
Policy title:	SUSPENSION, EXCLUSION OR TRANSFER OF STUDENTS IN ACT PUBLIC SCHOOLS
Published:	2010
Identifier:	SETS201010
Legislation:	<i>Education Act 2004</i> <i>Discrimination Act 1991</i> <i>Disability Discrimination Act 1992 (Commonwealth)</i> <i>Human Rights Act 2004</i> <i>ACT Civil and Administrative Tribunal Act 2008</i> <i>Human Rights and Equal Opportunity Commission Act 1986</i> <i>(Commonwealth)</i>

This policy must be read in conjunction with the Providing Safe Schools Policy P-12 policy and the Suspension, Exclusion or Transfer of Students in ACT Public Schools Guidelines.

1. POLICY STATEMENT

- 1.1 ACT Public Schools provide a safe and supportive learning environment for all students.
- 1.2 All schools must have a whole of school behaviour support plan developed collaboratively and reviewed regularly in consultation with their school community. The behaviour support plan must include the procedures and supports for suspension.
- 1.3 All schools must adhere to Section 36 of the *Education Act 2004* (the Act) when dealing with the suspension, transfer or exclusion of students from ACT public schools (Attachment A).
- 1.4 The power to suspend, transfer or exclude rests with the Director-General of the Education and Training Directorate (the Director-General). Under Section 36 (10) the Director-General may delegate power to suspend a student from a public school for not longer than 15 days to the principal of the school. Principals cannot delegate this power to any other staff member. However, acting principals are principals for this purpose.

2. RATIONALE

- 2.1 This policy sets out the responsibilities of the Director-General and principals in relation to the suspension, exclusion or transfer of students in ACT Public Schools.

- 2.2 The purpose of suspension is to:
- restore a safe working environment
 - allow the school time to review their practice and establish support plans for the student, and
 - communicate the significance of the behaviour and for the student to accept responsibility for behaviour change.
- 2.3 The purpose of transfer is to move a student from a school in which severe misbehaviour has become entrenched, or an incident of misbehaviour is so severe that re-entry to the school concerned would be unreasonable.
- 2.4 The purpose of exclusion is to remove a student who poses an extreme threat to the welfare and safety of staff and students. Exclusions are used in exceptional circumstances when the support required to establish a safe work environment is beyond the resources of the school system.

3. DEFINITIONS

Suspension:

- 3.1 The process of temporarily withdrawing a student from attending school if they display behaviours described under section 36 of the Act.

Transfer:

- 3.2 The process of changing the enrolment of a student from one public school to another public school.

Exclusion:

- 3.3 The process of excluding a student from continuing enrolment or re-enrolment at any ACT public school.

Parent:

- 3.4 For the purpose of this policy 'parent' refers to any adult with parental responsibilities for a student. For the purpose of this policy a student with independent student status is considered to be the parent.

4. PROCEDURES

- 4.1 The Director-General or principal must ensure that a student who is suspended for seven or more school days in a school term (whether or not these are consecutive school days) is given a reasonable opportunity to access appropriate counselling (Section 36 (9)).
- 4.2 Parents must be consulted in the process of the proposed suspension, transfer or exclusion of a student and informed in writing of the reasons for the proposed action.

- 4.3 The Director-General or principal must notify the Director-General of the Department of Disability, Housing and Community Services or their delegate when suspending or considering transfer or exclusion of students who are in care.
- 4.4 The Director-General or principal must notify the Manager of Disability Education when suspending or considering transfer or exclusion of students with a diagnosed disability.
- 4.5 The principles of natural justice and procedural fairness must apply to all suspension, exclusion and transfer proceedings (see Attachment B).
- 4.6 In making the decision to suspend, the Director-General or principal must take into account the individual circumstances of the student including their developmental capacity.
5. **Suspensions for up to 15 days**
 - 5.1 Student's parent/s must be consulted and informed of the decision to suspend before the suspension comes into effect.
 - 5.2 A copy of the suspension record, suspension letter and appeal guide must be forwarded to the student and parent/s within 24 hours of informing the parent/s.
 - 5.3 The suspension record must be forwarded to the relevant School Network Leader within 24 hours.
 - 5.4 The student must be provided with meaningful school work during the suspension.
 - 5.5 A student who has been suspended must remain at school until the end of the school day or until appropriate arrangements have been made with the student's parents.
 - 5.6 The first day of the suspension period is the day the student leaves the school (where the student is suspended in the morning and has left the school before or during lunchtime) or the following day (where the student is suspended and leaves during the afternoon or at the end of the school day).
 - 5.7 In exceptional circumstances and in consultation with the relevant School Network Leader, the length of the suspension resulting from a particular incident can be varied within the 15 day period based on new information not available at the time of the original decision.
6. **Request for additional days of suspension**
 - 6.1 The principal may make a request for up to an additional five days suspension beyond 15 days for any one incident by forwarding a request to the Director-General within the first 10 days of suspension.

6.2 The Director-General will notify the parent/s, the Director-General of the Department of Disability, Housing and Community Services or their delegate and the Manager of Disability Education as appropriate, of the outcome of the request.

7. **Re-entry**

7.1 When a student returns to the school following a period of suspension, the principal or delegate must convene a re-entry meeting with the student and consult with the student's parent/s to develop a program to support the student's return to school.

8. **Transfer**

8.1 The principal may recommend to the Director-General through the School Network Leader that a student be transferred to another public school (Section 36 (2) (b)) in cases where repeated attempts with comprehensive support to engage the student in effective participation in school is unsuccessful or after an incident of such severity that a return to the school would be unreasonable.

8.2 While the transfer of a student is being considered, the student must return to school if they are of compulsory school age, or the period of suspension must be extended until the decision is made. In the case of an extended suspension, procedures at 6.1 and 6.2 of this policy must be followed.

8.3 The Director-General will make a decision about transfer within five working days after receiving the recommendation and will advise the parent/s and student, principal, and the Director-General of the Department of Disability, Housing and Community Services and Manager of Disability Education as appropriate of the decision, or of the need for an extension of the suspension period to enable consultations to continue.

9. **Exclusion**

9.1 The principal may recommend through the Executive Director for School Improvement to the Director-General, that the student is excluded from all ACT public schools.

9.2 The Director-General may extend the period of suspension up to a maximum of twenty days (inclusive of days the student has already been suspended) while the recommendation to exclude is being considered.

9.3 The Director-General will make a decision about exclusion within ten working days after receiving the recommendation and will advise the principal, student and parents, and the Director-General of the Department of Disability, Housing and Community Services and Manager of Disability Education as appropriate of the decision.

10. Appeals

- 10.1 The decision by the Director-General or principal to suspend, transfer or exclude a student is a reviewable decision.
- 10.2 Students and parent/s must be advised in writing by the Director-General or principal that they have the right to appeal a suspension, transfer or exclusion if they believe correct procedures have not been followed or that an unfair decision has been made.
- 10.3 Appeals against the suspension of a student for up to 15 days may be submitted to the Director-General as outlined in Attachment C.
- 10.4 The parents of the student must be notified in writing of the Director-General's decision regarding the appeal and their right to appeal the decision.
- 10.5 Parents may appeal a decision of the Director-General in accordance with the requirements of Section 22B of the *ACT Civil and Administrative Tribunal Act 2008*.
- 10.6 Information about the application process is available on the ACT Civil and Administrative Tribunal (ACAT) website at: <http://www.acat.act.gov.au/>

11. Complaints

- 11.1 Complaints Officers dealing with appeals or requests for review of decisions should identify complaints against the Directorate, which are included in the same correspondence as the appeal or request for review, but which fall outside its scope. This information must be referred to the Community Liaison section. Appellants will be kept informed of any referrals to the Community Liaison section.

12. POLICY OWNER

Director, Aboriginal and Torres Strait Islander Education and Student Support

13. RELATED POLICIES

Providing Safe Schools Policy P – 12

Attachments:

Attachment A
Attachment B
Attachment C

Education Act 2004 – Section 36
Procedural Fairness and Natural Justice
Appeals against a decision to suspend

Education Act 2004 – Section 36**36 Suspension, exclusion or transfer of student by Director-General**

- (1) This section applies if—
- a) a student attending a government school—
 - i. is persistently and wilfully noncompliant; or
 - ii. threatens to be violent or is violent to another student attending the school, a member of the staff of the school or anyone else involved in the school's operation; or
 - iii. acts in a way that otherwise threatens the good order of the school or the safety or wellbeing of another student attending the school, a member of staff of the school or anyone else involved in the school's operation; or
 - iv. displays behaviour that is disruptive to the student's learning or that of other students; and
 - b) the principal of the school is satisfied that action should be taken under this section.
- (2) The principal may recommend to the Director-General that the Director-General —
- a) suspend the student from the school for a stated period of not longer than 20 days; or
 - b) transfer the student to another government school; or
 - c) exclude the student from all government schools.
- (3) After considering the principal's recommendation, the Director-General may—
- a) give effect to the recommendation; or
 - b) take any other action mentioned in subsection (2) that the Director-General considers appropriate; or
 - c) suspend the student for not longer than 20 days.
- (4) The Director-General may exclude the student only if—
- a) the student's parents have been given an opportunity to be consulted, and told in writing, about the proposed exclusion of the child and the reasons for it; and
 - b) the student has been given a reasonable opportunity to attend counselling, undertake relevant educational programs or receive other appropriate assistance; and
 - c) as far as the student's maturity and capacity for understanding allow, the participation of the student has been sought, and any views of the student considered, in deciding whether to exclude the student; and

- d) the student has been given sufficient information about the decision-making process, in a language and way that the student can understand, to allow the student to take part in the process; and the student has been offered alternatives for continuing the student's education during the exclusion.
- (5) The Director-General may suspend or transfer the student only if—
- a) the student's parents have been given an opportunity to be consulted, and told in writing, about the proposed suspension or transfer of the student and the reasons for it; and
 - b) as far as the student's maturity and capacity for understanding allow, the participation of the student has been sought, and any views of the student considered, in deciding whether to suspend or transfer the student; and
 - c) the student has been given sufficient information about the decision-making process, in a language and way that the student can understand, to allow the student to take part in the process; and
 - d) the student has been given a reasonable opportunity to continue the child's education during the suspension.
- (6) Despite subsection (5), the Director-General may immediately suspend the student for not longer than 5 days if, in the Director-General's opinion, the circumstances are of such urgency or seriousness to require the child's immediate suspension.
- (7) However, before suspending the student under subsection (6), the Director-General must comply with the requirements of subsection (5) (a) to (d) to the extent that it is practicable and appropriate to do so.
- (8) To remove any doubt, the Director-General may suspend the student under subsection (6) while deciding what other action (if any) should be taken in relation to the student under this section.
- (9) If the student is suspended for 7 or more school days in a school term (whether or not consecutive school days), the Director-General must ensure that the student is given a reasonable opportunity to attend appropriate counselling.
- (10) The Director-General may delegate the Director-General's power to suspend a student from a government school for not longer than 15 days to the principal of the school.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

The rules of procedural fairness or natural justice require that in respect of any decision the affected person must be given a reasonable opportunity to be heard.

A reasonable opportunity to be heard requires that the affected person knew what they were accused of, had time and opportunity to put their case, and that the decision maker considered their response before reaching the final decision.

Generally speaking a 'lawful' decision in the context of the Directorate's schools is one where the relevant legislation, guidelines or policies have been adhered to, which takes account of all the circumstances and only relevant matters have been taken into account, and has been made in an objective manner by an unbiased decision maker.

Representation of a child by a parent/caregiver is not a necessary requirement of natural justice, especially if the student is in high school or college. However, in most cases a parent/caregiver is the most suitable choice and should be involved at the earliest opportunity. A support person of the student's choice may be used in circumstances where a parent is not available or appropriate.

In relation to suspensions, transfers or exclusions, procedural fairness involves:

The right to be heard, which includes:

- the right to know why the action is happening
- the right to know the way in which the issues will be determined
- the right to know the allegations in the matter and any other information that will be taken into account in determining the outcome
- the right of the person against whom the allegations have been made to respond to the allegations; and
- the right to an appeal.

The right of a person to an impartial decision, which includes:

- the right to impartiality in the investigation and decision making phases
- the right to an absence of bias in the decision maker.

In meeting the requirements of procedural fairness, principals should establish whether interpreters are needed, and if so make arrangements for one to be available. Principals should also ensure that parent/s have access to all policies and procedures under which action is being taken.

To ensure the elements of procedural fairness are met, it is appropriate to provide students and their parent/s with details of all allegations relating to the incident. Principals should inform parent/s that they have the right to seek documents through Freedom of Information procedures, if they are unhappy with the information provided.

APPEAL AGAINST A DECISION TO SUSPEND A STUDENT FROM AN ACT PUBLIC SCHOOL

Appeals against the suspension of a student for up to 15 days may be submitted if the correct procedures as set out in Section 36 of the *Education Act 2004* or as set out in the Suspension, Exclusion or Transfer of Student in ACT Public Schools policy were not followed, or if you believe the decision was unfair.

If you are submitting an appeal, please complete the attached form and submit it, together with a copy of the suspension form and any other documents you believe are relevant, to the Director-General at the following address:

Education and Training Directorate
GPO Box 158
CANBERRA ACT 2601

or by fax to 6205 8327.

The appeal will be accepted up to 28 days after you have received the official notification of the suspension.

If you need assistance in submitting the appeal, please contact: 6205 7194 (South/Weston and Tuggeranong School Network) or 6205 5479 (North/Gungahlin and Belconnen School Network).

Your child's school will be able to advise you as to which number you should call.

The relevant School Network Leader will convene a panel to consider your appeal and will notify you of the outcome and the specific reasons for reaching the decision within 21 days of receiving the appeal.

The School Network Leader will also determine what further action is to be taken if the appeal is upheld.

Appeals against the suspension of a student for more than 15 days and less than 20 days may be submitted if the correct procedures as set out in Section 36 of the *Education Act 2004* or as set out in the Suspension, Exclusion or Transfer of Student in ACT Public Schools policy are not followed, or if you believe the decision was unfair.

The appeal against the decision must be lodged with the ACT Civil and Administrative Tribunal (ACAT). The ACAT is a statutory tribunal which conducts external reviews of administrative decisions made by Government Departments and agencies. Information about the application process is available on the ACAT website at: <http://www.acat.act.gov.au/> or by telephone on (02) 6207 1740.

APPEAL AGAINST THE SUSPENSION OF A STUDENT IN A PUBLIC SCHOOL

Student's name:		
School attended:	Year	
Person making appeal:		
Relationship to student:		
Address:		
Telephone (work)	(home)	(mobile)

This appeal is on the grounds that: (please tick appropriate boxes)

- Correct procedures have not been followed
- An unfair decision has been made

Please attach a supporting statement providing details of the issues you wish to have considered in the appeal

- Attached

Signature of person making appeal: _____

Date: _____