</p>	<p>All decisions must be made having regard to the severity and frequency of misbehaviour, student's prior record and other relevant matters.</p> <p><u>Suspension:</u> Head Teacher may suspend for 1-5 days depending on the severity or frequency of problem behaviour. Regulation 44(2)(b): Cannot suspend for more than 15 school days in a calendar year or on more than 4 separate occasions in a calendar year (without authorisation of the responsible officer⁴).</p> <p>During suspension a suspension conference is held. Attending: student, parents/carers, the head teacher, and other support people. A development plan is negotiated including learning goals, support, monitoring, etc.</p>	<p>Exclusion from school is intended to: enable the student to achieve certain goals related to increasing responsible behaviour and improving learning; and signal that the student's irresponsible behaviour is not acceptable and cannot be managed within that school community without interfering with the rights of others to education and safety.</p> <p><u>Offences (students):</u> If student contravenes or fails to comply with directions given by the responsible officer in relation to undertaking education, work or other relevant activity during the period of an</p>	<p>There is no formal appeal rights associated with suspension from school because the purpose of the process is to negotiate a satisfactory outcome for all parties concerned at the suspension conference.</p> <p><u>Exclusion:</u> The student, the parents or caregivers or someone acting at their request may appeal against a decision of the Head Teacher to exclude (within 5 school days after notification) to a panel established by the responsible officer.⁵ The panel decides through a</p>

⁴ Note: unable to find definition of who is responsible officer at this stage.

⁵ Note: unable to find definition of who is responsible officer at this stage.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>and Child Development (DECD)</p> <p>Director General – Chief Executive of the DECD</p> <p>Note: the Act refers to Principals, the regulations refer to Head Teachers</p> <p>Compulsory school age means that children must be enrolled in and attending school from when they turn 6 until they turn 16. Students aged 16 must be in an approved learning program until they turn 17.</p>	<p>means; the student has acted illegally; or the student is interfering with the rights of other students to learn and of teachers to teach. Students may also be suspended when the Head Teacher believes on reasonable grounds that the student shows persistent and wilful inattention or indifference to school work.</p> <p><u>Expulsion:</u> Under regulation 46, the Head Teacher may expel a student above compulsory school age from a school if the Head Teacher believes on reasonable grounds that— (a) the student has threatened or perpetrated violence; or (b) the student has acted in a manner that threatens the safety or wellbeing of a student or member of staff of, or other person associated with, the school (including by sexually harassing, racially vilifying, verbally abusing or bullying that person); or (c) the student has acted illegally; or (d) the student has persistently interfered with the ability of a teacher to instruct students or of a student to benefit from that instruction.</p> <p><u>Expulsion from all schools:</u> Under regulation 47, the Director General may on the Head Teacher's recommendation expel a student above compulsory school age from all schools if satisfied on reasonable grounds that— (a) the student has threatened or perpetrated violence; or (b) the student has acted in a manner that threatens the safety or wellbeing of a student or member of staff of, or other person associated with, the school (including by sexually harassing, racially vilifying, verbally abusing or bullying that person); or (c) the student has acted illegally.</p>	<p><u>Exclusion:</u> Head Teacher may exclude a student for 4 – 10 weeks, or for the rest of the term, or for students over 16 the rest of the semester (head teacher may extend). The length of exclusion is determined by the Head Teacher and depends on the severity or frequency of the irresponsible behaviour and the time deemed necessary to achieve specific behavioural changes.</p> <p>Notice of intention to exclude which suspends student for up to 5 days, during which time a pre-exclusion conference is held. Same people as at suspension conference. Information from all parties considered. The Head Teacher then determines whether to exclude. If the exclusion is to go ahead then the appeals process is outlined, and where the student is to attend if still of compulsory education age.</p> <p><u>Expulsion (over compulsory school age):</u> Minimum expulsion is for 6 consecutive months unless the period is to the end of the semester, and not more than 18 consecutive months, on any one occasion. Head Teacher must first suspend for a period no more than 20 consecutive school days.</p> <p><u>Expulsion from all schools:</u> Timeframe: cannot be expelled under this regulation for less than 1 year (unless for remainder of year), or more than 5 years. Student must first be suspended for a period not exceeding 30 consecutive school days.</p>	<p>exclusion the student has committed an offence (maximum fine \$200).</p> <p>If found on school grounds while suspended/excluded/expelled, the student has committed an offence, (maximum fine \$200)</p>	<p>vote. They may affirm, vary or quash original decision, and make recommendations.</p> <p><u>Expulsion:</u> Appeals against a decision of the Head Teacher to expel go to the Director General (within 10 school days after notification).</p> <p>Appeals against a decision of the Director General to expel from all schools (within 10 school days after notification) to the Minister.</p>
<p>Australia – Western Australia</p>	<p><u>Suspension:</u> Under section 90 of the Act, a Principal (delegations allowed) of a government</p>	<p><u>Suspension:</u> Under section 90(2) of Act, and regulation 44, before suspending the Principal must (unless serious breach of school discipline) advise</p>	<p>Regulation 45 – If student is suspended for 10 or more days in a school year the principal is to take reasonable steps to have a</p>	<p>Exclusion of a student over compulsory school age: the student may apply in writing to the Chief Executive for a</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Legislation: School Education Act 1999 (the Act), Division 5 – Suspension and exclusion</p> <p>Secondary legislation: School Education Regulations 2000 (regulation 43 maximum period of suspension, regulation 44 rules for imposing suspension)</p> <p>Applies to: Government schools</p> <p>Chief Executive: Director General of the Department of Education</p> <p>Compulsory school age: 6 years and 6 months – 16</p>	<p>school may wholly or partially suspend a student who in the Principal's opinion has committed a breach of school discipline (any act or omission that impairs the good order and proper management of the school).</p> <p><u>Exclusion:</u> Section 91 of the Act enables exclusion where a breach of school discipline has adversely affected or threatened the safety of any person on the school premises or participating in an educational programme of the school, or has caused or likely to result in damage to property, or disrupted the educational instruction of other students.</p> <p><u>Exclusion after compulsory school age:</u> Under section 95 of the Act the Principal of a Government school may exclude a student over compulsory school age if their attendance not satisfactory or they are not participating to their benefit, or they have failed to comply with a requirement of a code of conduct, and if they have failed to comply with any condition of their enrolment imposed by the Chief Executive.</p> <p><i>Note: school means on the school premises or participating in an educational programme of the school.</i></p>	<p>student/parent of reasons for and duration of suspension, and give them reasonable opportunity to argue against it.</p> <p>If serious breach of discipline, student/parent must be given a reasonable opportunity to show that they should not have been suspended or that it should not continue.</p> <p><u>Exclusion:</u> Under section 92 of the Act If there are grounds the Principal may recommend to the Chief Executive to exercise their powers. Under section 94 (Chief Executive may make orders) the Chief Executive may order exclusion from normal attendance (but student allowed to attend for specific purposes), or total exclusion, or a direct student to attend a specified government school/educational programme, or otherwise determine educational instruction. Orders may have specified period of effect, can be revoked or amended. Then the student/parent must be notified. The Chief Executive refers to a School Discipline Advisory Panel (section 93) (or a Disability Advisory Panel if child is disabled). Panel examines the matter and reports to Chief Executive recommending how to deal with it. Panel is to have regard to the social, cultural, lingual, economic or geographic factors or learning difficulties that are relevant to the student.</p> <p>Section 93 of the Act lists requirements for the membership of the panel who are appointed by the Minister. Minister may give the panel procedure directions in writing. Student/parent may have another person attend the panel with them but they cannot be represented by another person unless panel determines this is necessary.</p>	<p>discussion with the parent about the student's behaviour and how to avoid further discipline breaches.</p> <p>Regulation 46 – If student is suspended for 3 or more consecutive school days or 5 or more days in a year total, the Principal is to ensure that educational instruction is made available to the student.</p>	<p>review of the decision. Limited to fair and proper procedures followed by the Principal. Must be made within 7 days of notification. Chief Executive has 28 days to refer the matter to a School Discipline Advisory Panel. Panel reports back to Chief Executive who then may confirm, vary or reverse decision, and has 14 days to notify applicant of decision.</p>
<p>Australia – Northern Territory</p> <p>Legislation: Education Act (the Act)</p> <p>Secondary legislation: Education Regulations set out requirements for requests for review of decisions (regulation 19 and 20)</p>	<p><u>Internal suspension:</u> A response to student behaviour that occurs during normal school hours, where the risk of harm posed by the student can be mitigated by removing them from a scheduled class/es, and allowing them to reflect in a closely supervised environment that is separated from others.</p> <p><u>Suspension:</u> Principal has authority to suspend for not more than 20 school days when satisfied that a student's presence is</p>	<p><u>Suspension:</u> When considering suspension, Principals should ensure procedural fairness in their decision making. Procedural fairness relates to a student and parent's right to be told the allegations against them and be given the opportunity to see and consider the information that the Principal is basing their decision on, to have an opportunity to be given a fair hearing before the decision is made, and to have decisions made that are objective, considered and based on all the information gathered, from as many sources as possible.</p> <p>Suspension is not a punitive measure and students should not be suspended for reasons other than "risk of physical or psychological harm". Decisions to suspend must: reflect the context, nature and seriousness of the student's conduct, and be applied fairly and</p>	<p><u>Suspension:</u> Prior to a student returning to the school following a period of suspension, the Principal or nominated school staff member must: arrange a re-entry meeting with the student (and parent, where appropriate) if contact has not already been established by the family; advise the student that re-entry may include conditions to manage and monitor appropriate behaviour when the student returns to school; consult with the student's parent (where appropriate) to develop a program to support the student's reintegration – this could include provisions</p>	<p><u>Suspension:</u> Under departmental guidelines, where parent or student not satisfied with principal's decision they may lodge a complaint with the department.</p> <p><u>Exclusion:</u> Under section 92(5) of the Act a student may apply (also note regulation 19 – requests must be written and submitted within 14 days of receipt of exclusion notice) – to the CEO to review the decision. The CEO may confirm, vary or set aside the</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Statutory Guidance: 1) Department of Employment, Education and Training Guidelines: Suspension; and 2) Department of Employment, Education and Training Guidelines: Expulsion⁶</p> <p>Applies to: Government schools</p> <p>Government Department: Department of Education</p> <p>CEO or CE or Chief Executive (used interchangeably): Chief Executive of the Department of Education</p> <p>Parent: a child's father, mother or any other person who has parental responsibility for the child, including a person who is regarded as a parent of the child under Aboriginal or Torres Strait Islander customary law or tradition</p> <p>Daily care and control of a child (relating to the definition of parent): refers to a person who is entitled to exercise all the powers and rights, and has all the responsibilities, in relation to the day-to-day care and control of the child</p>	<p>likely to constitute a risk of physical or psychological harm to others (section 91 of the Act).</p> <p>Behaviour must have one of the following features: pose a danger, whether actual, perceived or threatened, to the health, safety or wellbeing of any person at the school; or cause significant damage to or destruction of property; or involve the participation in, attempt or actual theft of any property; or include the possession, use or sale, or deliberate assistance to another person to possess, use or sell illicit substances or weapons; or fail to comply with any clear and reasonable instruction of a staff member so as to pose a danger, whether actual, perceived or threatened, to the health, safety or wellbeing of any person including themselves; or demonstrate a consistent behaviour that vilifies, defames, degrades or humiliates another person based on: age; gender; identity; impairment; employment or vocation; marital status; physical features; political beliefs; race; religion; sexual orientation etc; or demonstrates consistent behaviour of an unproductive manner that interferes with the wellbeing, safety or educational opportunities of any other student.</p> <p>Principals may impose partial periods of suspension where a student is suspended for a prescribed number of hours during a school day or days per week. This might happen when a student is reintegrating into the school after a serious incident, or where their previous behaviour related to a</p>	<p>consistently in a manner where students are not suspended for minor breaches of discipline or infringement of school rules.</p> <p>Suspensions are a last resort. Principals are responsible for ensuring alternative options have been explored.</p> <p>Section 90 of the Act requires Principals to consider a range of factors prior to making any decisions relevant to the management of a student's behaviour. These include: a) the age of the student, b) the developmental stage of the student, c) whether the student is a child with special learning needs, d) the mental health and wellbeing of the student, e) the physical health and wellbeing of the student, f) any relevant religious or cultural considerations, and g) the student's home environment and the arrangements in place for the student's care.</p> <p>Written notice may include any conditions Principal thinks appropriate. Notice must be given to the CEO and student/parent. Suspension notices must be provided to the student, unless they are not living independently, then the notice must be provided to a parent who has daily care and control of the student. In addition to written notice, Principals must attempt to contact the parent via telephone prior to issuing the notice. Student/parent have a right to respond prior to a decision being made. Notices also must be provided to Regional Director and CEO.</p> <p>Principals have sole decision-making power to vary or revoke a suspension period.</p> <p><u>Exclusion:</u> Chief Executive may exclude until a charge determined by a court. Exclusion may be from school premises or participation in any programme. Written notice must go to student and parent.</p> <p><u>Expulsion:</u> Expulsion should only be used as a last resort and in exceptional and extreme circumstances, after all other available avenues of addressing problematic behaviour have been exhausted.</p> <p>Decisions to expel must: reflect the context, nature and seriousness of the student's conduct, and be applied fairly and consistently in a manner where students are not issued with this sanction prior to other avenues of behaviour management being exhausted.</p>	<p>about attendance, learning and clear strategies for the student to engage in alternative positive behaviours whilst at school; involve relevant school staff or other support services (such as Department of Children and Families case workers, paediatricians or treatment providers) in the development and implementation of the student's reintegration program; and provide opportunity for the student to bring other nominated support, should parents or school staff not be appropriate/available. Appropriate course work is provided to student during suspension.</p> <p><u>Exclusion:</u> If an exclusion has the effect of preventing the student from attending all Government schools, the CEO must take reasonable steps to arrange for the student's participation in an education program that allows the student to continue their education during the exclusion. Re-entry meeting required prior to student returning.</p> <p><u>Offences (parents and students):</u> Parents have responsibility under section 94 of the Act (if student not living independently) to ensure student complies with notice. Offences apply to parents of suspended/excluded/expelled student if student. First offence 15 penalty units, second and subsequent 20 units. Student offences where living independently – first offence 1.5 units, second and subsequent 2 units. Strict liability.⁸ Defence to have reasonable excuse.</p>	<p>decision and substitute a different decision. Written notification required to student and parent.</p> <p><u>Expulsion:</u> Under section 93(3) of the Act, a parent/student may make an application to the Minister for a review of a decision to expel. The application must be made in writing within 14 days after the parent/student received the written notice from the CE advising of the expulsion (see regulation 20).</p> <p>If the Minister grants this application, and decides to revoke the expulsion, the student must be re-enrolled and attend school.</p> <p>Where a parent/student is dissatisfied with the outcome of the Ministers review of the decision to expel, they may apply to the Northern Territory Civil and Administrative Tribunal (NTCAT) for a review of the decision. For a matter to be referred to NTCAT, it must have first been reviewed by the Minister.</p>

⁶ Guidelines made under section 90 of the Act: "The Chief Executive may prepare and publish guidelines, not inconsistent with this Act, relating to the management of the behaviour of students enrolled in Government schools. Principals must comply with guidelines."

⁸ Unsure of meaning of penalty units, and strict liability.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
Child living independently: if the child is of or above the age of 14 years and not living with a parent, or although living with a parent, but the parent is unable to control the child's behaviour to the extent necessary to ensure compliance with Part 4 (Enrolment, Attendance and Participation) of the Act	<p>particular activity (and they are not allowed back to that activity).</p> <p><u>Exclusion:</u> Under section 92 of the Act the CEO has authority to exclude if student is charged with an offence (punishable by 2 year term or more) but only if the CEO is of the opinion that the student's presence is likely to constitute an unacceptable risk of physical or psychological harm to other persons at the school.</p> <p><u>Expulsion:</u> Minister has authority to expel under section 93 of the Act if considers it necessary in the interests of other persons present at a Government school.</p> <p>Expulsion may be recommended: where a student's pattern of behaviour is consistently unacceptable, and all attempts to address the behaviour have not resulted in improvement; or where the behaviour is so extreme that the school assesses any return to school grounds at any time (immediate or future) would in and of itself present an unacceptable risk of physical or psychological harm.</p>	<p>Principal considering expulsion must suspend student first. Written notification required to student/parent. Principal consults with Regional Director. Then if still considering expulsion, student/parent is given 3 working days to submit. Principal considers submissions and makes decision within 2 working days, which then must be provided to the CEO as a recommendation. Written notification to student/parent required immediately (which must include all documentation to be provided to the CEO). Principal's recommendation and supporting documents (list of requirements in guidelines) goes to the Regional Director who checks it, and submits it to the CEO (via an Executive Director). Student/parent is given 7 days to provide a written submission, and advised if they able to meet with CEO. Where ever possible notices/letters etc. must be hand delivered to the student/parent or delivered as "expeditiously as possible".</p> <p>The CEO (this seems to be a delegated power from the Minister although no verification or supporting document found to support this)⁷ must decide on expulsion before the suspension period expires. Written notice advising of recommendation as soon as practicable to student and parent. If expelled must have Minister's permission to enrol any Government school unless it is a distance education centre (section 95 of the Act).</p>		
<p>England</p> <p>Legislation: Education Act 2002 (the Act), as amended by the Education Act 2011; 2) The Education and Inspections Act 2006; 3) the Education Act 1996; 4) the Equality Act 2010</p>	<p><u>Fixed period exclusion:</u> Head Teachers (maintained schools; can be someone acting as Head Teacher), teachers in charge (pupil referral units) and principals (academies)¹² may remove a child from school for a total of no more than 45 days (regulation 4 of the School Discipline regulations) in a school year. The limit attaches to the student not</p>	<p><u>Exclusions:</u> Head Teachers must establish a behaviour policy and should have processes for identifying and supporting pupils additional needs. Head Teacher must decide whether to exclude (cannot be delegated but can be someone acting in the Head Teacher role). In doing so the Head Teacher should consider whether exclusion is the most appropriate and reasonable sanction, and consistent with the school's behaviour policy, and investigate the specific incidents with all parties in a sensitive and fair way. Head Teacher should where practical give the pupil an opportunity to present their case before</p>	<p>Governing boards have a legal duty to arrange suitable full-time education for any pupil of compulsory school age who is excluded for more than five days. Schools should take reasonable steps to set and mark work for pupils during the first five school days of an exclusion; and alternative provision must be arranged from the sixth day. This duty does not apply for pupils in</p>	<p><u>Independent review panels:</u> Where parents dispute the decision of a governing board not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel. The panel is arranged by the local authority.¹³ Parents have 15 school days in which to apply for review (from when they are given notice by the</p>

⁷ The departmental guidelines are confusing here. The end of section 7.3 references the CE making a final decision (after a long process where the Principal recommends to the CE via the Regional Director and Executive Director). This is followed by section 7.4 which suddenly mentions the Minister making a decision based on all the documentation provided to the CE (without any preceding steps involving the CE recommending to the Minister). This switches back to the CE in the last paragraph of 7.4 ("CE will provide the parent/student with a written notice of their decision").

¹² The rules and regulations are largely the same for all three types of school, (there are some minor differences that reflect different terminology and governing structures) so from here this document refers only to maintained schools and Head Teachers.

¹³ Schedule 1 of the School Discipline Regulations sets out the constitution and procedure requirements of review panels.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Secondary legislation: Regulations made under section 51A of the Education Act 2002 – 1) The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 (the School Discipline Regulations); 2) The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007 (as amended by the Education (Provision of Full-Time Education for Excluded Pupils) (England) (Amendment) Regulations 2014)</p> <p>Statutory Guidance: Exclusion from maintained schools, academies and pupil referral units in England: Statutory guidance for those with legal responsibilities in relation to exclusion, September 2017</p> <p>Applies to: maintained schools, pupil referral units⁹ and academies.¹⁰ The majority of state schools are maintained schools (overseen or ‘maintained’ by local authorities).¹¹</p>	<p>the institution. Can be for a non-continuous period, or parts of a school day. Decision may only be made on disciplinary grounds (statutory guidance).</p> <p><u>Permanent exclusion:</u> A child is expelled only when in response to a serious breach or persistent breaches of the schools behaviour policy and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.</p> <p><u>Direct off-site and managed moves:</u> Maintained schools also have the power to direct a pupil off-site for education to improve their behaviour under section 29 of the Education Act 2002. Separate statutory guidance applies. A pupil at any type of school can also transfer to another school as part of a ‘managed move’ where this occurs with the consent of the parties involved, including the parents and the admission authority of the school. However, the threat of exclusion must never be used to influence parents to remove their child from the school (statutory guidance).</p>	<p>taking the decision to exclude, and take account of any contributing factors that are identified after an incident of poor behaviour has occurred.</p> <p>Head Teacher must inform the relevant person (pupil if 18 or over, parent if under 18) “without delay”. Written notification also required. Regulation 5 of the School Discipline Regulations sets out requirements of notification – e.g. Head Teacher must inform of period of exclusion, reasons for it, that representations may be made to the governing body of the school and how the pupil may be involved in this, how, where and to whom to make representations to, etc. When there is a legal requirement for the governing board to consider the exclusion, parents have a right to attend the meeting, be represented at the meeting (at their own expense), and to bring a friend. If exclusion is to be permanent, or for more than 5 school days in a term, or if it will mean the pupil will lose an opportunity to take a public exam or National Curriculum test, then the Head Teacher must also notify the school’s governing body and the local authority (and, in the case of a permanent exclusion, if applicable, the home local authority, which means the local authority responsible for the area in which the pupil resides where this differs from the local authority in which the pupil’s school is located).</p> <p>The governing board has a duty to consider a relevant person’s representations about an exclusion.</p> <p>Schools must comply with duties under the Equality Act, and with statutory duties in regard to special education needs. Schools must also have due regard to the need to eliminate discrimination, harassment, victimisation, and other conduct that is prohibited by the Equality Act; advance equality of opportunity between people who share a protected characteristic and people who do not; and foster good relations between people who share a protected characteristic and people who do not share it. For disabled children, this includes a duty to make ‘reasonable adjustments’ to policies and practices. It is unlawful to exclude or to increase the severity of an exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet. It would also be unlawful to exclude for a reason such as:</p> <ul style="list-style-type: none"> - academic attainment / ability; - the action of a pupil’s parents; 	<p>their final year of compulsory education (who have no further public exams to sit).</p> <p><u>Reinstatement at school:</u> Governing bodies are required to consider whether or not to reinstate (and if so when) a pupil who has been permanently excluded (or where the pupil would be excluded for a total of more than 15 school days in an term, or lose an opportunity to take a public exam, or where the pupil would be being excluded for more than 5 days in a school term and they or their parent makes a representation). In fulfilling this duty governing bodies must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and persons working at the school. They must also consider any representations, and take reasonable steps to arrange a meeting with the head teacher, the pupil and parent, and a representative of the local authority. They have 15 days to do this if the exclusion is permanent (or if the pupil’s total number of days excluded will be over 15, or where they would lose an opportunity to sit a public exam), or 50 days if the exclusion is between 5 and 15 school days in a term and the parent has made a representation.</p> <p>Where legally required to consider reinstating an excluded pupil, the governing board must notify parents, the head teacher and the local authority of its decision, and the reasons for it, in writing and without delay. Where the pupil resides in a different local authority area from the one in which the school is located, the governing board must also inform the pupil’s ‘home authority’. The governing board must include in the notification information listed in</p>	<p>governing board that it has decided not to reinstate a permanently excluded pupil). Whether or not a school recognises a pupil as having special education needs (SEN), all parents have the right to request the presence of an SEN expert at a review meeting. In reviewing the decision the panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school. Following its review the panel can decide to: uphold the governing board’s decision; recommend that the governing board reconsiders reinstatement; or quash the decision and direct that the governing board reconsiders reinstatement. The review panel’s decision is binding on the relevant person, the governing body, the head teacher and the local authority. If their decision was quashed, the governing body then has 10 school days to reconvene and reconsider their decision.</p> <p>An independent review panel does not have the power to direct a governing board to reinstate an excluded pupil. However, where a panel decides that a governing board’s decision is flawed when considered in the light of the principles applicable on an application for judicial review, it can direct a governing board to reconsider its decision. The panel will then be expected to order that the school must make an additional payment of £4,000 if it does not offer to reinstate the pupil.</p>

⁹ A pupil referral unit is a school for children who cannot attend mainstream school (e.g. for health reasons, or for being excluded).

¹⁰ An academy is alternative provision of education run by a governing body separate from the local authority.

¹¹ Other types of provision exist (e.g. independent schools (other than the academies listed above), city technology colleges, city colleges for the technology of the arts, sixth form colleges or 16-19 academies, and have separate exclusion procedures. Local authorities are, however, required to arrange educational provision for pupils of compulsory school age who are excluded from these institutions if they would not otherwise receive such education.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
Parent: in addition to the child's birth parents, references to parents includes any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives. Where practicable, all those with parental responsibility should be involved in the exclusions process.		<ul style="list-style-type: none"> the failure of a pupil to meet specific conditions before they are reinstated such as attend a reintegration meeting. <p>When establishing the facts in relation to an exclusion decision the Head Teacher must apply the civil standard of proof; i.e. 'on the balance of probabilities' it is more likely than not that a fact is true, rather than the criminal standard of 'beyond reasonable doubt.' See regulation 10 of the School Discipline Regulations. This means that the Head Teacher should accept that something happened if it is more likely that it happened than that it did not happen. Also applies to governing bodies and review panels in exercising their regulatory functions.</p>	<p>regulation 6(6)(b) of the School Discipline Regulations (including that the pupil/parent may apply for the governing board's decision to be reviewed by a review panel).</p> <p>Schools should have a strategy for reintegrating a pupil who returns to school following a fixed-period exclusion and for managing their future behaviour.</p> <p>The governing board must remove a permanently excluded pupil's name from the school register if 15 school days have passed since the parents were notified of the governing board's decision to not reinstate the pupil and no application has been made for an independent review panel; or the parents have stated in writing that they will not be applying for an independent review panel. Where an application for an independent review panel has been made within 15 school days, the school must wait until the review has been determined, or abandoned, and until the governing board has completed any reconsideration that the panel has recommended or directed it to carry out, before removing a pupil's name from the register.</p>	Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents can also make a claim to the First-tier Tribunal (Special Educational Needs and Disability) for disability discrimination, or the County Court for other forms of discrimination. Where a pupil's name is removed from the school register and a discrimination claim is subsequently made, the First-tier Tribunal (Special Educational Needs and Disability) or County Court has the power to direct that the pupil should be reinstated.
<p>Wales</p> <p>Legislation: 1) Education Act 2002 (the Act); 2) The Equality Act 2010</p> <p>Secondary legislation: 1) The Education (Pupil Exclusions and Appeals) (Maintained Schools) (Wales) Regulations 2003; 2) The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (Wales) Regulations 2003; 3) The Education (Pupil</p>	<p><u>Fixed period exclusion:</u> Head Teachers (maintained schools) and teachers in charge (pupil referral units) may remove a child from school for a total of no more than 45 days in a school year.¹⁶ Limit applies to the learner and not the institution. Statutory guidance says exclusion should be for the shortest time necessary (as any longer than a day or two makes it difficult for the learner to reintegrate).</p> <p>A Head Teacher (no power to delegate but if they are absent then the most senior teacher may exercise the power</p>	<p><u>Exclusion:</u> Exclusion should not be imposed in the heat of the moment unless there is an immediate threat to the safety of others in the school or to the learner concerned. Before deciding whether to exclude a learner, either permanently or for a fixed-term, the Head Teacher should: ensure that an appropriate investigation has been carried out, and consider all the evidence available to support the allegations; take account of the school's behaviour and equal opportunities policies, and, where applicable, the Equality Act 2010; allow the learner to give his or her version of events; check whether the incident may have been provoked, e.g. by bullying or by racial or sexual harassment; if necessary consult others, but not anyone who may later have a role in reviewing the Head Teacher's decision, e.g. a member of the discipline committee; and keep a written record of the incident and actions taken. The standard of proof is the "balance of probabilities". The Head Teacher must specify a period of time for</p>	<p>Schools are obligated to provide education while the learner is on the roll. The governing body is responsible for ensuring the school complies. Once a permanent exclusion has been upheld by the discipline committee the local authority should assess the learner's needs and how these might be met (even though the exclusion might be overturned at appeal). Once the learner is removed from roll, the local authority is responsible for ensuring that suitable education is made available.</p> <p>The Education (Reintegration Interview) (Wales) Regulations 2010 which came into force on 5 January 2011, require Head</p>	<p><u>Independent appeal panels:</u> The relevant person in an exclusion has the right to appeal a governing body's decision not to reintegrate a learner. The appeal is considered by an independent panel arranged by the local education authority. The relevant person must appeal in writing. They cannot determine that a pupil is to be reinstated because of a failure to comply with any procedural requirement under the regulations in relation to the governing body's decision (against which the appeal is brought) or the exclusion/decision made by the Head Teacher. The</p>

¹⁶ From this point only 'Head Teacher' and 'school' are referred to.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Exclusions and Appeals) (Wales) (Miscellaneous Amendments) Regulations 2004; 4) The Education (Reintegration Interview) (Wales) Regulations 2010.</p> <p>Statutory Guidance: Exclusion from schools and pupil referral units, 171/2015¹⁴</p> <p>Applies to: maintained schools and pupil referral units</p> <p>Regulations refer to pupils, statutory guidance refers to learners.</p> <p>Relevant person: the parent/carer if the learner was aged 10 or below on the day before the beginning of the school year in which the learner was excluded, or both the parent/carer and learner if the learner is of compulsory school age and was aged 11 or above on the day before the beginning of the school year in which the learner was excluded, or the learner if aged over compulsory school age (normally 16).¹⁵</p> <p>Parent/carer means anyone who has parental</p>	<p>to exclude as 'Acting Head Teacher') can exclude a learner only in response to serious breaches of the school's behaviour policy, and if allowing the learner to remain in school would seriously harm the education or welfare of the learner or others in the school.</p> <p><u>Permanent exclusion:</u> This is a final step in a process, following a wide range of other strategies which have been tried without success. In some exceptional circumstances however it may be used for first-time offences. For example: serious actual or threatened violence against another learner or member of staff, sexual abuse or assault, supplying an illegal drug, use or threatened use of an offensive weapon.</p> <p><i>Note: Learners' behaviour outside school on school business, e.g. on school trips, away school sports fixtures or work experience placements is subject to the school's behaviour policy. Bad behaviour in these circumstances should be dealt with as if it had taken place in school. For behaviour outside school, but not on school business, a Head Teacher may exclude a learner if there is a clear link between that behaviour and maintaining good behaviour and discipline among the learner body as a whole.</i></p>	<p>the exclusion (may be for a non-continuous period such as every lunch time for a week; lunchtimes are treated as one quarter of a school day).</p> <p>Other than in the most exceptional circumstances, schools should avoid permanently excluding learners with statements of SEN (special education need).</p> <p>In every instance where a learner is sent home for disciplinary reasons, Head Teachers must formally record and specify the length of the exclusion (for reporting purposes this should be recorded as a half day, whole day or lunchtime). They should ensure that: they are meeting their legal duty of care towards learners, and that parents/carers are formally notified of the exclusion; child protection issues are taken into account, e.g. bearing in mind the learner's age and vulnerability, that a parent/carer is at home and the learner is not placed at risk by, for example, being left to wander the streets; and that work is sent home or alternative provision is arranged.</p> <p>Legal duties once decision made to exclude: Head Teacher must take reasonable steps to inform the relevant person, without delay. Head Teacher must follow up the immediate notification with written notification (which must include a range of things, e.g. period of exclusion or if it is permanent, reason for it, how to make representations, etc).</p> <p>When the Head Teacher excludes a learner permanently (or decides the exclusion of any learner is to be made permanent), or when the amount the learner is being excluded for brings their total for that term to more than five school days, or if by excluding them they would miss an opportunity to take any public exam, then the Head Teacher must also without delay inform the local education authority (the local authority) and the governing body of the school of the exclusion and the period it is for. Reporting requirements also apply – information on all exclusions must be provided to the local education authority and the National Assembly for Wales once a term. Information provided from school to governing body, and from governing body to local education authority (that must supply to the National Assembly at its request).</p> <p><u>Discipline Committees:</u> The governing body of a school is required to have a discipline committee under the Government of Maintained Schools (Wales)</p>	<p>Teachers of schools to request, in specified circumstances, that parents/carers of learners excluded for a fixed-term to attend a reintegration interview at the school. The request for interview applies to all fixed-term exclusions for primary-aged learners but only fixed-term exclusions of six or more days for secondary-aged learners. Reintegration interviews need to take place within 15 school days of the last day of the exclusion period. The reintegration interviews provide the opportunity to: emphasise the importance of parents/carers working with the school to take joint responsibility for their child's behaviour; discuss how behaviour problems can be addressed; explore wider issues and any circumstances that may be affecting the learner's behaviour; and reach agreement on how the learner's education should continue, how best they can be reintegrated and what measures could be put in place to prevent further misbehaviour.</p>	<p>decision of an appeal panel is binding on the relevant person, the governing body, the Head Teacher and the local education authority. The panel may uphold the exclusion, or direct that the pupil is to be reinstated (either immediately or by a date specified in the direction). In some cases reinstatement may not be practical. The panel is required to note on the learner's record what their decision would have been.</p> <p>A parent/carer or learner can complain to the Ombudsman. The grounds of complaint would be maladministration by the appeal panel. The Ombudsman has the power to make recommendations. The Ombudsman has no powers to direct reinstatement or to order a fresh appeal hearing, though a fresh appeal hearing could be recommended. It would be for the local authority to decide whether to accept the Ombudsman's recommendation, although it would normally be expected to comply.</p> <p>The Welsh Ministers can consider complaints about a discipline committee's operation of the exclusion procedure but has no power to overturn the exclusion or to consider complaints about the decision of an independent appeal panel.</p> <p>If the parent/carer or learner, the governing body or local authority consider that the panel's decision is perverse, they may apply to the High Court for a judicial review. This must be done promptly and usually no later than three months from the date of</p>

¹⁴ Section 52(4) of the Act requires decision makers to 'have regard' to this guidance.

¹⁵ The effect of the definition means that all excluded learners aged 11 and above have the right to be notified formally of their exclusion and the right to appeal the exclusion decision. In the case of learners aged 11–16, i.e. in most cases secondary school learners of compulsory school age, parents/carers will also be notified of the exclusion. For these learners, if the parent/carer sends a written notice to the local authority saying that they do not intend to appeal the exclusion decision the notice will be treated as final whether or not the learner has given such notice. The right to appeal for learners above compulsory school age rests solely with the learner.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
responsibility for, or care of, a learner, which includes guardians and corporate parents. Where a learner is the subject of a care order, the local authority will have parental responsibility for the child.		<p>Regulations 2005. The role of the committee includes reviewing the use of exclusion within the school. This committee is required to meet to consider the circumstances in which the learner was excluded (if fixed term exclusions amount to 6 or more school days in any one term).</p> <p>The discipline committee must, in the case of one or more fixed-term exclusions totalling five school days or fewer in any one term, consider any representations from the parent/carer and learner but cannot direct reinstatement. The committee must, in the case of one or more fixed-term exclusions totalling more than five but not more than 15 school days in any one term, convene a meeting between the sixth and the fifteenth school day after receiving the notice of exclusion, to consider the exclusion, if the parent/carer and/or learner requests a meeting. The meeting may direct reinstatement. Must invite the parent/carer and/or learner, Head Teacher and an local authority officer to the meeting at a time and place convenient to all parties (within the statutory time limit), and must offer the opportunity for the views of the excluded learner to be considered at the meeting, irrespective of their age. In reaching their decision the committee should consider whether the Head Teacher has complied with the exclusion procedure and has had regard to the Welsh Government's guidance before deciding to exclude the learner. In the case of permanent exclusion, the discipline committee should normally satisfy itself that all other strategies to improve a learner's behaviour have been tried and have not been successful. When a discipline committee decides that the learner should be reinstated, the discipline committee should then decide if reinstatement is practical (that is, in regards to the individual circumstances and needs of a learner), and discuss with local authority about any need for extra support. When confirming a Head Teacher's decision to exclude the committee should be satisfied that there are suitable arrangements for the learner to continue their education while away from school. After the meeting the discipline committee should inform the parent/carer and/or learner, the Head Teacher and the local authority of their decision in writing within one school day of the hearing, stating its reasons, and giving the last day for lodging an appeal.</p>		the decision. If a judicial review were granted, the court would consider the lawfulness of the panel's decision. If it found the panel's decision to be unlawful or unreasonable (in the narrow legal sense of 'unreasonable', i.e. irrational or perverse) it could quash the decision and direct the local authority to hold a fresh appeal hearing before a newly constituted panel.
Scotland Legislation: 1) Education (Scotland) Act 1980 (the 1980 Act), 2) Standards in Scotland's Schools Act 2000, 3) Equity Act 2010	<u>Exclusion:</u> An education authority (the power to exclude can be devolved to the senior management within a school) shall not exclude a pupil from school unless the authority: "are of the opinion that the parent of the pupil refuses or fails to	<u>Exclusion:</u> The authority must, on the day upon which a decision to exclude a child or young person is taken, intimate in writing or orally (where intimations are oral they must be confirmed in writing) to the child's parent or if the learner is a young person, the young person: the decision to exclude; and the date, time and place where the Head Teacher (or other teacher at the school or official of the education	The 1980 Act (section 14(3)) places a duty on education authorities (this duty may be devolved to senior management within a school) to make appropriate education provision ("without undue delay" ¹⁸) when a child or young person is excluded.	An appeal against exclusion may be made, in the first instance, to an Education Appeal Committee, set up by the education authority under section 28D of the 1980 Act. The Education (Appeal Committee Procedures) (Scotland) Regulations

¹⁸ Not legally defined. However the objective is to ensure the child or young person continues to receive an education while excluded.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Secondary legislation: Regulations 4 and 4A of the Schools General (Scotland) Regulations 1975 ("the 1975 Regulations"), as amended and the Schools General (Scotland) Amendment (No. 2) Regulations 1982</p> <p>Applies to: state schools</p> <p>Local or education authority: State schools are owned and operated by local authorities which act as Education Authorities.</p> <p>Parent: guardian and any person who is liable to maintain or has parental responsibilities¹⁷ in relation to, or has care of, a child or young person.</p> <p>Child: under 18 (section 97, Children and Young People (Scotland) Act 2014)</p> <p>Young person: over school age but not 18 (section 135(1) of the Education (Scotland) Act 1980.</p>	<p>comply, or to allow the pupil to comply, with the rules, regulations, or disciplinary requirements of the school"; or "consider that in all the circumstances to allow the pupil to continue attendance at the school would be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there."</p> <p>The length of an exclusion is not defined in the legislation but is at the discretion of the local authority. Statutory guidance notes that it should be proportionate and take into account individual circumstances.</p> <p>The guiding principle is that any sanction should be proportionate to the breach of discipline. Therefore the length of an exclusion should reflect the seriousness of: the breach of discipline which resulted in the exclusion; the pupil's past disciplinary record; and any other relevant circumstances surrounding the pupil and/or the incident/s on which the decision to exclude is based. The local authority remains responsible for the provision of education for the child or young person during the period of exclusion.</p>	<p>authority), shall be available to discuss the decision to exclude. This meeting must be within seven calendar days following the day of the decision to exclude. The authority must, notify the parent/carer or young person in writing (by post or handed to the parent or young person directly): (a) the reason(s) the pupil was excluded; (b) the conditions, if any, with which the parent and/or pupil must comply, or undertake to comply before the pupil may be re-admitted; (c) the right to refer the decision to exclude the pupil to an appeal committee under section 28H of the 1980 Act and the right to appeal this committee's decision to the sheriff and how appeals can be initiated; and (d) any other information which the education authority considers appropriate. In most instances the authority will delegate this to the school.</p> <p>All exclusions should be recorded on the local authority management information system. All exclusions from school must be formally recorded. Children and young people must not be sent home on an 'informal exclusion' or sent home to 'cool-off'.</p> <p><u>Removal from register:</u> In very exceptional circumstances it may be that the school believes that the child or young person's behaviour is such that it may merit their removal from the register of the school (that is, they are permanently excluded). Where the decision is made to remove a child or young person from the register, local authorities must arrange for new educational provision to be made with the appropriate supports put into place. Schools must ensure timely transfer of educational records and plans to support the effective transition of the learner to their new educational provision.</p>	<p>Statutory guidance notes that it is good practice (but not a legal requirement) to agree a plan to support the child or young person on their return to school. This should not take the form of a 'good behaviour contract'.</p> <p>A parent of a child or young person of school age has a duty under section 30 of the 1980 Act to provide efficient education for their child suitable to his or her age, ability and aptitude by causing their child to attend a public school (local authority) regularly, or by other means. Parent(s) continue to be subject to this duty even if their child has been excluded from school.</p> <p>No legal requirement to have a pre-return meeting. However, statutory guidance notes that prior to a child or young person returning to school, an update to the wellbeing assessment and planning should take place to ensure the right support is provided. Appropriate approaches and strategies should be developed to prepare the child or young person, parent(s), staff and peers to enable them to return to school in a positive way.</p>	<p>1982 regulate the procedures of appeal committees, including committees set up to hear appeals against exclusion. A further appeal against the decision of the Education Appeal Committee may be made to the sheriff court.</p> <p><i>Either</i> the pupil, where the pupil is over sixteen years or is judged to be of legal capacity¹⁹, or the parent of a pupil, where the pupil does not have legal capacity or is incapable of expressing his views for the purposes of section 61(7) of the 1980 Act, may appeal. A parent and pupil may not both appeal.</p> <p>In order for the process of appeal to function effectively, it is necessary for education authorities to advise pupils and their parents, not only of their right to appeal against the exclusion, but also of the procedures involved, the type of evidence admissible at the hearing and the support which they can bring with them.</p> <p>Section 2(2) of the 2000 Act states that due regard is to be given to the views of the child, as far as is reasonably practicable. Their views should be sought even when it is the parent taking forward the appeal. This embodies the position in Article 12 of the United Nations Convention on the Rights of the Child, and the Children (Scotland) Act 1995 which stresses that the child's point of view should be represented and taken into account in decisions which directly affect them.</p>

¹⁷ Within the meaning of section 1(3) of the Children (Scotland) Act 1995. Those with parental responsibility includes those providing a foster or residential placement, or the local authority where full parental responsibility rests with them.

¹⁹ The Age of Legal Capacity (Scotland) Act 1991, section 2(4A) and (4B) provides that a person under the age of 16 has legal capacity to instruct a solicitor in connection with any civil matter where they have a general understanding of what it means to do so and a child of 12 or more is presumed to be of sufficient age and maturity to have that understanding. Such a person also has legal capacity to sue or to defend in any civil proceedings.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
				The Scottish Ministers will consider complaints brought by parent(s) or other interested parties, who think the local authority has failed to fulfil its legal duty under any enactment relating to education, under section 70 of the 1980 Act. If the Scottish Ministers are satisfied that an authority has failed to fulfil one of its legal duties, they may make an order requiring the authority to carry out that duty.
<p>Northern Ireland</p> <p>Legislation: The Education and Libraries (Northern Ireland) Order 1986 (the 1986 Order)</p> <p>Secondary legislation: 1) Schools (Suspension and Expulsion of Pupils) Regulations (Northern Ireland) 1995; 2) Schools (Expulsion of Pupils) (Appeal Tribunals) Regulations (Northern Ireland) 1994</p> <p>EA – Education Authority (a non-departmental body of the Department of Education)</p> <p>Controlled schools: managed by a board of governors, employing authority is the Education Authority.</p> <p>CCMS: Council for Catholic Maintained schools (Roman Catholic managed schools)</p> <p>Compulsory school age: 4 – 16</p>	<p><u>Suspensions:</u> Principal may suspend for no more than 5 days (maximum 45 school days in any one year) if: student has seriously broken school rules; or allowing them to stay in school would seriously harm their education or welfare, or the education or welfare of other pupils.</p> <p><u>Expulsions:</u> Only the expelling authority may expel: In the case of controlled schools, this is the education authority and, in the case of all other grant-aided schools, it is the Board of Governors of the school.</p>	<p>Schools should have a written policy setting out the standards of behaviour expected, and outlining what the school will do if a child's behaviour falls below these standards.</p> <p><u>Suspensions:</u> The Principal cannot extend a period of suspension without the prior approval of the Chair of the Board of Governors. The Principal must immediately give written notification of a suspension to the parent of the pupil, the Chair of the Board of Governors, the Education Authority Region in which the school is located and (in the case of a pupil at a Catholic maintained school) to CCMS.</p> <p><u>Expulsions:</u> Expulsion is legal only if: the pupil has served a period of suspension; and a consultation has taken place between the Principal, the parent of the pupil, the Chair of the Board of Governors, an authorised officer from the Education Authority and (in the case of a Catholic maintained school) an authorised officer from CCMS (the consultation must include consultations about the future provision of suitable education for the pupil concerned); and the decision to expel the pupil is made by the appropriate 'expelling authority' which is the Education Authority in the case of pupils attending controlled schools and the Board of Governors in all other cases. Where a final decision has been taken to expel a pupil the Principal must immediately notify the parent(s) of their right to appeal that decision to an independent appeal tribunal established by the Education Authority and the arrangements and timetable for doing so.</p>	<p>Schools must provide students with suitable work to do and mark it (parents may have to collect work and return it to school when it's finished).</p> <p>If expelled the education authority must make arrangements for suitable education for the student until they go to another school.</p>	<p>There is currently no independent review or appeals system against a child's suspension from school.</p> <p><u>Expulsion Appeals Tribunal:</u> Appeals must be made in writing. The appellant may appear and make oral representations, and can bring a friend or be represented. The expelling authority may also make representations and must provide information about procedures followed. The tribunal must have regard to whether procedures were properly followed, and the interests of other pupils and teachers in the school, and considers any representations put to it. The education authority sets time limits for hearing and determination of appeals. Appeals are heard in private, and decided by vote (majority rules). All matters on procedure for the appeals are determined by the education authority.</p>
<p>Ireland</p> <p>Legislation: 1) Education (Welfare) Act 2000 (the</p>	<p>If there has been serious misbehaviour, the school may decide to suspend a student.</p>	<p>The board of management of the school is obliged to draw up a code of behaviour for students stating the disciplinary rules and procedures. This must include procedures to be followed before a</p>		<p><u>All complaints except expulsion:</u> Under the Education Act 1998 the Minister can, after consultation with the education partners, set out</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Welfare Act); 2) The Education Act 1998; 3) Education (Miscellaneous Provisions) Act 2007 (the Miscellaneous Act)</p> <p>Applies to state primary and post primary schools.</p> <p>Education Welfare Officer: appointed by the National Educational Welfare Board, and work for the Child and Family Agency</p> <p>Secretary General: Chief Executive of the Department of Education and Skills (DES)</p>		<p>student is suspended or expelled and the grounds for lifting a suspension.</p> <p><u>Suspension:</u> The decision to suspend a student is made only after all other disciplinary measures have been tried. The school will notify the parents of the suspension. The parents may appeal this decision to the board of management and as a last resort to the Department of Education and Skills.</p> <p><u>Expulsion:</u> Where the board of management of a recognised school (section 24 of the Welfare Act) is of the opinion that a student should be expelled it shall first notify the educational welfare officer (EWO) in writing. The EWO shall make all reasonable efforts to ensure that provision is made for the continued education of the student. The EWO consults with the Principal, the student and parents, and convenes a meeting. Students cannot be expelled prior to 20 school days following the EWO receiving notification from the board.</p>		<p>procedures whereby a parent can appeal against a decision of a teacher or other staff member to the board of management. These procedures can also be used by parents or students who have complaints (except for expulsions).</p> <p><u>Expulsion:</u> Under section 29 of the Education Act 1998 if a board expels a student or suspends a student or refuses to enrol a student then the parent may appeal that decision to the Secretary General of the Department of Education and Skills (DES) and the appeal will be heard by an appeals committee. The Child and Family Agency has the right to appeal where the school board expels or refuses enrolment. Procedures must ensure that the parties are helped to reach agreement if possible, the appeal is conducted in the most informal way possible, and is dealt with within 30 days (Secretary General may extend a further 14 days).</p> <p>If the appeals committee upholds a complaint or believes that a matter needs to be remedied, it must make recommendations to the Secretary General about the action required. The Secretary General must give reasons for the decision of the appeals committee and, if it has made a recommendation, may give directions to the board on how to resolve the issue.</p> <p>The Miscellaneous Act (not yet in effect) will require the appeals committee to take account of the educational interests of other students in the school. This Act will also entitle the National Council for Special</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
Canada – Alberta Legislation: School Act, RSA 2000, Chapter S-3	<p><u>Suspension:</u> Under Section 24 of the School Act, Teachers or Principals have the right to suspend a student from school for up to five days. Teachers can suspend a student from one class period; Principals can suspend from school, from one or more class periods, courses, or education programmes, or from riding in the school bus. Suspension may occur if students fail to comply with the code of conduct, that is:</p> <ul style="list-style-type: none"> (a) be diligent in pursuing the student's studies; (b) attend school regularly and punctually; (c) cooperate fully with everyone authorized by the board to provide education programs and other services; (d) comply with the rules of the school; (e) account to the student's teachers for the student's conduct; (f) respect the rights of others. <p>Principals can also suspend if the student's conduct is injurious to the physical or mental well-being of others in the school.</p> <p><u>Expulsion:</u> The Principal may recommend that the board expel the student if: the student has displayed an attitude of wilful, blatant and repeated refusal to comply with code of conduct, or the student's conduct is injurious to the physical or mental well-being of others in the school.</p>	<p><u>Suspension:</u> The principal must inform the student's parent of the suspension "forthwith", and follow up with a report in writing. If requested, the Principal must provide an opportunity to meet with the student's parent, and the student (if 16 or older), to discuss the reasonableness of the suspension.</p> <p><u>Expulsion:</u> If the student is not to be reinstated within 5 school days, the Principal shall forthwith inform the board of the suspension, and report in writing to the board all the circumstances respecting the suspension and the Principal's recommendations. Student remains suspended until the board has made a decision (within 10 school days) to either reinstate or expel the student. Parent may make representations to the board before decision is made. Board must notify student and parent in writing, and notice must include right to request a review.</p>	<p>The school must plan to follow up with a re-entry meeting and a plan for facilitating a positive return to school.</p> <p>A board cannot expel a student without also offering them another education programme.</p>	<p>Education to make submissions to an appeal committee.²⁰</p> <p><u>Expulsion:</u> Under section 124 of the School Act, an expelled student or parent may request (in writing) that the Minister review the decision of the board.</p>
Canada – Ontario	<u>Suspension:</u>	A positive school climate means everyone — students, parents, staff and community members — feels safe, welcome and respected.	<u>Suspension:</u>	<u>Suspension:</u>

²⁰ Unclear if this is up to date.

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Legislation: Education Act, R.S.O. 1990, C. E.2</p> <p>Secondary legislation: O.Reg. 472/07: Behaviour, Discipline and Safety of Pupils</p> <p>Government department: Ministry of Education</p>	<p>Principal (can delegate) can suspend a student for 1 – 20 school days if they engaged in: uttering a threat to inflict serious bodily harm on another person; possessing alcohol or illegal drugs; being under the influence of alcohol; swearing at a teacher or at any person in a position of authority; committing an act of vandalism that causes extensive damage to school property at the student's school or to property on school premises; bullying, including cyber-bullying; any other activities identified in school board policy.</p> <p><u>Expulsion:</u> Principal recommends to school board whether or not student should be expelled and school board decides. Immediate suspension and recommendation whether to expel or not occurs if student engages in any of the following activities: possessing a weapon, including a firearm; using a weapon to cause or threaten bodily harm to another person; committing physical assault on another person that causes bodily harm requiring treatment by a medical practitioner; committing sexual assault; trafficking in weapons or in illegal drugs; committing robbery; giving alcohol to a minor; bullying - if the student has previously been suspended for bullying and the student's presence in the school creates an unacceptable risk to the safety of another person; any activity for which a student can be suspended that is motivated by bias, prejudice or hate; or any other activities identified in school board policy.</p> <p><i>Note: Suspension or expulsion will be considered whether the activity took place at school, at a school-related activity (e.g., a field trip), or in any other circumstances where the</i></p>	<p>When inappropriate student behaviour occurs, schools will use a progressive discipline approach which combines early and ongoing interventions to promote positive student behaviour.</p> <p><u>Suspension:</u> Before suspending a student, the Principal must consider the individual circumstances of that student and must specifically take into account the following factors: the student does not have the ability to control his/her behaviour; the student does not have the ability to understand the possible consequences of his/her behaviour; the student's presence in the school does not create an unacceptable risk to the safety of another person; the student's history (i.e., personal history such as a recent trauma in the student's life); whether progressive discipline has already been used; whether the behaviour is related to harassment because of the student's race, ethnic origin, religion, disability, gender or sexual orientation or any other type of harassment how the suspension will affect the student's ongoing education; and the student's age. If a student has special education needs and has an Individual Education Plan, the Principal must also consider: whether the behaviour was a manifestation of a disability identified in the student's plan; whether appropriate accommodation has been provided; whether suspension is likely to aggravate or worsen the student's behaviour or conduct. Each decision on discipline is unique for each student. Based on these factors, the Principal can decide on different consequences and supports for each student.</p> <p>The Principal must make every reasonable effort to let parents know within 24 hours, followed by a letter (which must include reason, length, supervisory officer contact, appeals).</p> <p><u>Expulsion:</u> Student is immediately suspended, Principal then investigates (must make every reasonable effort to speak to the student, parents, anyone else with information). The Principal must make every reasonable effort to let parents know within 24 hours, followed by a letter (which must include reason, length, supervisory officer contact, appeals). Principal must take into account the same list of factors as suspensions (above). After the investigation the Principal will decide if the student should be recommended for expulsion, and can either confirm the suspension and its length (or change length, or withdraw suspension) or report to board recommending expelling the student (can be from that school only or all schools board in charge of). Board then holds expulsion hearing within 20 school days. Student and parents can speak at hearing. After decision written notification must include how to appeal.</p>	<p>If suspended for 1 – 5 school days the student must receive a homework package from school.</p> <p>If suspended 6-10 school days the student must be offered an academic program.</p> <p>If suspended 11-20 school days the student must be offered an academic programme with a positive behaviour component.</p> <p>Principals must invite parents to a discussion about the programme and school boards must have a process in place for dealing with parents concerns.</p> <p>Planning meeting/Student Action Plan: when suspended more than 5 days and have agreed to programme, Principal holds meeting and identifies objectives of plan. If special education needs then Individual Education Plan.</p> <p>Students must be allowed to return to school at end of suspension. If suspension longer than 5 days Principal will hold a re-entry meeting with school staff, board, student, parents if possible. Purpose to make transition back successful.</p> <p><u>Expulsion:</u> Students who are expelled must be provided with opportunities to continue their education and offered addition supports such as counselling.</p> <p>If expelled from school only, board must assign student to another school in the board. If expelled from all the board's schools, the board must offer a programme for expelled students. If a student is expelled from all schools and agrees to participate in the programme for expelled students, then the Principal will hold a planning meeting to identify objectives for a Student Action Plan. Principals must invite parents to a discussion about the programme and school boards must have a process in place for dealing with parents concerns.</p>	<p>Can be appealed to the school board. Written request must be sent to superintendent of the school board within 10 school days of the start of the suspension.</p> <p><u>Expulsion:</u> An expulsion can be appealed to the Child and Family Services Review Board within 30 school days of receipt of notice.</p>

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
	<i>student's behaviour has an impact on the school climate (like cyber-bullying).</i>		<p><u>Re-entry for expelled students:</u> Students who have been expelled from one school can write to the school board asking to return, and the board can decide whether the student can return.</p> <p>Students expelled from all schools in the school board can apply to return to school with their original school board (or a different school board if they are living in that board's area). If students successfully complete a school board program for expelled students, they may apply to be readmitted and the board must readmit them to school. If they haven't completed the programme but have met the program objectives through another route, such as work experience, then the school board must readmit them.</p> <p>A re-entry plan is required to help student transition back into school.</p>	
<p>The Netherlands</p> <p>Legislation: Compulsory Education Act 1969</p> <p>Compulsory school age: first school day of month following 5th birthday (almost all attend school from the age of 4) – end of the school year in which child turns 16 (must attend full time for 12 full school years)</p> <p>Government department: Ministry of Education, Culture and Science</p> <p>State Secretary for Education</p>	<p><u>Suspension:</u> The law does not prescribe guidelines for appropriate reasons for suspensions.</p> <p><u>Expulsion:</u> Cannot expel for poor academic achievement.</p>	<p>The governing body of a publicly run school has responsibility for deciding on the admission and exclusion of pupils, and formulating rules of conduct for the pupils. Students must have a say in the way school discipline is managed within their own schools. Since 1992 all schools are legally required to draw up a student statute that includes the rights and duties of students. This statute must be approved by student representatives and a committee of parents, teachers, and principals. How schools handle disciplinary problems, both minor and serious, differs between schools and depends on the content of the student statutes drawn up for the individual schools.</p> <p><u>Suspension:</u> Students may not be suspended for more than one week, and suspensions exceeding one day must be reported to the Inspectorate of Education.</p> <p><u>Expulsion:</u> Inspectorate must agree to the expulsion.</p>	<p>If younger than 17 the school board must find a new school that is willing to accept the student.</p>	
Finland	<p><u>Detention/written warning, escalating to suspension:</u> Under section 36 of the Act, a pupil who disrupts teaching or otherwise</p>	<p>Pupils are entitled to safe learning environment (section 29 of the Act). Education providers shall adopt school rules specifying proper conduct and promoting internal order, learning and safety.</p>	<p>The education provider shall arrange teaching to prevent a suspended pupil from falling behind the progress made by his or her year-class and teaching group. A personal</p>	

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
<p>Legislation: Basic Education Act 628/1998 (the Act)</p> <p>Compulsory education: 7 – when basic education syllabus has been completed or ten years after beginning</p> <p>The enforcement of a decision on suspension shall come under the provisions of Section 31(1) and (2) and Section 32 of the Administrative Judicial Procedure Act (586/1996)</p>	<p>transgresses against school order or cheats may be kept in detention for a maximum of two hours or may be given a written warning. If the offence is serious or if the pupil carries on inappropriate conduct referred to above after detention or a written warning, the pupil may be suspended for a maximum of three months.</p> <p><u>Classroom dismissal:</u> A pupil who disrupts teaching may be dismissed from the classroom or other teaching facility for the remainder of the class or be ordered to leave a school function.</p> <p><u>Sent home for rest of day (violent behaviour):</u> A pupil may be banned from participating in education at the most for the remainder of the school day if there is a risk that the pupil's violent or aggressive behaviour will endanger the safety of another pupil or a person working at the school or another teaching facility or that the pupil's disruptive behaviour will inordinately complicate teaching or an activity associated with it.</p> <p>When a pupil has behaved so violently or threateningly as to endanger the safety of another pupil or a person working at the school or in another teaching facility and there is a manifest risk that the violent or threatening conduct will recur, suspension may be enforced whether or not the decision on suspension has come into effect.</p> <p><u>Mandatory after school home-work detention:</u> A pupil who has neglected to do his or her home-work may be ordered to do the assignments under supervision for a maximum of one hour at a time after school.</p>	<p><u>Suspension:</u> Before a disciplinary action is taken, the pupil's parent/carer must be given an opportunity to be heard. The pupil's parent/carer has to be notified of measures taken and, where necessary, an executory social welfare official in the municipality where the school is situated must be notified if a pupil is temporarily banned from participating in education.</p>	<p>plan based on the curriculum according to which teaching is given and learning monitored shall be devised for the suspended pupil.</p> <p>Head Teacher and Teachers have the right to remove a pupil if they are dismissed from the classroom or temporarily banned from participating. They can use force (appropriate to imminence of threat and for the pupil's age) if the pupil resists. The Head Teacher can work together with the other Teacher but cannot use implements, and they have to provide a written report about the incident to the education provider.</p> <p>During legal action pending against a pupil in a court of law, a disciplinary measure may not be instigated or enforced against him or her for the same reason. During legal action pending against a pupil in a court of law, a disciplinary measure may not be instigated or enforced against him or her for the same reason. If a court of law has sentenced a pupil to a punishment, no disciplinary action may be taken against him or her for the same reason. However, the pupil may be suspended if justified in view of the pupil's crime or associated factors.</p>	
Singapore	<p><u>Pupils to be dismissed for disorderly conduct and subversive propaganda:</u></p>			

Country	Threshold test	Process	Penalties/outcomes	Right of appeal
Secondary legislation: Education (Schools) Regulations	<p>The supervisor or Principal shall dismiss from the school pupils participating in any unlawful or disorderly assembly, pupils participating in any dispute between employers and employees, pupils carrying subversive propaganda whether on or off school premises, or pupils resisting discipline.</p> <p><i>Note: Principal is responsible for the discipline of the pupils in the school, whether on the premises or off the premises in such circumstances as to permit the pupils to be identified as pupils of the school.</i></p>			

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Restorative Practices in New Zealand schools

What outcomes can be expected from Restorative Practices?

The use of RP has shown positive results in managing student misbehaviour and reducing punitive disciplinary measure in schools in New Zealand, Scotland and Australia (Drewery, 2007; Kaveney & Drewery, 2011; McCluskey, Lloyd, Stead et al., 2008; Shaw, 2007). Despite positive feedback from those involved in the introduction of restorative practices so far in NZ schools, there has been no wide spread introduction into all schools.

Research suggests that restorative practices in schools is a positive and constructive approach that can:

- 1) Allow students to become more aware of their own behaviour and the impact their behaviour had on others.
- 2) Reduce the need for the student to be removed from the classroom since the classroom environment is calmer (Kaveney and Drewery, 2011; McCluskey, Lloyd, Kane et al., 2008).
- 3) Enable students to feel they are being listened to, which improves the student-teacher relationship, thereby reducing the need for teachers to control and discipline students (McCluskey, Lloyd, Kane et al., 2008).
- 4) Provide an early opportunity to work on behavioural modification and to teach notions of responsibility.
- 5) Incorporate Māori values, for example offending is viewed in terms of acts against the community, wider family groups have a greater say in the outcome, use of 'hui', culturally appropriate venues used for hui (adds relevance).
- 6) Resolve the tension in schools between the need to ensure a safe educational environment, and conflict resolution which prioritises the need to keep all students engaged.

In both Australia and New Zealand, the current disciplinary procedures provided for in education legislation are generally silent on any aspect of restorative practices such as victim and community consultation, participation and restoration (Varnham, 2008). The implementation and successful use of restorative practices is dependent upon support from individual schools and local authorities, and requires the same legislative response and resourcing as has been the case in the criminal justice system.

The Restorative Practices Development Team at the University of Waikato suggested (in 2003) that¹:

1. The support of the management, staff and community of the school is an essential ingredient for the success of restorative conferencing.
2. Schools that wish to consider establishing restorative conferencing need to analyse carefully whether the process fits within the culture of the school. The restorative ideals, as opposed to a punishment focus, have to be deeply embedded in the school's culture for the project to be successful.
3. The relationship between the disciplinary role of the Board of Trustees and the conferencing processes should be clarified from the outset. At times the demarcation lines between these linked roles can create problems. Clear policies need to be established between these two disciplinary processes.

¹ Wearmouth et al, 2007.

4. We recommend the use of a community support person to complete the community liaison and administrative work that is vital to the conducting of conferences.
5. In high schools the deans should be trained as convenors to assist in the referrals of students to conferences context, where conferences involve Māori students and their communities, deans may need to seek guidance from Māori colleagues in the school and/or from senior Māori people in the local area.
6. The conferencing process can be used for a range of different types of problems, including: continual disobedience; assault; vandalism; alcohol and drugs.
7. The process has the potential to be extended into other contexts within the schools as a model of handling contentious issues. This could include developing processes to address classroom conflicts, bullying, peer mediation, staff conflicts and issues within Boards of Trustees.

What are restorative practices in schools?

School-based restorative practices (RP) are holistic methods used to build healthy relationships in the school environment. The RP approach seeks to address student behaviour as it occurs, as well as building pro-social skills in students (McCluskey, Lloyd, Kane, et al., 2008).

The RP approach has an underlying philosophy that suggests that when a wrongdoing has occurred, the relationship between those parties involved is damaged. School-based RP developed from restorative justice. Restorative justice is a philosophy and collection of practices used at different stages of the justice system, such as meetings with victims, not just as an alternative to retributive or punitive actions but something done in tandem with traditional processes (McCluskey, Lloyd, Kane, et al., 2008).

The aim of RP emphasises a relational approach that seeks to repair the damage caused to the relationship by supporting both the victim and the perpetrator to allow all those involved to heal and move forward (Morrison, Blood, & Thorsborne, 2005; Zehr & Mika, 1998). In schools, RP require a student to reflect on their behaviour and acknowledge any wrongdoing, and offer them the opportunity to agree on an outcome (Morrison et al., 2005). In addition, the RP approach promotes personal accountability and allows the students an opportunity to have a voice in issues that affect them (Shaw, 2007).

The introduction of RP into New Zealand schools

The use of restorative practices in New Zealand schools evolved out of concern about the increasing use of suspensions in the 1990s. Initially the Ministry of Education contracted a team from the University of Waikato to utilise restorative justice principles to develop a conferencing process for use in schools. The process developed was introduced into five schools initially. A team of researchers from the University of Auckland evaluated the project, and found that there was 'substantial satisfaction' among participants in the process. The researchers reported however, that despite the apparent success of the trials and the huge interest from schools there was at that time no systematic introduction of restorative justice in schools.

In 2001 the Suspension Reduction Initiative (SRI) was implemented by the Ministry of Education. This initiative aimed to reduce the numbers of students (especially Māori

students) being suspended from mainstream secondary schools. The SRI targeted schools with high suspension rates, particularly of Māori students. Each school determined an appropriate intervention or programme to reduce its suspension rate. The emphasis was on replacing punishment with prevention, though schools employ a wide variety of initiatives to reduce suspensions, and they usually used a combination of approaches rather than focusing on a single practice.

Strategies included establishing remedial literacy and numeracy programmes; calling on the resources of the Māori community; restorative practices; youth mentoring; working with multiple external agencies to co-ordinate services to schools, students, and their whānau; drug education/intervention programmes; and career planning or goal-setting assistance.

Impact of the SRI

The Education and Science Select Committee reported in 2008 that the initiative succeeded in reducing suspension rates, with schools in the original cohort dropping from 16.3 students per thousand suspended in 2000 to 9.7 students per thousand in 2006 (for the period January to October 2006). There was a small increase in the overall age-standardised suspension rate for secondary schools that were not involved in SRI in the same period. The committee recommended in 2008 (see the report 'Inquiry into making the schooling system work for every child'²) that the Ministry of Education's Suspension Reduction Initiative be made available in every school.

Student Engagement Initiative

In 2003 the SRI became part of the Student Engagement Initiative under which the government supports schools by providing funding: approximately \$4 million to support District Truancy Services (DTS), and \$2 million to maintain the successful Suspension Reduction Initiative (SRI). The approach was still identifying schools or regions that have unusually high levels of student disengagement, setting targets for improvement, closely monitoring change over time, and employing facilitators who can work flexibly at the local level to identify the reasons for the unusually high incidence of the problem and help with meeting targets. In 2005 an additional focus on Pacific Island suspensions was introduced.

The Ministry subsequently introduced Positive Behaviour for Learning (PB4L) School-wide in 2010, which helps schools to create positive teaching and learning environments. It focuses on staff development, sharing with students, and establishing clear expectations and consistent values. A strand of PB4L focuses on Restorative Practices that build on relationships, develop a shared vision of school community and commitment to resolution, and have a solution-focused approach to problems, in contrast to a punitive one.

PB4L Restorative Practice:

The Positive Behaviour for Learning (PB4L)³ is a programme delivered by the Ministry of Education in partnership with a range of other organisations and groups.⁴ It is a long-term, systemic approach involving ten initiatives, one of which is Restorative Practice.

² Parliamentary report, found at: https://www.parliament.nz/resource/en-nz/48DBSCH_SCR3979_1/383847d373839d321e886e1754d8378732ad69e6

³ See overview on Ministry of Education's Te Kete Ipurangi website at [file:///hofil08/KyriacouE\\$/Downloads/16037-PB4L%202015%20Overview%20\(3\).pdf](file:///hofil08/KyriacouE$/Downloads/16037-PB4L%202015%20Overview%20(3).pdf)

⁴ The Positive Behaviour for Learning (PB4L) Restorative Practice model focuses on building and maintaining positive, respectful relationships across the school community and offers school staff best-practice tools and techniques to restore relationships when things go wrong. By building and

Restorative Practice is a relational approach to school life grounded in beliefs about equality, dignity, mana and the potential of all people.

PB4L Restorative Practice is based on a set of best practice tools and techniques to support a consistent and sustainable approach to managing positive, respectful relationships within the school.

PB4L Restorative Practice⁵ was piloted in 21 secondary schools in 2013–14 and was planned to be made available to up to 200 schools by 2017. A list of 174 schools (as at April 2017) using this programme is available at <http://pb4l.tki.org.nz/PB4L-Restorative-Practice/List-of-Restorative-Practice-schools>

Principles PB4L Restorative Practice is underpinned by four key principles:

- Positive interpersonal relationships are a major influence on behaviour.
- A culture of care supports the mana of all individuals in the school community.
- Cultural responsiveness is key to creating learning communities of mutual respect and inclusion.
- A restorative approach leads to individuals taking responsibility for their behaviour.

PB4L Restorative Practice has three key interrelated components⁶ – Restorative Essentials, Restorative Circles, and Restorative Conferences. The Restorative Essentials are the everyday, informal actions that place emphasis on relationships, respect, empathy, social responsibility, and self-regulation. Restorative Essentials ‘keep the small things small’. A key approach is the Restorative Conversation, which uses a scripted set of questions to explore and resolve minor problems in a respectful way. Restorative Circles are a semi-formal practice requiring some preparation. They operate on a continuum from community building to healing and conflict resolution. Restorative Conferences provide formal, structured processes for responding to serious misconduct, repairing harm, and restoring relationships.

Impact of PB4L Restorative Practices

Anecdotal feedback from the secondary schools that participated in pilot testing of PB4L Restorative Practice suggested that schools can expect the following positive outcomes:

- a calmer school environment, with less classroom disruption and more time for teaching
- an increase in the engagement and learning of students in the classroom
- growth in relational and problem-solving skills, both for adults and students across the school community
- improvements in attitudes and relationships across the whole school community

maintaining positive, respectful relationships within a school, staff to staff, staff to student and student to student, issues are more easily managed.

⁵ Information from TKI website: <http://pb4l.tki.org.nz/PB4L-Restorative-Practice/What-is-PB4L-Restorative-Practice>

⁶ More information on the practice model is available at: <http://pb4l.tki.org.nz/PB4L-Restorative-Practice/What-is-involved>

- a consistent best-practice approach across the whole school community that aligns with the school's shared values.

A case study from Naenae College is available in the overview document (see footnote 3).

In 2018 Martin Jenkins and Associates released their final report of their evaluation of the programme.⁷ The evaluation was designed to support the implementation and roll-out of the PB4L Restorative Practice programme within 27 schools, and to identify lessons for other schools implementing the programme. The final report includes findings on the outcomes of implementing Restorative Practice based on the 2018 Environment Survey that teachers filled in for the evaluation.

The following outcomes are reported:

- Schools continue to make progress in implementing a restorative environment: the concept of Restorative Practice, and the associated value and behavioural practices, have become embedded in schools. The 27 'Uptake schools' are now working to ensure that these practices remain front-of-mind for both staff and students.
- School environments are calmer: interview participants found it difficult to define, but the majority reported their school environment felt "calmer" because of Restorative Practice – both within their classrooms and across the school campus more generally. The change in environment was cited as a result of staff being more patient with students, engaging in dialogue rather than shouting or taking punitive approaches to behaviour management.
- Teachers continue to implement new teaching practices: School staff continue to report utilising new, restorative-centred practices in their teaching. Some of these changes are on a smaller scale, such as more consistent use of restorative language; these changes have had a major positive influence on classroom behaviour.
- The use of punitive measures has decreased: punishments, such as sending students to the Dean, or detentions, have been actively reduced by teachers. Interview participants reported improved behavioural and educational outcomes as result of keeping students in class, or at school, rather than removing them as a "quick fix".
- Students are receptive to Restorative Practice and view it positively: Interviews with students showed that students are highly receptive to the restorative approach to behaviour management and problem resolution. Most notably, under Restorative Practice, students feel respected by staff, and that they are treated as equal members of the school community.

⁷ See <https://www.educationcounts.govt.nz/publications/series/pb4l-school-wide/evaluation-of-restorative-practice-a-positive-behaviour-for-learning-programme>

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**RESTORATIVE JUSTICE IN SCHOOLS VS THE FORMAL
REQUIREMENTS UNDER SECTION 14 OF THE
EDUCATION ACT: BALANCING WHAT WORKS TO
ENSURE RETENTION IN EDUCATION AND THE RISE OF
KIWI SUSPENSIONS**

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RESTORATIVE JUSTICE IN SCHOOLS VS THE FORMAL REQUIREMENTS UNDER SECTION 14 OF THE EDUCATION ACT: BALANCING WHAT WORKS TO ENSURE RETENTION IN EDUCATION AND THE RISE OF KIWI SUSPENSIONS

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In today's society schools are increasingly forced to balance a number of competing demands. Schools face a plethora of requirements when seeking to adhere to regulatory and compliance demands set out in legislation and policy. For instance, new health and safety obligations and strong employer obligations mean schools face increasing pressure to ensure measures are put in place to provide safe school environments. There are also requirements to ensure that students with special educational needs are reasonably accommodated. The recent ratification of the United Nations Convention on the rights of persons with disabilities resulted in domestic legislative enactments and publication of government policies strengthening obligations in respect of reasonably accommodating needs of special needs students. Safe workplaces for school staff can be presented with difficulty when a student may have challenging behavior or aggression due to special needs. There is a need for compliance but also for creativity and culture. There are ever increasing needs to balance regulatory demands with educational values. One area in which the dichotomy between regulation and creativity is evident is the fraught area of student discipline.

The Right to Education

The right to education is considered fundamental. The importance of a primary and secondary education to the socialization and development of children in society is well recognized. There is no dispute that public education imparts knowledge of essential skills and assists individuals in achieving a basic standard of literacy and numeracy. This enables functioning adequately in various spheres of life in the future.¹ A necessary corollary of this vital right translates into a requirement that any interference with the child's regular and systemic education is only justified in very narrow and limited circumstances.

A number of international conventions protect the right to education² and at a domestic level, section 3 of the Education Act 1989 ("the Education Act") sets out that all children between the ages of 5 and 19 are entitled to enroll and receive free and state sponsored education.³

The detail of this right is found in related provisions of the Education Act which set out school zoning systems. The sections also provide that any child that is resident within a

¹ Douglas Hodgson "The Human right to education" (Ashgate Publishing, Dartmouth) 2.

² United Nations Convention on the rights of the Child (open for signature 20 November 1989, in force 2 September 1990).

³ Education Act 1989.

designated zone has a right to attend at the local in zone state school.⁴ Children between the ages of 6 and 16 must be enrolled in their locally zoned school and failure to attend can result in truancy prosecution of the student's parents.

The zoning system is coupled with a decile ranking system which provides for funding to public schools based on decile rankings. Criticisms of the system include reports that certain zones tend to be more attractive to some students and families and there has been a reported rise in fraudulent conduct on the part of families to assert residence in particular school zones.⁵ It has also been claimed that this has created a competitive environment amongst schools vying for ranking and performance based incentives⁶ meaning schools can be driven to seek to remove students which may affect the school's performance record and funding.⁷

Section 8 of the Education Act also provides for a right to special education stating that all people who have special educational needs whether because of disability or otherwise, have the same rights to enroll and receive education at state schools as people who do not. Protections for such students are bolstered by Bill of Rights Act 1990 and Human Rights Act 1993 which prevent discriminatory treatment.

The Education Act makes clear that any removal of a student from education should only occur in the most extreme circumstances and retention in education is vital.⁸ In other words, it should only be a last resort and only invoked when there are no alternatives and any disruption to a young person's education should be minimized. Any action taken in respect of student discipline must be carried out in a manner that is consistent with the principles of natural justice.⁹ Ministry of Education guidelines set out that natural justice includes proper documentation, and requirements for flexibility and fairness.¹⁰

Under the Education Act schools are governed by an elected board of trustees. Administration and management of a school on a daily basis is undertaken by school principals. Decisions are to be made in accordance with provisions of the Education Act and Ministry of Education ("MOE") guidelines. Sections 75 and 76 of the Education Act bestow complete discretion on a principal and school board to manage and administer the school as "seen fit". The practical effect of these sections can mean that some decisions taken in respect of student access to education can be final and difficult to challenge.

⁴ Education Act 1989, Section 11.

⁵ Joanne Carroll 'Parents take extreme measures to move children out of school zones' 8 November 2015 <<http://www.stuff.co.nz/national/education/73732596/Parents-take-extreme-measures-to-move-children-out-of-school-zones>>

⁶ Nicholas Jones 'Decile Divide: Social climbing leading to decile drift' 25 March 2014 http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11225491

⁷ Kirsty Johnson 'World-Class Auckland: Education – where are we going wrong?' 14 August 2015 <http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11496657>

⁸ Education Act 1989, Section 13.

⁹ Education Act 1989, Section 13.

¹⁰ Ministry of Education, Guidelines for principals and boards of trustees on stand-downs, suspensions, exclusions and expulsions 2009.

Barriers to Accessing a Right to Education

It has been noted by those carrying out research into the reduction of formal suspension rates of students that “in spite of the overall reduction of suspensions, there are still rather large numbers of students who are temporarily excluded from schools under the heading ‘stand-downs’”.¹¹ It is also claimed that a little over one in 30 students are given the equivalent of timeout each year” disrupting educational access significantly.¹²

Youthlaw Aotearoa Inc (“Youthlaw”), a community law centre that specializes in youth education law issues has received increasing reports of barriers to inclusive education.¹³ Anecdotal data indicates that there are issues with access to education for the entire student population. This is reported to occur at all points of the schooling system from entry and enrolment, access and participation in the curricula, and occurrence of removals from school both formally and informally. Reports have also indicated a disproportionate impact of such issues on students with special educational needs.

Youthlaw was fortunate to secure funding from the Law Foundation to undertake research into illegal removals from schools in 2015. The research obtained first-hand accounts from young people and their families of their experience by undertaking online surveys on an anonymous basis. The research has evidenced the need for further research into the scale of the issue and the research findings are discussed in further detail below.

Formal Means of Removals from School

Although principals and school boards of trustees are bestowed significant discretion under sections 75 and 76¹⁴ to manage and administer the school as “seen fit”, the Education Act also sets out the limited circumstances in which a school may be empowered to formally remove a student from school. In essence the only formalised times this may occur include:

- Annulment of enrolment;
- An authorised exemption;
- An authorised removal from the school roll (due to a verified absence for a specified period); and
- Formal discipline for misbehavior such as gross misconduct or continual disobedience.

Under section 110 of the Education Act, a school board may formally annul a student’s enrolment where the board has cause to believe a student is not genuinely residing in the school’s home zone. There are significant issues with how this section is utilized by schools. The evidentiary requirements are somewhat obtuse and openly interpreted. Moreover, schools are able to assert use of the provision at any time during the academic year. This means that students can be significantly disrupted in their education, particularly when already deeply immersed in the school environment and academic assessments.

¹¹ Wendy Brewery “Restorative Practices in Schools: Far-reaching implications” 202 <[¹² Brewery, *Ibid*.](http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjPt6O507zNAhUL9WMKHfpgBI8QFggdMAA&url=http%3A%2F%2Ffigps.victoria.ac.nz%2Fevents%2Fcompleted-activities%2FDrcwry%2520%2520Restorative%2520Society%2520Conference%2520Paper.pdf&usq=AFQjCNE5uGC_Fi0nGQtl_awHa6oqh78a5Q&bvm=bv.125221236,d.cGc></p></div><div data-bbox=)

¹³ Youthlaw Aotearoa Inc is one of 26 community law centres around NZ vested under the Legal Services Act delivering information, advice, advocacy and education. Youthlaw’s core service includes an 0800 nationwide advice line operating 5 days a week.

¹⁴ Education Act, Section 75 and 76.

Students may also be formally exempted from school in specific circumstances. These include the following:¹⁵

- Where a child is placed in residence under the Children, Young Persons and their Families Act (for instance where allegations against parents have been investigated);
- Where a child has requested to be absented from sexual health education;
- Where the Secretary of Education has deemed that exemption is appropriate; and
- Where a child resides more than 5km from their local school and the principal is satisfied that the student will receive other tuition to a satisfactory standard.¹⁶

A principal may preclude a student from attending school under section 19 of the Education Act if the principal believes on grounds of health that a student is not clean enough or may have a communicable disease within the meaning of the Health Act 1956.¹⁷

Youthlaw has consistently received anecdotal reports that there has been a rise in the use of short term exemption provisions under the Education Act in questionable ways. For instance, children who have not been vaccinated being barred from attendance at school, school sports days and parts of the mainstream curriculum. There is authority vested in District Health Boards to issue such directives barring unvaccinated students in particular risky situations for a specified period. Despite this, reports indicate that at times no such directives have been made and students are deprived of access to education.

More concerning, are cases of exemptions under section 27 of the Education Act. The section empowers a principal to exempt a student from attendance for a period not exceeding five days "if satisfied that a student's absence was or will be justified". Anecdotal reports indicate that this section is increasingly being used to remove troublesome students without resort to the appropriate procedures set out in section 14 of the Education for misbehavior.

Where a student is absent for more than 20 consecutive days without good reason, a student may be formally and permanently removed from the school roll. Anecdotal reports claim that often students are removed from the roll without notification or consultation following other exemptions or informal short term removals. A common theme from anecdotal reports emerged of schools seeking to remove "troublesome" students (often with diagnosed illnesses or disabilities) when such absences were agreed between the school and parents often at the instigation of the school prior to removal from the roll.

¹⁵ Education Act, sections 25-27.

¹⁶ Education Act, Section 25B.

¹⁷ Education Act, Section 19.

Discipline under Section 14 of the Education Act

Section 14 of the Education Act empowers schools to employ disciplinary action against students where they are guilty of misbehavior such as gross misconduct or continual disobedience. Section 14 action results in short term removal and can end with the permanent removal of the student from the school.

The threshold for justifying removal under section 14 is extremely high. Case law has stated that gross misconduct should consist of a gross one-off incident which is serious to a reprehensible degree. It is not merely trivial and must be sufficiently serious to warrant removal from school.¹⁸ Continual disobedience must be an established pattern of sufficiently serious misconduct.

Where a principal is reasonably satisfied of a breach of section 14, they may choose to stand down a student for up to five consecutive days. Consistent with the guidance in section 13 of the Education Act setting out that disruption to education should be minimized, the legislation prescribes that this can only be invoked for a maximum of 10 school days a year and only five days consecutively. The school is also required to notify the MOE when stand downs are imposed.

In more serious cases, a principal may suspend a student. Once a student is suspended the school Board of Trustees must hold a meeting within seven days (or 10 days at the end of a school term) to consider the suspension. The Board can then consider the student's continued future at the school. The board has a number of options available which include lifting the suspension, lifting the suspension with conditions, or permanently removing the student (exclusion where the student is under 16 and expulsion where the student is over 16 years of age). Similar to when a stand down occurs, the MOE is notified of any suspensions imposed.

Any failure to adhere to the requirements of section 14 can invalidate the action taken. Students may then seek to lodge a complaint with the Ombudsman, or challenge the process through judicial review in the High Court. Where a student wishes to return to the school the student can ask for the board to reconsider the decision. Generally, this is a viable option when there is some new information or change of circumstances which might influence the board's decision. The Ombudsman is only able to consider if the disciplinary process adhered the procedural requirements of legislation and has no power to order the return of the student to school. Average response time is 50 days and during that time the student will remain out of school.

The only other recourse available to students is to take a case in the High Court seeking judicial review. This is at great cost and delay and only investigates whether a proper process was adhered to. Even if a judicial review is successful, it will not necessarily mean the student is reinstated in school.¹⁹ Given the finality of principal and school board decisions it is crucial that any removal from school should be justified in accordance with strict criteria and procedural protections to protect access to education.

¹⁸ M & Anor v S & Board of Trustees of Palmerston North Boy's High School [2003] NZAR 705, 712 (decided 5 December 1990).

¹⁹ In essence, judicial review only allows the court to consider if there was illegality (acts outside power), irrationality (no reasonable person could have made such a decision) or procedural impropriety (breach of due process and natural justice). The court has declaratory powers but will not substitute its decision for that of the school's. As will be discussed in further detail below, Youthlaw has consistently advocated for the establishment of an independent tribunal to provide accessible recourse rather than facing the daunting prospect of High Court litigation.

Procedural Requirements

The Ministry of Education has published guidelines for schools in procedural requirements of the Education Act. The guidance notes are clear that written documentation is to be provided to students and their families within specified time periods specifying alleged misconduct. The guidelines also set out that students must be treated fairly and with flexibility. In addition to this, the Board of Trustees cannot impose conditions for return on a student that are for unreasonably extended durations or which the student cannot achieve. There are also clear obligations on the part of schools to ensure that students receive adequate pastoral care and support where necessary. Implicit in the guidelines is also the understanding that fairness informs all processes and a student cannot be punished twice for an offence.

Access to education can be affected if procedural requirements are not adhered to. Youthlaw often receives reports of situations where a student may be stood down and suspended or formally and informally punished more than once for the same offence. This type of action arguably results in breach of concepts such as “double jeopardy” whilst also depriving the student of access to education.

Removal from School

With the impact of technology and risks schools face, more and more often schools are implementing zero tolerance discipline policies in many arenas. One such example are the rising popularity of zero tolerance drug use policies. Whilst the average age for a child to be permanently removed from school is 13.5 years, students as young as six years old are being excluded.²⁰ It has been alleged that there has been increasing “normalization” of permanent removal as routine punishment rather than last resort when dealing with students. It has been claimed that the more that this practice is normalized, the more prevalent such practices will become.²¹

Ministry of Education policy states that where a student is permanently removed the Ministry must ensure placement in another school or alternative education without delay. This aims to ensure minimum disruption to education. Despite this, it is reported that when students are formally removed they are out of school for an average of 50.4 days before placement elsewhere.²² The delays in placement significantly impact on access to the right to education.

It is also a matter of concern that formal school removal statistics in New Zealand disproportionately include a high percentage of male Maori and Pasifika students. Statistics indicate that Maori and Pacific students are 63% more likely to be excluded than any other demographic. In 2006, 46 % of alienated and excluded students were identified as Maori.²³ Moreover, the rate of school exclusions and expulsions are much higher in low quintile (low decile ranked) schools which results in the most vulnerable sectors of the community facing significant barriers to accessing education.

²⁰ Nadia Freeman “When one door closes: evidence based solutions to improve outcomes and open new doors for students excluded or expelled from school in New Zealand” <<http://www.rph.org.nz/content/bc0c5b40-644f-4e61-8beb-90c1fbcf10c8.cmr>>

²¹ Nadia Freeman “When one door closes: evidence based solutions to improve outcomes and open new doors for students excluded or expelled from school in New Zealand” <<http://www.rph.org.nz/content/bc0c5b40-644f-4e61-8beb-90c1fbcf10c8.cmr>>

²² Freeman, *Ibid*.

²³ *Ibid*.

Once removed from school, students may be directed into correspondence or alternative education if another school placement is not viable. It has been asserted that correspondence school and alternative education has become a “dumping ground” for those who cannot be included in education and the reality is that those children are only statistically or notionally involved in the schooling system.²⁴ From 2000 to 2006, the number of alienated and excluded students on the correspondence school roll increased from 876 to 1,518.²⁵

Youthlaw receives frequent reports of “troublesome” students, (many with special educational needs) being pressured to enter into correspondence or alternative education as a means for schools to remove the student from their day to day management. Although such children are notionally deemed to be in education, reports indicate that the substance of that involvement in reality does not equip those children with an educational experience and access to education for those students is significantly impinged.

The Aftermath of Removal from School

When a child is removed from education, it may result in provision of alternative education. However, in most cases, it is commonly reported that it results in a departure from the education system altogether. Permanent removal from education has long term and devastating consequences for any young person. Students can theoretically reenter the education system if they leave, however, the practical realities and difficulties that flow from removal often mean re-entry is not possible.

Youthlaw regularly receives reports of students who are denied participation in education when schools refuse to enroll a student who has been removed (either formally or informally) on the basis of a poor record and past removal even where the student has a right to enrollment.

Barriers for students are further compounded when a student is over the age of 16. Once a student is over 16 years of age there are no legal requirements on students to remain in education and they can voluntarily leave school. As a consequence, even when the MOE can legally direct an enrolment under section 16 of the Education Act, the MOE will not actively support a removed student with any direction to a school to accept enrolment of a student when over the age of 16. It is claimed this will often happen even when a young person wishes to be in education. Youthlaw also routinely receives anecdotal information that there is a significant amount of reluctance by the MOE to utilize its powers under section 16 of the Education Act even where the child is under the age of 16 and required to be in school where a school does not wish to accept enrolment.

²⁴ Report of Education and Science Committee “Inquiry into making the schooling system work for every child”, February 2008, 31
<http://www.google.co.nz/url?sa=t&rct=j&q=&csrc=s&source=web&cd=1&ved=0ahUKEwj_3_zv07zNAhVG6mMKHZedDKIQFggcMAA&url=http%3A%2F%2Fwww.parliament.nz%2Fresource%2Fen-nz%2F48DBSCH_SCR3979_1%2F383847d373839d321e886e1754d8378732ad69e6&usg=AFQjCNHJDEJz97daH K3JO1AjpJM78IhiXQ>

²⁵ Ibid, 30.

The Cost of Removal from Education

In cases where removal from education is prolonged or protracted, there is a significant impact on a young person. Students who have experienced removal from school report feeling a deep sense of grievance.²⁶

It is said that exclusion from school can be the first step towards isolation from society.²⁷ Once excluded students experience stress. "They often face family disruption, which contributes to further deterioration of possibly already poor relationships with parents, teachers and peers. For the excluded student, this can lead to feelings of rejection that can transfer into resistance to further teaching and controls and can inhibit their ability to acquire basic skills, limiting their chances of success in the future. These excluded students are disadvantaged when entering adulthood and the workforce, as they are unlikely to receive the same transitional supports that they would have had when at school. This increases their likelihood of marginalization and exclusion from the rest of society."²⁸

It has been claimed that 80 percent of all offenders in the Youth Court are not formally engaged in the education system – be it through exclusions, truancy or otherwise – and that this group constitutes virtually the whole of the problem in the Youth Court.²⁹ It is alleged that involvement in education is one of the "big four" protective factors against future criminal offending. Helping young people feel part of society through school involvement assists in keeping them out of trouble. When faithfully attending school they are much less likely to become involved in crime – even if not achieving academically.³⁰

Statistics reflect that excluded students are:

- 2.5x more likely to be in trouble with the police;
- 3x as likely to be arrested; and
- 9x as likely to be summoned to court³¹

It has been found that children in the United Kingdom who were excluded from school were 90 times more likely to become homeless when compared to those that achieved a school qualification.³² Studies have also found comparatively higher rates of substance abuse in students who have been sent out of school into alternative education compared to those in mainstream school following exclusion.³³ Moreover, a study by the United Kingdom Governmental statistical service found that exclusion from school escalated offending in those who had already offended and put pressure on those who had not committed crimes previously.³⁴

In sum, "[w]hen considering the poor outcomes associated with sending a student home from school, it is important to consider the potential financial costs, which include costs

²⁶ National Children's and Youth law center 1995 survey.

²⁷ Nadia Freeman "When one door closes: evidence based solutions to improve outcomes and open new doors for students excluded or expelled from school in New Zealand" <<http://www.rph.org.nz/content/bc0c5b40-644f-4e61-8beb-90c1fbcf10c8.cmr>>

²⁸ Ibid.

²⁹ AJ Beecroft, Principal Youth Court judge "Youth offending: Factors that contribute and how the system responds" (Symposium on Child and Youth offenders: What works, 22 August 2006).

³⁰ AJ Beecroft, Ibid.

³¹ Youthlaw, Out of school, Out of mind: The need for an independent education review tribunal, 1 August 2012, 8 <<http://www.youthlaw.co.nz/wp-content/uploads/Out-of-School-Out-of-Mind-web1.pdf>>

³² Ibid.

³³ Ibid.

³⁴ Ibid.

associated with crime, drug use, and unemployment. These financial costs could be addressed through reducing school exclusion and managing students to remain in education longer. School exclusions are the cause of considerable costs to the education sector, social services, the health sector, justice and police. The public cost of excluding a student from school on average amounts to an estimated 41% [based on studies in the United Kingdom] more than it does to keep them in mainstream school. Addressing concerns at an early stage can mitigate these costs.”³⁵

Rising Popularity of Informal Processes

Targeted early intervention is an obvious solution to reducing the number of students permanently removed from education. Concepts of informal punishment premised on ideologies such as restorative justice have gained considerable popularity in recent times.

Drawing from origins in the criminal justice system, restorative justice has arisen as a popular alternative method of managing school relationships. Invoked in lieu of formal stand-down, suspension and removal from school, it involves creative approaches to dealing with misbehavior. Addressing the issue involves investigating wider issues such as student disaffection, under-achievement and truancy. Rather than an individual approach to punishment, the restorative justice processes seek to address community issues and involve all relevant parties to achieve long term outcomes.

Where there has been harm to any individuals, restorative processes aim to repair the harm and restore relationships by allowing the alleged offender to understand the impact of their actions and the consequences on the wider community. Focus is directed towards allowing the entire school community to develop common rules and find ways to move forward when those rules are transgressed. Emphasis is placed on the fact that there is no “guilty party” and no blame allocated.

There is increasingly positive feedback that restorative justice processes can be far more effective at targeting students who are at risk of permanent removal from education when compared to formal disciplinary processes. It is claimed that traditional methods of school discipline can be disruptive and result in difficulties with continued engagement in education. A student subjected to formal disciplinary processes can form negative student perspectives on education. By contrast, with a restorative approach, underlying causes will be canvassed and a young person is given the opportunity to seek different ways to move forward in the future. The young person is also encouraged to take responsibility and understand the impact of their behavior on others.

Other jurisdictions have evidenced success with the introduction of restorative justice processes. For example in Bristol (United Kingdom) an agency RAIS has been established (Restorative Approaches in Schools). This agency equips school staff with skills to tackle conflict and behavioral problems. These services are carried out in conjunction with the Bristol Children and Young People’s service and Safer Bristol. Cross agency support in the implementation of restorative justice has proven extremely successful.

Following implementation of the initiative, fixed term exclusions declined by 57% over two academic years.³⁶

³⁵ Ibid.

³⁶ Restorative Bristol ‘Helping tackle conflict in Bristol report’, page iii
<<http://www.restorativejustice.org.uk/sites/default/files/resources/files/Bristol%20RAis%20full20report.pdf>>

Other successes with implementation of restorative justice programs in North America (Oakland California³⁷ and Ontario, Canada³⁸) also evidence significant reduction in the number of school removals of at risk youth. Key factors that were attributed to the success of those programs included the fact that such programs were viewed as school and community programs. Processes worked in conjunction with other groups such as local juvenile justice systems, healthcare and local authorities. This ensures wrap around services and pathways for young people with transition, reintegration and addressing additional underlying issues. Relevant school staff were provided with extensive training to implement such processes and parents and the wider community were ensured extensive involvement. There was also recognition that success was also contingent on the inclusion of students in the process from a student centered view. The long term success of the programs has been attributed to adequate ongoing professional development, ongoing administration resources, and long term commitment to restorative justice.

At a local level, a pilot restorative justice program launched in St Thomas of Canterbury (NZ) in 2003 indicates just how successful alternatives to formal discipline can be. Seven years following implementation, the rate of stand-down and suspensions reached zero.³⁹ The Ministry of Education has sought to build on this success with the launch of restorative justice initiatives targeted at Maori and Pasifika students who are disproportionately represented in formal removals from schools.⁴⁰ Despite evidenced success, no systematic introduction of restorative conferencing in schools has followed these pilots.

Informal restorative justice is not synonymous with illegal removals from school. In some cases restorative justice processes can avoid outcomes such as permanent illegal removal. Restorative justice has great potential as a viable solution to many problems which students face at school including addressing where a student feels there has been a lack of communication and understanding with the school.

There is risk that restorative justice processes may not result in positive outcomes for some students. At times the student in question may have been out of school during the restorative justice period in order to reconcile issues. A school may then seek to switch to informal or even formal suspension, even though notionally such action would offend against double jeopardy notions of not punishing a student twice for the same offence. Guidance around restorative justice practices is crucial to avoiding any harmful consequences.

The prescriptive detail of the Education Act provides protection and assurance of due process to formally protect the right to education. Moreover, when schools employ such formal processes, there is an obligation to report to the Ministry of Education any formal stand-down, suspension, exclusion or expulsion that occurs.

Conversely, there is no requirement to notify the Ministry of Education when informal processes are employed. There is no reporting check on any informal measures taken with students when schools are reporting on performance to the Ministry of Education. There is

³⁷ Restorative Justice Oakland Unified School District Report < <http://rjyouthcouncil.wix.com/restorative-justice>>

³⁸ Restorative practices in Ontario schools: Findings and recommendations, 10, 12 <<http://restorativeworks.net/wp-content/uploads/Docs/Moore-2014-RP-Ontario-Schools-REVISED.pdf>>

³⁹ St Thomas of Canterbury College 'Restorative Justice' <http://www.stc.school.nz/student-support/restorative-justice/> <http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&ved=0ahUKEwjznNn1bzNAhVJ2mMKHbrOCB8QFggxMAM&url=http%3A%2F%2Fwww.howardleague.org.nz%2Fuploads%2F1%2F1%2F6%2F3%2F11633778%2Fcp_evaluation.pdf&usq=AFQjCNFAft28E9MxfoFLh5FuF9MIMyXQGA>

⁴⁰ From 1999-2000 personnel from the University of Waikato were funded by the Ministry of Education to work on ways to incorporate restorative justice in the Waikato region. The directive was targeted at Maori male students and retention in education. Key discoveries from the initiative included great success and constructive discussions with schools where the family and wider community became involved in processes.

lack of oversight, audit and monitoring to ensure consistent fairness in informal processes. Furthermore, informal processes can vary vastly school to school and there is a complete absence of guidance as to appropriate measures and duration to ensure uniformity and consistency. It is not clear how often non-formal processes are employed and students are left with no recourse to challenge processes given the lack of formality.

Findings from a 2006 attendance survey indicate that 4.1% of students are truant for all or part of each school day⁴¹ and that truancy rates are the highest amongst Maori and Pasifika students. It is arguably reasonable to assume that the group of under achieving students is well represented in truants and it is arguably possible to extrapolate that there is a significant possibility that particular groups are disproportionately affected by informal removals.⁴²

Youthlaw's research indicates that informal removals from school are wide spread and pervasive. The long term implications for children who are denied the right to participation in education are vast. Perceptions of unfairness, lack of transparency and consistency accompany such actions when parents and students are not properly consulted in decisions leading to removal of a student from school.

The Unstudied Phenomena of the Kiwi Suspension

It has been said that across New Zealand 'Principals are using illegal suspensions to get rid of troublesome students, putting extra pressure on other schools forced to take them in. The practice known as kiwi suspension, takes place behind closed doors and is not recorded on a school's official disciplinary record. It involves an informal meeting between a principal and a student's parents where it is suggested that they withdraw their child before they are suspended or excluded.'⁴³ Such processes are taken contrary to process and established Ministry of Education policy guidelines.⁴⁴ It has been said that the real number of children being kicked out of school is not reflected in official statistics as a result of such practices.⁴⁵

To date, very little research has been undertaken as to the scale and frequency of informal removal processes in schools. In 1997 the Youthlaw Project published a research paper "The effect of indefinite suspensions on young people: Young people talk about their experiences". The report assessed the impact of such actions on the future lives of those young people. The study sought to interview 18 young people who had experienced an indefinite suspension. Throughout the study participants had common experiences such as having a sense of "unfairness" and in some cases the long term removal from education had had immense impact on their future lives.

Two example case studies include the following:

He is a 16 year old Maori. He was suspended indefinitely twice from a West Auckland school It took 8 months to enroll him in a new school. He voluntarily withdrew from that school and is currently doing nothing.⁴⁶

⁴¹ Ibid, 25.

⁴² Ibid, 25.

⁴³ Jonathan Carson, 'Problem students illegally suspended' 19 August 2013
<<http://www.stuff.co.nz/national/education/9057873/Problem-students-illegally-suspended>>

⁴⁴ Ibid.

⁴⁵ Nicolas Jones 'Law Group wants change after claims of illegal expulsions', 1 August 2013
<http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10906330>

⁴⁶ Youthlaw Project "The effects of indefinite suspensions of young people: young people talk about their experiences (September 1997).

He is a 17 year old Pakeha. He was suspended indefinitely from a central Auckland school when he was 14.... He was enrolled at another central Auckland school during his 4th form. He was asked to leave there at the end of 1995. During 1996 he was enrolled at correspondence school. They will no longer enroll him unless he pays fees. He is currently doing nothing.⁴⁷

Youthlaw Research

Pursuant to a Law Foundation grant in 2015, Youthlaw sought to further research informal barriers to education in New Zealand. Analysis of Youth law's past client files and also receipt of public survey responses, indicated there were significant barriers to inclusive education in a number of aspects of schooling:

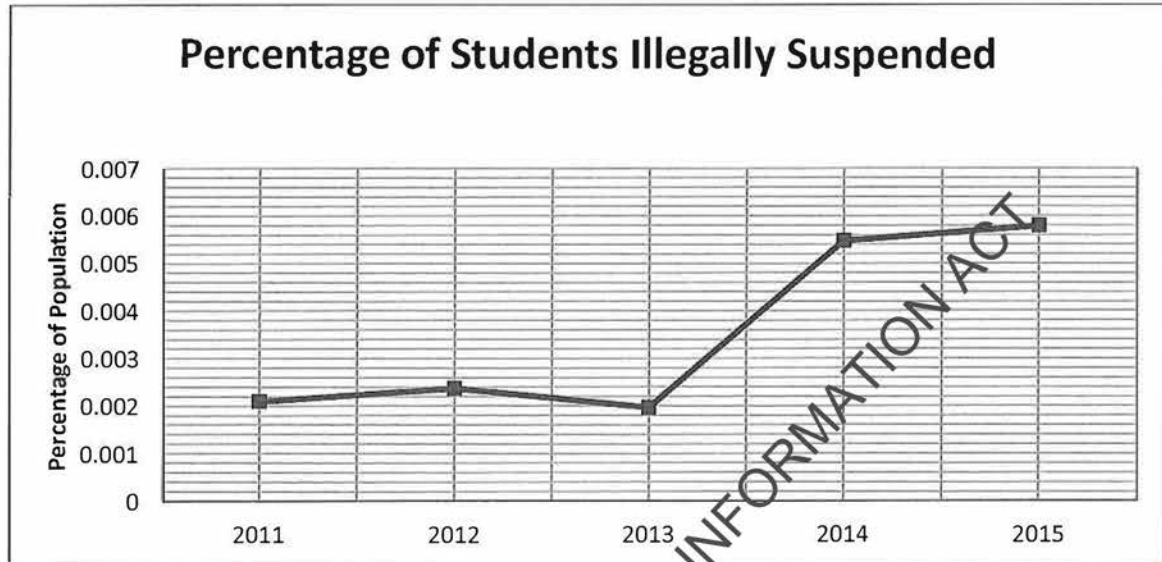
- There was a worrying portion of stories relating to barriers at the outset of entry to education. In particular, barriers to enrolment even when a student was entitled to enrolment (pursuant to the Education Act and international conventions) and was in zone for the local public school (a pre-requisite to access the right to a free state sponsored education);
- A large proportion of stories related to issues with access and participation in the schooling curriculum (and ancillary school activities) on a daily basis; and
- A significant number of stories were received from those who had faced questionable processes for removal and exclusion from school for sustained periods of time or permanently at the end of their educational experience.

There were also alarming discrepancies to how schools dealt with misconduct and discipline of students. The theme that emerged from the research was substantial misunderstanding as to the ambit of authority when acting pursuant to section 14 of the Education Act. Given the lack of reporting to the MOE, some schools consider they are subject to few restraints when utilizing informal punishment. Despite Ministry of Education guidance that punishment of a student's misbehavior ought to be proportionate and reasonable, stories showed widely inconsistent and worrying approaches.

⁴⁷ Ibid.

Research Findings

Set out below is a table indicating the number of kiwi suspension case files Youthlaw has given advice for over time.⁴⁸



Official Ministry of education statistics report that formal removals from school are on the decline. 2014 official data recorded the lowest age standardized suspension rate in the 15 years of recorded data.⁴⁹ The anecdotal data captured by Youthlaw's research appears to indicate the converse is true of kiwi suspension rates.

Some case studies agreed to share their stories anonymously and set out below is a snapshot of a few examples of the kiwi suspension stories received from around the country:

- Parents of "S" a student with special educational needs were told it would be better if "S" was to stay away from school for "a while" as behavior was becoming unmanageable and "S" would be formally and permanently removed ruining his record otherwise. "S" remained out of school for one year informally without any access to education until "S"'s parents contacted Youthlaw;
- The case of "D" who had been diagnosed with ADHD and had been struggling at school. After being formally stood down several times, D was told to un-enroll or face formal exclusion;
- The case of "L" who after bringing drug paraphernalia to school was suspended indefinitely with no return date to school;
- The case of "L" who was told he was no longer welcome at school and not to return;
- The case of "N" who was told only to attend part days at school as they would not accommodate his special needs full time; and

⁴⁸ Youthlaw not only conducted a public survey seeking kiwi suspension stories, but also analysed past client files related to kiwi suspensions and sought consent from clients to share those stories anonymously.

⁴⁹ Education counts website <<http://www.educationcounts.govt.nz/indicators/main/student-engagement-participation/Stand-downs-suspensions-exclusions-expulsions>>

- The case of “A” who was pressured into enrolling into correspondence school after a number of informal removals.

Disproportionate Impact on Special Needs Children

The data collated below indicates reasons for removal in our case studies.

Cases Sorted by Cause of Suspension and Year⁵⁰

Year	S.E. N.	Admission	Drugs	Sexual	Bullying	Fighting	TG	Uniform	Unknown	Total
1998	-	1	-	-	-	-	-	-	-	1
1999	1	-	-	-	-	-	-	-	-	1
2000	-	1	-	-	-	-	-	-	-	1
2001	1	1	-	-	-	-	-	-	-	2
2002	-	1	-	-	-	-	-	-	11	12
2003	-	-	-	-	-	-	-	-	17	17
2004	2	6	1	-	-	1	-	-	-	10
2005	4	5	2	-	-	4	-	3	1	20
2006	-	8	2	-	3	-	-	2	-	15
2007	4	4	2	-	2	3	-	-	1	16
2008	4	9	1	-	-	1	-	1	1	18
2009	3	2	2	1	-	-	-	-	1	15
2010	16	6	6	3	2	4	1	2	2	42
2011	16	18	5	1	2	-	-	2	1	45
Total	51	69	21	5	10	13	1	10	35	215

For ease of reference:

S.E.N – Special educational needs

⁵⁰ Only includes years that have cases.

Admin – breach of school rules (for example truancy or disobedience in class)

Drugs – illicit substances or alcohol

TG – Transgender related issues

Uniform – where a student was refused access to education due to uniform related issues

Unknown – our data was not clear

Over the years, the proportion of cases dealing with students with SEN has increased substantially (23.7%). Statistics indicate that in 2013, 11% of the youth population was living with some form of disability or special need.⁵¹ To extrapolate that further, students with special educational needs are grossly represented in our kiwi suspension statistics.

Such statistics are not unique to New Zealand. In the United States of America a child with disabilities is twice as likely to be suspended as a child without disabilities.⁵² In the United Kingdom, 22% of families with disabled children are suspended illegally at least once a week. 60% of that 22% reported being told by schools that their child was to be placed on a part time timetable limiting access to education.⁵³

There has been an increasing rise in complaints to the Human Rights Commission, cases being taken to arbitration and court where families of students have alleged that there has been a failure to accommodate the special needs of a student. The IHC Society of New Zealand has consistently reported that there has been an overwhelming tide of complaints from families of students with special needs who have encountered barriers to education from entry, participation through to unconsented removal from school. Common examples cited include the following:⁵⁴

- Refusal of enrolment of a child due to their special educational needs despite a right to attend the public school;
- Conditions being imposed on students with special needs as to being able to attend class or being sent home part of the day;
- Limiting access to extra-curricular activities such as school camps due to disabilities;
- Seeking extra funds from parents (despite the right to a free state sponsored education set out in section 3 of the Education Act) to keep their disabled children in classrooms; and
- Use of disciplinary measures such as suspension for disability related behavior not necessarily misconduct.

In light of international conventions and related policy, such treatment arguably runs afoul of the Bill of Rights Act and the Human Rights Act prohibiting discriminatory treatment.

⁵¹ Liz MacPherson "2013 New Zealand Disability Survey" (17 June 2014) Statistics New Zealand <http://www.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey_HOTP2013.aspx>

⁵² Daniel Losen et al. "Are We Closing the School Discipline Gap?" (Feb 2015) The Civil Rights Project <<http://civilrightsproject.ucla.edu/resources/projects/center-for-civil-rights-remedies/school-to-prison-folder/federal-reports/are-we-closing-the-school-discipline-gap/>>

⁵³ Janet Murray "Children with disabilities illegally excluded from school, 18 February 2013 <<http://www.theguardian.com/education/2013/feb/18/children-with-disabilities-illegally-excluded>>

⁵⁴ IHC Press release "IHC files discrimination complaint", 2012 <http://www.google.co.nz/url?sa=t&rct=j&q=&esrc=s&source=wcb&cd=2&ved=0ahUKewjXr_ihnd_KAhUBqJQKHRynCIMQFgghMAE&url=http%3A%2F%2Fwww.ihc.org.nz%2Fnews%2Fihc-filcs-discrimination-complaint-disabled-students%2F&usq=AFQjCNFG6SU00i7Y20DxXi4fUFDsMNdlAQ>

It is quite clear that the protections in international and domestic law provide for a right to an adapted education of an equitable and comparable level to other children without special needs. The overall findings of Youthlaw's research indicate a need for intervention and measures to reduce the occurrence of kiwi suspensions.

Law Reform?

There are a number of targeted interventions that may be useful prior to any removal of a student from school. Preliminary measures that could be immediately implemented include provision for greater inclusion of parents in any discipline processes and putting in place goals to ensure early intervention with students. Policy could be considered which focuses on collaboration between schools, upskilling and training of school leaders and staff and emphasis on building up professional capacity. Thought could also be given to setting up "offsite" units for students in trouble at school and directing resourcing to services providing for "at risk" students at school. Given the wide discretion vested in schools under section 75 and 76 of the Education Act, supplementary measures could include provision for more extensive training to school staff and board of trustee members. It might be worth considering requiring particular qualifications for board members who consider permanent removals of students. Training for board members at a bare minimum could be as simple as an online video providing an overview of Education law principles and statutory duties to be discharged. This should be supplemented with processes that assist in reintegrating students who have been stood down, suspended, excluded or expelled alongside fostering positive school cultures.

Consistent Implementation of Restorative Justice

Appropriate restorative justice processes can produce better outcomes at times than formal discipline. To ensure consistency and avoid discrepant outcomes in student treatment, uniform restorative justice programs or guidance for use across schools could be implemented. This should include clear policy on when such an approach would be appropriate in lieu of formal discipline. It is clear that there would be a need for clear structured frameworks to implement restorative justice which can be managed and tracked. Ideally, any widespread roll out would come at a Ministry level to ensure that all schools were rolling out processes in a similar manner. With oversight and tracking of such processes, variability and inconsistencies would be ironed out. It would seem clear from the successes achieved in other jurisdictions that it is vital to involve parents and the wider community in all such processes. Accountability to the Ministry would ensure parents and students have a further point of contact to address further issues.

Discipline Standards

Detailed discipline standards could be created. Present Ministry of Education guidelines only relate to formal discipline action taken under section 14. It would certainly be helpful for the Ministry to publish guidance on when it may be appropriate to consider informal action and guidance on how such processes would be carried out in various circumstances. Clear definition of kiwi suspensions could also assist.⁵⁵

Special Protection for Special Needs Students?

Additional protection for special needs students could also be considered. For example, the United States (federal) Individuals with Disabilities Act ("IDEA") protects special needs students and ensures that it is virtually impossible for a school to exclude a child with special educational needs. Safeguards include access to educational records, parent participation, requirements for written notice to any IEP changes, and a number of "stay put" mechanisms (requiring a student to stay put until parents and the school can go through dispute resolution).

An Education Commissioner?

In addition to targeted interventions prior to removal, significant benefits could be gained from provision of additional protections for students following any unlawful removals from education. Suggestions include creation of a role of education commissioner⁵⁶ similar to the Health and Disability commissioner. It has been claimed this would allow students and parents' consistency in complaint resolution inexpensively and quickly whilst also relieving the workload of the Ombudsman,⁵⁷ the Ministry of Education and the Education Review Office.

The success of such a role is arguably very dependent on the scope and powers afforded to the role. Without the ability to review a removal from school on both procedural and substantive merits nor quash any improper decision, students would be left with recourse similar to the Ombudsman which is not only lengthy but also at times ineffective in ensuring continuing education.⁵⁸

Independent Tribunal

In terms of other possible measures for reform, it may be more useful to draw example from other jurisdictions which provide students with a right to appeal adverse decisions and removal from school. For instance, in the United Kingdom and some provinces of Canada

⁵⁵ The MOE recently updated their website with a general definition of kiwi suspensions which is an improvement on the information which was previously available <<http://parents.education.govt.nz/secondary-school/your-child-at-school/standdowns-suspensions-exclusions-expulsions/#PrincipalWithdrawal>>

⁵⁶ Carol Anderson, Time for an education commissioner? Anzela NZ. update March 2016.

⁵⁷ The Ombudsman at present can accept complaints and investigate decisions where students have been removed from school. At the conclusion of the investigation the Ombudsman will publish a report of findings and issue recommendations if appropriate in the circumstances. The recommendations are not binding on schools, and schools are under no obligation to adopt the recommendations. As noted above, it can take a number of months for the Ombudsman to investigate and publish findings meaning potential substantial delays in education for a removed student.

⁵⁸ Ibid.

there is ability to appeal to an independent tribunal which can consider the adverse removal decision in both procedure and substance.⁵⁹

The United Nations special rapporteur on education has stated that for the right to education to be realised there must be the ability to enforce that right and appeal that decision in substance and process. This enforceability should include an independent forum empowered to adjudicate over the matter.⁶⁰ Given the lack of any other genuine avenues of recourse available to students, Youthlaw has consistently advocated for the establishment of an independent Education Tribunal similar to those found in the United Kingdom and provinces of Canada.⁶¹ This tribunal would provide an accessible, low cost alternative for students and jurisdiction could be extended to investigate any removals from school (even those that have not been through the section 14 process). It is Youthlaw's contention that an additional layer of protection would ensure the justiciability of the right to education in both procedure and substance and align with international law obligations.

Reporting, Monitoring and Checks

Perhaps the most effective measures that are immediately achievable and have the potential to address the issue would be introduction of reporting requirements and monitoring.

In the United Kingdom OFSTED (the Office for Standards in Education, Children's services and skills)⁶² which is an independent monitoring body, undertakes inspections of schools. Inspectors are able to assess a school's use of exclusion including rates, patterns and reasons and have powers to request records and analyze any incidents of bad behavior and any use of internal isolation. The power of such data collection enables tracking of pupils before removal from school rolls and may indicate any situations where parents have felt forced into alternatives to education. The data is also extremely helpful in identifying any disproportionate impact of removals on particular ethnic groups or students such as those with special needs.

Such a model from the United Kingdom could prove very beneficial in New Zealand. As a base measure, monitoring, oversight and audit could make a significant difference in reducing the incidence of kiwi suspensions. If schools were required to report on informal measures taken in their performance reporting to the Ministry of Education on an annual basis, it would at a minimum provide for a self-audit and check for the school in compliance with Education Act and Ministry of Education guidelines. There could also be provision for periodic reporting and monitoring by the Ministry of Education in addition to self-reporting by schools which would provide for an independent check against self-reporting. The Education Review Office could also undertake periodic or spontaneous reviews where any issues with particular schools were identified.

⁵⁹ See for example the Education Act 2011 in the United Kingdom which provides for right of appeal to an independent review panel or the province of Ontario in Canada which allows for appeal to the Child and Family services Board.

⁶⁰ "Justiciability of the right to education", United Nations Special Rapporteur, Kishore Singh 10 May 2013 http://www.google.co.nz/url?sa=t&rc=1&q=&esrc=s&source=web&cd=1&ved=0ahUKEwiZg4Cmk-XMAhUEW6YKHeEuDmUQFggeMAA&url=http%3A%2F%2Fwww.ohchr.org%2FDocuments%2FHRBodies%2FHRCouncil%2FRegularSession%2FSession23%2FA.HRC.23.35_en.pdf&usg=AFQjCNFTlho9zNE-ldlIgzjxzRbO3glYiA

⁶¹ Youthlaw "Out of sight, out of mind", 2012 <<http://www.youthlaw.co.nz/wp-content/uploads/Out-of-School-Out-of-Mind-web1.pdf>>

⁶² Constituted under the Education and Inspections Act 2006.

Summary

A number of approaches would arguably be necessary to genuinely target illegal kiwi suspensions with elements of restoration or the aim of returning a student to education. There is an ongoing need to allow schools freedom to invoke creativity such as restorative justice processes to find processes that meet the needs of each student. On the other hand, this needs to be balanced against the need to comply with regulatory demands and procedural and substantive protection of the right to education. The creation of a positive school culture which fosters creativity according to guidelines ought to be the ultimate goal to ensure that all students are able to access their right to an education.

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Research Summary: conclusions on the impact of school exclusion

School exclusion is known by a number of different terms. In this summary the terms 'school exclusion' and 'exclusionary discipline' are used interchangeably as catch all terms covering any out-of-school¹ removal of students. More specific terms are also used such as 'suspension' (refers to a temporary out-of-school exclusion, and may return) or 'expulsion' (where a student is removed permanently from a school, and may not return).

Method

Research was found through google searches utilising a large range of search terms.

Evidence utilised in this study includes a range of materials from policy papers, articles in international journals reporting on original research, literature reviews, meta-analyses, etc.

Conclusions

Several statements emerge as well accepted conclusions when reviewing the evidence base on what the impact is of excluding students from schools. These conclusions have arisen from a large number of studies conducted over several decades. Those summarised here are a small portion of these. The same conclusions appear in the evidence base from a range of inter-national sources. These conclusions are:

- Exclusionary discipline is moderately to strongly associated with negative impacts for students. The evidence base to date however does not clearly show a causal connection.
- Ethnic minorities, those from low socio-economic backgrounds, male students, and students with learning support needs) are over-represented in the numbers of exclusions.
- Exclusionary discipline has not been shown to be effective, and does not achieve the goals associated with it.
- A high cost is associated with excluding students.

The following sections outline more detail, with references, of what some studies have concluded in relation to the overall conclusions listed above.

Exclusionary discipline is associated with negative impacts for students

- A range of studies have concluded that there is a moderate to strong link between exclusionary discipline and negative outcomes for students (summarised by the American Psychology Association).²
- Skiba et al. (2014) argues that a wealth of empirical research has suggested exclusion significantly contributes to negative outcomes. However research to date does not clearly show whether exclusion has a causal effect over and above the social, familiar and behavioural characteristics of the affected students.³
- A number of multivariate and longitudinal studies that demonstrate that exclusionary discipline is a risk factor for a host of short- and long-term negative consequences, including academic disengagement, depressed academic achievement, school dropout,

¹ Out-of-school means the student is required to leave the school premises, and is not allowed to attend for a period of time.

² American Psychological Association Zero Tolerance Task Force. Are zero tolerance policies effective in the schools? An evidentiary review and recommendations. American Psychologist 2008; 63: 852-62.

³ Sutherland and Eisner (2014), Valdebenito et al (2018).

and increased involvement in the juvenile justice system (Gregory and Smith 2017⁴; Skiba, Arredondo, and Williams, 2014⁵).

- A meta-analysis of 24 studies by Noltemeyer, Ward and Mcloughlin (2015)⁶ found evidence of a link between in-school⁷ and out-of-school suspension and low achievement.
- A number of studies have found that students who are suspended miss critical instruction time and often find themselves further behind their peers when they return to school, creating a cycle of lower academic achievement and disengagement from school.⁸
- Research also shows that out-of-school suspensions often exacerbate behavioural issues among suspended students, who then tend to be suspended more frequently in subsequent years.⁹
- School suspensions have been shown (in the American context) to be a significant predictor of being held back a grade and dropping out of school altogether. A Texan study found that a student suspended or expelled was twice as likely to repeat a grade compared to a similar student attending a similar school who was not suspended or expelled. This study also found that a suspended or expelled student was nearly three times as likely as a similarly situated peer to have contact with the justice system the following year, supporting previous findings that exclusionary school discipline practices lead to a greater chance of incarceration.¹⁰
- In England only 1% of excluded students achieved five good GCSEs¹¹ including English and maths (according to Department of Education statistics), and the average attainment score for excluded pupils was 7.8 (compared to 48.5 for pupils not excluded).¹² In the longitudinal 2010 Youth Cohort Study only 3 in 10 excluded young people had achieved level 2 English and maths qualifications (needed for semi-skilled employment and low-skilled apprenticeships and training). This leads to excluded young people being at significant risk of low term unemployment, which has a highly detrimental impact on mental health, future employment and risk of criminal activity. The Youth Cohort Study also shows that more than one in four excluded young people were not in education, employment or training for between one and two years by the time they were 19 years old (compared to one in 10 for those never excluded).

⁴ Gregory, Anne, Russell J. Skiba and Kavitha Mediratta. 'Eliminating Disparities in School Discipline: A Framework for Intervention', Review of Research in Education, March 2017, vol. 41, pp. 253-278.

⁵ Skiba, R. J., Arredondo, M., & Williams, N. T. (2014). More than a metaphor? The contribution of exclusionary discipline to a School-to-Prison Pipeline. *Equity & Excellence in Education*, 47, 546–564.

⁶ Noltemeyer, A., Ward, R. M., & Mcloughlin, C. S. (2015). Relationship between school suspension and student outcomes: A meta-analysis. *School Psychology Review*, 44, 224–240.

⁷ In-school suspension is where a student is removed from a class but stays in school.

⁸ Gregory, Skiba, and Noguera, "The Achievement Gap and the Discipline Gap: Two Sides of the Same Coin?", *Educational Researcher* 2010; 39, 59; Emily Arcia, "Achievement and Enrollment Status of Suspended Students: Outcomes in a Large, Multicultural School District," *Education and Urban Society* 38, no. 3 (2006): 359–369.

⁹ David Osher et al., "How Can We Improve School Discipline?," *Educational Researcher* 39, no. 1 (2010): 48–58; L. M. Raffaele Mendez, "Predictors of Suspension and Negative School Outcomes: A Longitudinal Investigation," *New Directions for Youth Development*, no. 99 (2003): 17–33.

¹⁰ Fabelo et al., 2011.

¹¹ General Certificate of Secondary Education.

¹² See Gill et al, (2017).

- A longitudinal study of prisoners in the UK found that 63% had been temporarily excluded when at school and 42% had been permanently excluded. Those prisoners who had been excluded were more likely to be repeat offenders than other prisoners.¹³
- Researchers at the University of Exeter found evidence of a two-way relationship between child and adolescent mental illness and exclusion from school, and conclude being excluded can trigger long-term psychiatric illness and exacerbate existing mental ill health.¹⁴

There is over-representation of certain groups in exclusions

- African American (or other students of colour) students¹⁵, students with disabilities,¹⁶ and children living below the poverty line,¹⁷ are disproportionately overrepresented in exclusionary discipline statistics. There is no evidence that these groups misbehave at higher rates.¹⁸
- Racial/ethnic minority students, especially, are not only more likely to receive exclusionary discipline, they are more likely to receive it for less severe actions.
- The Texas study (see Fabelo et al, 2011) showed that African American and Hispanic students and children with particular educational disabilities who qualify for special education were suspended and expelled at especially high rates. The report also found that when students are suspended or expelled, the likelihood that they will repeat a grade, not graduate, and/or become involved in the juvenile justice system increases significantly.

Exclusionary discipline is not effective in achieving its stated goals

- So far, there is no evidence demonstrating that exclusion is effective for improving school discipline (Skiba, 2014).
- Mendez (2003)¹⁹ reports on a longitudinal study that examines the relationship between the frequency of suspensions and later outcomes (the study followed a cohort of students in Florida from 1989). Mendez concludes that the results of this longitudinal study suggest that use of suspension has no measurable positive deterrent or academic benefit to either the students who are suspended or to non-suspended students. This is partly attributed to the failure of the schools in the study (n = 150) to address the issues leading to the misbehaviour.
- Removal of students who violate school rules has not been proven to create a school climate more conducive to learning for students who remain. The American Psychological Association (APA) reports that data on indicators of school climate in the

¹³ Gill et al (2007).

¹⁴ Ford, et al. (2018).

¹⁵ Sundius J, and M Farneth. 'Putting kids out of school: What's causing high suspension rates and why they are dangerous to students, schools, and communities?', Open Society Institute Baltimore Policy Paper, 2008. Render G.F, J Nell, M Padilla, and H.M Krank. 'What research really shows about assertive discipline'. Education Leadership; 46(6), 1989, pp. 72-5.

¹⁶ Fenning P, and Rose J. 'Overrepresentation of African American students in exclusionary discipline: The role of school policy'. Urban Education, 2007, 42, pp. 536-59. Skiba, RJ. 'Special education and school discipline: a precarious balance'. Behavioural Disorders, 2002, 27, pp. 81-97.

¹⁷ Fiore, TA, and K.S Reynolds. 'Analysis of discipline issues in special education research'. Research Triangle Institute, 1996.

¹⁸ Ruck M.D, and S Wortley. 'Racial and ethnic minority high school students' perceptions of school disciplinary practices: a look at some Canadian findings'. Journal of Youth and Adolescence, Vol. 31, No. 3, June 2002, pp. 185-195.

¹⁹ Mendez, Linda M Raffaele. 'Predictors of suspension and negative school outcomes: A longitudinal investigation', New Directions for Youth Development, No. 99, 2003, pp. 17-33.

US show schools with higher rates of suspension and expulsion have less satisfactory ratings of school climate (citing: Bickel and Qualls, 1980, Wu et al, 1982, and Scott and Barrett 2004).²⁰

There is a high cost to the use of exclusionary discipline

- Parsons (1999) argued the financial cost of exclusion to public services in England are high, and this money would be better spent on the prevention of exclusion from school.
- According to Panayiotopoulos and Kerfoot, (2007) school exclusions are the cause of considerable costs to the education sector, social services, the health sector, justice and police. The public cost of excluding a student from school on average amounts to almost 41% more than it does to keep them in mainstream school. Addressing concerns at an early stage can mitigate these costs.
- Research by IPPR (Institute for Public Policy Research) calculated an estimate of the cost of exclusion in the UK (which indicated that cost is around £370,000 per young person in lifetime education, benefits, healthcare and criminal justice costs). This reflects:
 - The cost of education in the alternative provision sector
 - Lost taxation from lower future earnings
 - Associate benefits payments (excluding housing)
 - Higher likelihood of entry into the criminal justice system
 - Higher likelihood of social security involvement
 - Increased average healthcare costs.
- The IPPR study, using the official figure of 6,685 children permanently excluded from school in 2016, the total cost is around £2.1 billion for the cohort. However they estimate the cost is likely to be much higher, due to evidence that more than five times the number of pupils permanently excluded in 2016 were known to be being education full-time in schools for excluded pupils, and a further unknown number of pupils are excluded informally and are not captured by government data.

²⁰ See APA Zero Tolerance report (2008). <https://www.apa.org/pubs/info/reports/zero-tolerance.pdf>

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United States case study: a widespread reform of law, policy and practice on school discipline approaches

In the United States the consensus among most researchers and educators is that exclusionary discipline (commonly referred to in the US as suspensions and expulsions, although there is a range of different terms used by the various state legislatures) is an approach that should be avoided as much as possible. However there is disagreement about how to reduce this practice. Most seem to agree that increasing resources to schools and improving data collection and analysis would help, but perspectives diverge on the role of policy and law-makers, and of school governance (in the US school boards and superintendents) in setting limits on when exclusionary discipline is not appropriate.

In addition, although a lot of evidence is available indicating best practices that schools can undertake to promote desired behaviours (as alternatives to exclusion), there is very little evidence available about the best way to support schools, through policy or law change, to move discipline approaches closer to evidence on best practice.

In spite of this evidence dilemma, a large and growing number of states and municipalities are passing laws, changing regulations, or updating policies to limit the use of suspensions and expulsions. The pace of this change is faster than research on effectiveness of approaches can keep up with. Evaluative reports are limited to show impact and outcomes of these reforms.¹

Change driven by national leadership

The reform policies and laws of individual states have been driven by actions at the federal level. The US government under the Obama administration officially acknowledged that reliance on exclusionary discipline practices in schools has significant negative consequences for student learning and success, and that there are significant disparities along racial, gender, disability and other student characteristics in the use of suspension or expulsion.

In 2014, the Department of Justice (DOJ) and the Department of Education (ED) led a campaign to promote school discipline reform. The main message from the federal government was that states, cities and school districts should:

- 1) Reduce the use of school exclusions while at the same time working to ensure conditions in schools enable teachers and students to be engaged, that the school environment is safe and welcoming to students, teachers, school staff and the community.
 - Lowering the use of exclusion without regard for the other things, may simply be trading one set of problems for another.
 - Change must benefit all students not just those that have been engaged in misconduct. The focus should be on safe classrooms and supportive learning environments for all.
- 2) Actively address disproportionate use of school exclusion for distinct student populations.

¹ A great deal of commentary and discussion about the changes and their impact is available, but only one evaluative review was found for this note (see Steinberg and Lacoe, discussed below).

- Joint federal guidance was issued recommending ways to make discipline more equitable (the Joint “Dear Colleague Letter”, 2014).²
- 3) Re-cognise that school exclusion does still happen and legislate to ensure students removed from the classroom for disciplinary reasons continue to receive quality instruction.

About 27 states have now moved to reform their law /policies on school discipline. The specifics of how school exclusions are legally limited differ from place to place, although common threads include:³

- Introduction of more stringent limits for younger grades,
- a focus on change to subjective infractions (such as willful defiance – see below), and
- making exclusionary discipline a last resort.

For example, in California the Los Angeles Unified School District banned the use of suspensions for “willful defiance”⁴ for grades from kindergarten to grade three, and expulsion for willfull defiance in all grades. Willfull defiance was considered to be a vague and subjective reason for excluding a student, which enabled a lot of exclusions for minor behaviours. LA also issued a “School Climate Bill of Rights”⁵ that mandated implementation of restorative justice programs, disaggregated data collection tracking school discipline, and a system to file formal complaints regarding discipline.

Since the policy change districtwide, school suspensions decreased from 8% in 2007–2008 to 0.55% in 2014–2015, and days lost as a result of suspension decreased from 75,000 to 5,025.⁶ However, many teachers contend that the ban on suspensions triggered an increase in belligerent behaviour and classroom disruption, and although the racial gap in discipline rates has decreased, Black students and American Indian students are still suspended at disproportionately high rates compared to other racial/ethnic groups.⁷

In New York reforms banned suspensions for first time/low level offences, and required principals to seek permission from district administrators to suspend a student. Rates of

² Dear Colleague Letter, US Department of Education, 2014:

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html>

³ Council of the District of Columbia, Committee on Education, Report on B22-594 Student Fair Access to School Amendment Act of 2018, March 2018.

⁴ Defined as “disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties”, see this FactSheet (‘Recent Legislation on discipline: AB 420’, March 2015):

https://www.csba.org/GovernanceAndPolicyResources/~media/CSBA/Files/GovernanceResources/GovernanceBriefs/201503_AB420DisciplineFactSheet.ashx

⁵ LA School Climate Bill of Rights:

<https://1.cdn.edl.io/q48FMJUBSFHjwRo7lvhImKMoQ5ZszWym1vh3xMmtmF48N1z2.pdf>

⁶ ‘Why some LAUSD teachers are balking at a new approach to discipline problems’, by Teresa Watanabe and Howard Blume, LA Times, 2015, <https://www.latimes.com/local/education/la-me-school-discipline-20151108-story.html>

⁷ Losen, D. J. & Martinez, T. E. (2013). Out of School and Off Track: The Overuse of Suspensions in American Middle and High Schools. *UCLA: The Civil Rights Project / Proyecto Derechos Civiles*. Retrieved from <https://escholarship.org/uc/item/8pd0s08z>

suspension reduced, but some analysis indicated school climate was worsening (note that this analysis was criticised for lack of robustness).⁸

In 2018 in the District of Columbia DC Law 22-157 "Student Fair Access to School Amendment Act of 2018" was passed (into force August 2018).⁹ This law:

- requires all local education agencies to establish discipline and related policies to promote safe and positive school environments;
- limits the suspension of students in kindergarten through grade 8 to the most serious cases;
- prohibits the suspension of students in grades 9 through 12 for minor incidents;
- requires the Office of the State Superintendent of Education (OSSE) to provide supports to schools and establish a fund to provide resources for those supports; and
- establishes annual reporting requirements for each local education agency on suspensions, expulsions and other related data.

In many states, there is already a mandate in law that schools must provide alternative instruction when students are excluded from school. New York state educational law requires, for example, that for a suspension of any length "immediate steps shall be taken for his or her attendance upon instruction elsewhere or for supervision or detention of said pupil pursuant to the provisions of article seven of the family court act."¹⁰

Impact of reforms

The empirical evidence that is available suggests that although overall levels of exclusions are decreasing the disparities in the numbers (by population group) show little change.

Investigation of the impact of a reform in Philadelphia¹¹ that eliminated suspensions for certain low level misbehaviours, concluded that the change initially reduced suspensions but the change did not persist, partly due to varied compliance with the new rules by schools. The report highlighted that schools with serving students who are struggling more academically have higher suspension rates. This means changing rules to reduce suspensions may have unintended consequences, such as increases in suspensions for more severe infractions. To minimise this, the researchers conclude that rule change must be accompanied by additional supports for schools that face disciplinary challenges.

⁸ Eden, Max. 'School discipline Reform and Disorder: Evidence from New York City Public Schools, 2012-16. The Manhattan Institute, 2017. <https://www.manhattan-institute.org/html/school-discipline-reform-and-disorder-evidence-nyc-schools-10103.html>. For criticism of Eden's analysis see <http://dropoutnation.net/2018/01/24/max-eden-other-school-discipline-reform-foes-use-bad-data/>

⁹ DC Student Fair Access to School Amendment Act: <https://code.dccouncil.us/dc/council/laws/22-157.html>

¹⁰ New York State Consolidated Laws, Education, Chapter 16, Title IV, Article 65, Part I, Section 3214(2)(e). <http://www.p12.nysed.gov/ssr/lawsregs/3214.html>

¹¹ Steinberg, Matthew and Johanna Lacoe. 'The Academic and Behavioural Consequences of Discipline Policy Reform: Evidence from Philadelphia. Thomas Fordham Institute, 2017.

In addition, more research is needed to show whether reported post-reform reductions in numbers of suspensions and expulsions reflect unreported exclusions or other types of gaming.¹²

Consensus on how to reduce the use of school exclusion

Based on the US experience, the Council of State Government's Justice Centre pulled together a large group of policy makers, school administrators and teachers, police and justice works, and others, to agree on the best policies and practices for making change to reduce exclusions. A 'consensus report' was released that outlines this groups conclusions.¹³

The following are some suggested strategies (summarised/paraphrased) for policy and lawmakers to reduce the use of school exclusions (drawn from the consensus report).

- 1) Develop a nuanced understanding of discipline needs. Examine the data to inform strategies for improvement. Define success and how to measure it. What is done/what needs to be done will be revealed by the data analysis.
- 2) Get together a diverse national group to chart changes to school discipline policies and practices. Multiple goals and multidisciplinary approaches are necessary for strategic action.
- 3) Support/require the prevention of behaviour problems through the use in schools of evidence based behaviour frameworks, the availability of teacher/school staff training/PD, and use of / support or provision of targeted behavioural interventions (school wide and individual).
- 4) Reduce the negative impact of exclusion by for example:
 - Promoting or requiring schools to use policies that clearly outline how each behaviour will be disciplined using graduated system, the use of school engagement policies, and the use of positive reinforcement for desired behaviours.
 - Restrict the use of exclusion legislatively so that it can only be used as last resort and only for the most severe infractions, and require/encourage alternatives.
 - Restrict the number of days students can removed from school.
- 5) Reduce inequitable exclusion. Research suggests the following are promising strategies: increase awareness (by for example using data to make bias in disciplinary actions visible); have culturally representative staff; and cultural competency training.
- 6) Ensure education settings are available to meet needs. This may involve examination the provision of alternative education. When students need to be removed from school they should have access to high quality alternative education services that address the student's social-emotional, behavioural health and academic needs.

¹² Welsh, Richard and Shafiqua Little. 'The School Discipline Dilemma: A Comprehensive Review of Disparities and Alternative Approaches'. Review of Educational Research October 2018, Vol. 88, No. 5, pp. 752–794. <https://journals.sagepub.com/doi/pdf/10.3102/0034654318791582>

¹³ Morgan, Emily, Nina Salomon, Martha Plotkin and Rebecca Cohen. 'The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System', New York, The Council of State Governments Justice Centre, 2014.

What practices at the school level work to reduce the use of school exclusion?

The following is a brief summarised version of some practices that schools can undertake to move away from exclusionary discipline (drawn from the best practice evidence base relied upon in the United States to support the discipline reform movement).¹⁴

- 1) Ensure school discipline policies and practices keep students in school by reducing the use of punishment and increasing positive student experiences of schooling. A range of evidence-based approaches are available (there is a lot of overlap, so it is best to use multiple approaches/strategies). Examples:
 - a. School-wide prevention and universal intervention:
 - i. Multi-tiered system of support: a whole school prevention-based framework for improving learning outcomes for every student through a layered continuum of evidence-based practices and systems. For example 'Positive Behavioural Interventions and Supports' or PBIS.
 - ii. Restorative justice approaches.
 - iii. Social-emotional learning.
 - iv. Work on building positive school climate, e.g. bullying prevention, conflict resolution. Schools that create welcoming and secure learning environments reduce the likelihood that students will misbehave, and improve educators' ability to manage student behaviour.
 - v. Early intervention to prevent problems and reduce need for harsh discipline. For example, positive re-enforcement or rewarding for good behaviour.
 - vi. Provide professional development opportunities for teachers. Teachers and admin staff should have PD opportunities to gain the knowledge and skills needed to create positive conditions for learning. For example: de-escalation, conflict resolution, child development, building positive relationships with students.
 - b. Ensure individual student-focused responses are available when necessary as alternatives to exclusion. For example:
 - i. Mental health services and counselling.
 - ii. Targeted behaviour supports like self-management plans.
 - iii. In-school alternatives to removing from school - in other words in-school exclusion (detention), or Saturday school. Can be beneficial in some cases instead of removing a student from school.
 - iv. Positive reinforcement for desired behaviours
 - v. Ensure quality alternative education programmes are available: a change in the environment can help a student improve their behaviour. Alternative programmes or schools available to provide a specific setting to place students who have been removed from school for misbehaviour (need to ensure programmes offer quality provision).
 - vi. Mentoring, for example providing adult mentors to help students foster positive teacher-student relationships.
 - c. School community solutions
 - i. For example involving parents/families in schools to improve disciplinary process.
 - ii. Community service or restitution (supervised community service outside of school hours instead of exclusion from school).

¹⁴ See for example: Rosa, Juliana, Kathleen Keelan, Janelle Krueger. "alternatives to Zero Tolerance: Best Practice Summary". Colorado Department of Education, 2015.

- 2) When using school exclusion, reduce the negative impact of exclusion by:
 - a. Examine school policies and all staff (school) work together to determine which behaviours lead to what consequences. Set policies that clearly outline how each behaviour will be disciplined using graduated system. Don't just focus on discipline policies but also on promoting school engagement, and positive reinforcement for desired behaviours.
 - b. Restrict the number of days students can be out of school.
 - c. Train all staff in behaviour policies.
 - d. First contact with parents should be made by teacher not admin staff.
- 3) Reduce inequitable exclusion (ways of making disciplinary actions equitable across all student populations).
 - a. Increase awareness – using data to make bias in disciplinary actions visible, sharing with all, raise awareness of issue.
 - b. Understand the problem/underlying reason for student behaviour before deciding on repercussions.
 - c. Only use exclusion as last resort and only for severe infractions.
 - d. Have culturally representative staff.
 - e. Implement multiple strategies – for each behavioural incident consider multiple alternatives (research shows leads to more effective outcomes for schools and students).
 - f. Provide cultural competency training.

Other Useful Resources

National Clearinghouse on Supportive School Discipline:
<https://supportiveschooldiscipline.org/>

A compendium of school discipline laws and regulations is available (compiled by category and by state/jurisdiction, download full compendium or search using map), available at the National Center on Safe Supportive Learning Environments:
<https://safesupportivelearning.ed.gov/school-discipline-compendium>