POLICY TITLE: SUSPENSION, EXCLUSION OR TRANSFER OF STUDENTS IN ACT PUBLIC SCHOOLS
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LEGISLATION: Education Act 2004

1. Policy Statement
1.1 All schools must adhere to Section 36 (see Attachment A) of the Education Act 2004 when dealing with the suspension, transfer or exclusion of students from ACT public schools.

1.2 The power to suspend, transfer or exclude rests with the Chief Executive. Under Section 36 (10) the Chief Executive may delegate power to suspend a student from a public school for not longer than five days to the principal of the school. Principals cannot delegate this power to any other staff member.

1.3 If a student is suspended for seven or more school days in a school term (whether or not these are consecutive school days), the Chief Executive or delegate must ensure that the student is given a reasonable opportunity to access appropriate counselling. (Section 36 (9)).

1.4 Parents and carers must be consulted in the process of the suspension, transfer, re-entry and exclusion of a student.

1.5 When a student is suspended the school must forward a suspension form to the School Director within 24 hours.

1.6 The principles of natural justice and procedural fairness must apply to all proceedings.

2. Rationale
2.1 This policy sets out the responsibilities of the Chief Executive, principals and parents in relation to the suspension, exclusion or transfer of students in ACT public schools.

3. Definitions

Detention:
3.1 The process of restricting activities for students as a result of inappropriate behaviour.
**Exclusion:**

3.2 The process of preventing the child from continuing to be enrolled or being re-enrolled at any public school.

**Suspension:**

3.3 The process of withdrawing a child from school if a child displays behaviour described under section 36 of the Act.

**Transfer:**

3.4 The process of changing enrolment of a student from one school to another school.

4. **Procedures**

4.1 This policy must be read in conjunction with the Safe Schools Policy P-12 document.

**Detention**

4.2 When a detention is utilised by the school as a consequence of inappropriate behaviour the following procedures must be followed:
- students are to be provided with access to toilets and an opportunity to obtain and eat their morning tea and/or lunch
- prior arrangements must be made and approved in writing by the parents/carers when detention is to occur after school hours.

4.3 **Suspensions for up to five days**

4.3.1 Before a decision is made to suspend, the student must be given a reasonable opportunity to comment on information or material that the principal intends to consider in making the decision. The student must be given sufficient information about the decision making process to take part in this process.

4.3.2 The information must be given to the student in a language and way the student can understand.

4.3.3 The student must be offered the choice of having an advocate present.

4.3.4 The principles of natural justice and procedural fairness must apply.

4.3.5 Reasonable attempts must be made to inform the student's parents/carers. All attempts to contact the parents/carers should be documented. The parents/carers must be informed in writing about the proposed suspension of the student, the reasons for it and their right to appeal.

4.3.6 The student must be given a reasonable opportunity to continue their education during the suspension. See also Attachment B, Procedural Fairness and Natural Justice.

4.3.7 If, in the principal's opinion, the circumstances are of such urgency or seriousness as to require the student's immediate suspension, a suspension for up to five days may take place immediately. Students may be immediately suspended if the safety of students or staff is at risk, or because of serious physical violence or threats of violence or the possession of weapons or illegal drugs. Before suspending a student, the principal must comply with the requirements of 4.3.1, 4.3.2, 4.3.3, 4.3.4 and 4.3.5 of this policy to the extent that it is practicable and appropriate to do so.
4.3.8 Principals should confer with the appropriate Director of Schools in making this decision.

4.3.9 Where a decision has been made to suspend, the principal must ensure that the circumstances have been appropriately investigated and findings documented. The principal must gather and consider all relevant information fairly and consistently.

4.3.10 The school should maintain documentation to support the decision to suspend and will need to make this documentation available to the appropriate Director Schools in the case of an appeal. This documentation may include:

- procedures and criteria considered during decision making
- information considered leading to the decision
- reasons for the decision
- a record of actions and strategies taken by the school to support the student if there has been a history of problematic behaviour.

4.3.11 When a student has been suspended they must be advised to remain at school until the end of the school day unless supervisory arrangements have been made that ensure their safety.

4.3.12 If remaining on school premises the student may require segregation from other students for the remainder of the day. This should be consistent with the school’s student management policy. Students remaining at school should be supervised at all times.

4.3.13 A suspension form and a suspension letter (available on Index) must be completed and a copy of the form and letter sent to the parents/carers and to the appropriate Director of Schools.

4.3.14 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).

4.4 **Suspensions of more than 5 and up to 20 days**

4.4.1 The procedures set out in 4.3 must be followed.

4.4.2 The principal will forward a recommendation for a suspension of up to 20 days to the Chief Executive or delegate.

4.4.3 The student may be suspended for five days pending a response from the Chief Executive or delegate. The parents/carers and the student must be informed that the school is seeking a longer suspension. The Chief Executive or delegate will make a decision prior to the expiration of the initial suspension.

4.4.4 Principals will notify the parents/carers of the decision of the Chief Executive or delegate. This should be a verbal notification in the first instance, followed by written confirmation signed by the Chief Executive or delegate. (see Attachment C).
5. **Re-entry**

5.1 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 parents/carers to develop a program to support the student’s reintegration.

5.2 Consultation with parents and carers does not have to be a face to face meeting, although this is desirable where the suspension has been of more than one day’s duration.

5.3 Parents and carers should be advised of their rights to have a support person at any meetings, and that the school is able to organise an interpreter if one is needed.

6. **Transfer**

6.1 In cases where attempts to engage the student in effective participation in school have been unsuccessful and/or suspensions have proved ineffective, the principal may recommend to the Chief Executive or delegate that the student be transferred to another public school. (Section 36 (2) (b))

6.2 The principal must inform the parents/carers in writing that this action is being taken.

6.3 The principal will provide the Chief Executive or delegate with appropriate documentation to support the recommendation. The documentation may include:

- copies of suspension forms
- details of strategies used by the school to assist the student.

6.4 While the transfer of a student is being negotiated, the student must return to school if they are of compulsory school age, or the period of suspension must be extended to cover the period of negotiation. In the case of an extended suspension procedures at 4.4 of this policy must be followed.

6.5 The Chief Executive or delegate will make a decision about transfer within five working days after receiving the documentation and will advise the principal, student and/or parents/carers of the decision, or of the need for an extension of the suspension period to enable consultations to continue.

6.6 The appropriate Director of Schools will be responsible for identifying and negotiating entry to the new school.

7. **Exclusion**

7.1 In cases as in 6.1, the principal may also recommend to the Chief Executive, through the relevant Director of Schools, that the Chief Executive exclude the student from all public schools.

7.2 The principal must inform the parents/carers in writing that this action is being taken.

7.3 The principal, through the relevant Director of Schools, will provide the Chief Executive with appropriate documentation to support the recommendation. The documentation may include:

- copies of suspension forms
• details of strategies used by the school/s to assist the student.

7.4 The Chief Executive may extend the period of suspension beyond five working days to cover the period during which the recommendation to exclude is being considered.

7.5 The Chief Executive will make a decision about exclusion within ten working days after receiving the documentation and will advise the principal, student and/or parents/carers of the decision.

8. Appeals

8.1 Students and parents/carers must be advised in writing by the principal that they have the right to appeal a suspension or exclusion if they believe correct procedures have not been followed or that an unfair decision has been made.

8.2 Appeals against suspensions of up to five days

8.2.1 Appeals against suspensions of up to five days are made to the Chief Executive or delegate. Appeals should be made in writing, stating the grounds on which the appeal is being made. Appeals must be received within five days of the decision to suspend being conveyed to parents/carers. A form to facilitate a request for an appeal is at Attachment C.

8.2.2 Students or parents/carers who require assistance in lodging an appeal should contact the office of the Director of Schools. That office will identify appropriate support people, such as interpreters, if this assistance is requested.

8.2.3 The Chief Executive will appoint a Director of Schools from a district different from the one in which the student attends school to manage an appeal against a suspension.

8.2.4 Evidence is sought to demonstrate that the procedures set out in Section 36 of the Education Act 2004 were followed.

8.2.5 Where it is determined that the procedures were not followed, the appeal is upheld.

8.2.6 Where an appeal is upheld, the Director of Schools will determine what further action is to be taken. This will include removal of the record of suspension from the student’s file.

8.2.7 The fact that an appeal has been lodged does not put on hold the principal’s decision to suspend.

8.3 Appeals for suspensions of more than five days, transfers and exclusions

8.3.1 The decision by the Chief Executive or delegate to suspend a student for more than five days or to transfer or exclude a student, is a reviewable decision.

8.3.2 The parents of the student must be notified in writing of the decision.

8.3.3 The notice must be in accordance with the requirements of the code of practice in force under the Administrative Appeals Tribunal Act 1989. The code of practice is available from:
8.3.4 The parents of the student can lodge an appeal against the decision with the Administrative Appeals Tribunal (AAT). The AAT is a statutory tribunal which conducts external reviews of administrative decisions made on behalf of Government Departments and agencies.

8.3.5 Information about the application process is available on the AAT website at:


Attachments:

| Attachment A | Education Act 2004 – Section 36 |
| Attachment B | Procedural Fairness and Natural Justice |
| Attachment C | Appeal against a decision to suspend a student |

Policy Owner: Directors Schools
Related policies: Providing Safe Schools Policy P – 12
**Education Act 2004 - Section 36**

36 Suspension, exclusion or transfer of student by chief executive

(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 chief executive that the chief executive—

(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 chief executive may—

(a) give effect to the recommendation; or

(b) take any other action mentioned in subsection (2) that the chief executive considers appropriate; or

(c) suspend the student for not longer than 20 days.

(4) The chief executive 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

(e) the student has been offered alternatives for continuing the student’s education during the exclusion.
(5) The chief executive 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 chief executive may immediately suspend the student for not longer than 5 days if, in the chief executive’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 chief executive 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 chief executive 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 chief executive must ensure that the student is given a reasonable opportunity to attend appropriate counselling.

(10) The chief executive may delegate the chief executive’s power to suspend a student from a government school for not longer than 5 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.
PROCEDURAL FAIRNESS AND NATURAL JUSTICE

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 Department’s schools is one where the relevant legislation, guidelines or policies have been adhered to.

Representation of a child by a parent/caregiver is not a necessary requirement of natural justice, especially if the child is approaching adulthood. 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
• 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 parents/caregivers 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 parents or carers with details of all allegations relating to the incident. Principals should inform parents that they have the right to seek documents through freedom of Information procedures.
APPEAL AGAINST A DECISION TO SUSPEND A STUDENT FROM AN ACT PUBLIC SCHOOL

Appeals against the suspension of a student for up to five days may be submitted if the correct procedures as set out in Section 36 of the Education Act 2004 or as set out in this policy are 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 Chief Executive at the following address:

Department of Education and Training
PO Box 1584
TUGGERANONG  ACT 2901

or by fax to 6205 8327.

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

If you need assistance in submitting the appeal, please contact:

6205 7200 (Southside schools)
6205 7194 (Northside schools)
6205 5479 (Central schools).

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

The appropriate Director Schools 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 Director 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 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 this policy are not followed, or if you believe the decision was unfair.

The appeal against the decision must be lodged with the Administrative Appeals Tribunal (AAT). The AAT is a statutory tribunal which conducts external reviews of administrative decisions made on behalf of Government Departments and agencies. Information about the application process is available on the AAT website at: http://www.aat.gov.au/ or by telephone on (02) 6243 4611.
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 box*)

- 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.

Signature of person making appeal: ________________________________

Date: ________________________________