

Introduction

In any given year, YouthLaw provides advice on a daily basis to young people and their parents with regards to a number of education-related issues, the majority of which concern decisions by schools to stand-down, suspend, exclude or expel students.

For principals, the use of these measures is understandably seen as a necessary means by which the safety of staff and other students can be ensured. For affected students, however, the use of these measures can cause significant disruption to their academic progress, limiting future career opportunities and increasing their propensity for anti-social behaviour. An unwanted burden is not only placed on these students and their families, but also wider society through the need for increased expenditure in health, education and welfare sectors. In light of such concerns, the need for principals and boards of trustees to get it right when decisions are being made about a young person's ongoing education is profound.

Yet despite the gravity of the issues at stake, the current disciplinary regime affords students and parents very few opportunities for recourse. A decision by a principal to stand-down or suspend, or a board of trustees to exclude or expel is effectively final, with no direct right of appeal or challenge. To attain even a modicum of justice, parents and students must rely upon a patchwork of legal and quasi-legal mechanisms which can be time-consuming, costly, and provide little in the way of actual remedy.

The process differs markedly from that seen in England¹ where, following an adverse determination from a school board, parents and students have the right to take the matter further to an Independent Appeal Panel. The Panel provides an impartial forum in which both the substance and the procedural propriety of school disciplinary orders can be challenged, with the authority to order the direct reinstatement of students. The implementation of a similar panel in New Zealand would, we believe, preserve the flexibility of a broad discretionary power held by principals under the current disciplinary regime, whilst also ensuring that students in the most serious of cases will be able to fully realise their right to natural justice.

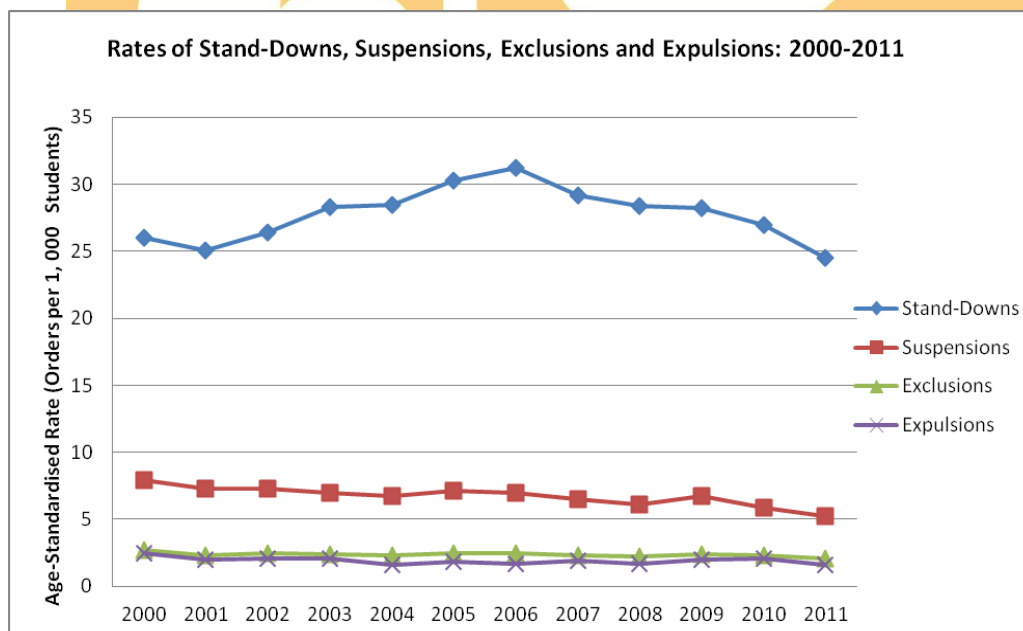
¹ Each nation in the United Kingdom administers differing education systems and legal processes.

Stand-downs, Suspensions, Exclusions, and Expulsions

Education Act 1989 Section 14

The proper procedures for school disciplinary orders are laid out in section 14 of the Education Act 1989. A stand-down refers to the process of formally removing a student from school for no more than five days in a school term or ten days in a school year, while a suspension is the removal of a student from school pending a board of trustees hearing. The board possesses the power to lift the suspension, extend the suspension, or terminate the student's enrolment at the school. In the event of the latter, the board will exclude students aged under 16 or expel students aged over 16.

Accounting for minor fluctuations on a year-by-year basis, as this graph illustrates, the rates of stand-downs, suspensions, exclusions and expulsions have remained relatively constant over the past decade. For reference as to scale, in 2010 alone, there were: 19, 392 stand-downs; 4, 222 suspensions; 1, 409 exclusions; and 207 expulsions.



Ethnic and gender inequalities feature prominently in the rates of stand-downs, suspensions, exclusions and expulsions. In 2011, for instance:

- Rates of exclusions and expulsions for Maori and Pasifika students are between two and three times the national average.
- Males were 2.7 times more likely to be excluded from school than females, and 4.3 times more likely to be expelled
- Students from lower quintile (deciles one and two) schools were nearly five times more likely to be excluded and over twice as likely to be expelled as those from higher quintile (deciles nine and ten) schools.

Consequences of School Exclusion

Stand-downs and suspensions under section 14 often lead to extended periods of school exclusion. A third of all students suspended, for instance, will later go on to either be formally excluded or expelled. From there, the average length of time from a student's exclusion to their reenrolment is 36 days at the excluding school or 40 days at another school.

Long periods of absence from school can have considerable consequences. Lost class time may result in lower levels of academic achievement, diminishing ones earning potential and future career prospects. More significantly, exclusion may loosen a young person's affiliation and commitment to a conventional way of life, increasing their propensity for anti-social behaviour. Principal Youth Court Judge Andrew Becroft has observed that up to 80 percent of all offenders are not formally engaged within the education system and that this group constitutes "virtually the whole of the problem" in the Youth Court.

The cost of exclusion is borne out not only by the child directly affected, but also the wider community through the need for additional public expenditure in welfare, education, crime, and other social services. Although no local studies are available, British think-tank New Philanthropy Capital estimated the average cost of an exclusion to be £63, 851 per student or around £650 million per annum.

Lack of Mechanisms for Accountability

In light of these costs – both social and financial –it is essential that any decision to stand-down, suspend, exclude or expel is not taken lightly. Yet although the current disciplinary regime affords principals and boards of trustees a wide discretionary power to discipline students, few safeguards are present to prevent what may be an improper or unlawful determination.

Before making a decision to stand-down or suspend, a principal need only be satisfied “on reasonable grounds” that the student’s gross misconduct is a harmful or dangerous example to other students, or that other students will be seriously harmed in the absence of an order being issued.

For stand-downs, once a decision has been made by principal, there is no further mechanism available by which to ensure that any decision is reasonable or within the boundaries of the law. In the case of suspensions, an additional layer of accountability is provided by boards of trustees who possess the power to return a student back to school.

Outside of these formal procedures, however, there are few other avenues for recourse. The most prominent option, judicial review through the High Court, is expensive and maintains only a limited power to quash decisions by boards and principals. Meanwhile, complaints to the Ombudsman and Education Review Office, although perhaps less costly alternatives remain just as time-consuming and ineffectual, if not more so.

Alternative Systems and Recommendations for Reform

The Independent Appeal Panel

The school disciplinary regime fails to provide an effective means by which students and parents can hold schools to account and ensure that any order made is both reasonable and within the bounds of the law. In light of this, it is necessary to consider international examples, most notably England’s Independent Appeal Panel.

Where a student has been ‘permanently excluded’ – the equivalent of an exclusion or expulsion – parents may appeal to the Independent Appeal Panel. The Panel consists of a mix of lay people and educational professionals empowered to determine whether the alleged facts took place and, if so, whether the penalty of exclusion is appropriate. The setting is a predominantly a quasi-legal one in which parents and other parties – generally without legal representation – can question witnesses and challenge facts. Once all relevant parties have been heard, if the panel is satisfied on

the balance of probabilities that exclusion was inappropriate or that the student did not do what had been alleged, it has the power to direct that the child be reinstated.

Recommendations

It is our view that the current disciplinary regime under section 14 of the Education Act 1989 needs to be supplemented with the creation of a uniform, impartial appeals tribunal which is capable of ensuring that the suspension, exclusion or expulsion of any student is both necessary and justifiable under the law. The Independent Appeal Panel would, we believe, act as a sound basis for any future implementation of an education tribunal in New Zealand. . The Panel provides a clearly delineated process of appeal, guaranteed to students as of right after a permanent exclusion and, unlike other mechanisms of accountability, has the power to take direct action by ordering reinstatement. Most of all, it is wholly independent and impartial, free from any prejudices and institutional pressures which may currently inhibit the decision making powers of principals and boards of trustees.

However, we are also of the view that the Independent Appeal Panel system cannot be replicated in New Zealand without some modification. These may include:

- **Jurisdiction.** In England, the right to a hearing before the Panel is limited to instances of 'permanent exclusion'. The jurisdiction of any proposed New Zealand tribunal should be broadened to encompass all instances where a student's right to education has been unfairly denied, terminated, or disrupted.
- **Membership.** The Panel is comprised of a mixture of former school personnel and lay people. We are of the view that a New Zealand tribunal should comprise individuals with legal training, as well as those with knowledge of the education system and lay people. Tangata whenua should also be represented.
- **Assistance.** The current Panel process fails to provide appropriate assistance for parents and students who may find the prospect of fighting a quasi-legal battle intimidating. It is our view that adequate provision for legal aid, or some form of assistance falling short of legal aid should be made where parents are unable to afford representation on their own accord.

Information for Members of the Media

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More information

We have prepared a range of sources and media contacts in connection with the issues identified in this report. We can provide on request:

- Names and contact numbers of young people willing to speak independently to media about their experiences at school and their opinions about the New Zealand education system
- Name and contact number for independent PhD research into stand-downs conducted in Christchurch concerning similar issues