

References Within

The Education Act, 1995



- Section 2** Interpretation
Compulsory school age
Pupil
School
School site
- Section 141(1)** Right to education
142(1) Right to attend school
148 Mediation of conflict (student)
150 General duties of pupils
151 Pupil accountable to teacher and principal
152 General discipline
153 Referral to a committee
154 Suspension
155 Expulsion
156 Pupils to attend regularly
- Section 175** Duties of principals
(d) (h) (i) (k) (l)
- Section 231** Duties of teachers
(a) (b) (c) (d) (g) (i) (p)
- Section 232** Immunity from liability
- Section 367** Disturbing of schools or meetings

This pamphlet should not be construed as legal advice to cover every situation. Teachers, including principals, are advised to contact the STF should they require advice or assistance with respect to a particular circumstance or situation.



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Student Discipline



Rights and Responsibilities of Teachers and Principals





Sometimes teachers and principals feel that their hands are tied in dealing with students whose misbehaviour makes it difficult for teachers to teach and other students to learn. It is important for you to know what you **can** do. *The Education Act, 1995* actually provides some very specific processes which may be a part of the plan for dealing with discipline issues.

The Duty of Teachers

The Education Act, 1995 [Section 231(2)(i)] makes it the duty of teachers to exclude a student from a classroom for “overt opposition to the teacher’s authority or other gross misconduct.” You not only have a right to do this, but an obligation to your other students. The behaviour must be serious, inexcusable and beyond what a reasonable person would accept. However, ultimately a teacher has considerable discretion. School or division policies might be of guidance in helping you determine whether some behaviour is serious enough to warrant excluding a child from class, but it is the teacher who makes the decision. You must report the exclusion in writing to the principal by the end of the school day. You must accept the student back into your classroom the next day and can only exclude the same student again for another incident.

A teacher cannot issue a “suspension” from class. A teacher’s authority is limited to exclusion of a student from the classroom under Section 231(2)(i) for the remainder of a school day. Under Section 154, only a principal may impose a suspension of a student for not more than three days [154(1)(a)] or not exceeding 10 days [154(2)] or a board of education for up to one year [154(7)] or for a period greater than one year [155(1)].

What the Principal May Do

A principal may suspend a student for a maximum of three days at a time for overt opposition to authority or **serious** misconduct.

A principal may suspend a student for a maximum of 10 days at a time for **gross** misconduct.

Defining Gross Misconduct

The Education Act, 1995 defines it this way:

- a) persistent overt opposition to authority,
- b) refusal to conform to rules of the school,

- c) irregular attendance,
- d) habitual neglect of duties (the duties of students are defined in Section 150),
- e) willful destruction of school property,
- f) use of profane or improper language,

or other behaviour that, in the opinion of the principal, is equivalent to these offences. Some conduct, like threatening a teacher with physical assault, might be considered “gross misconduct” if it happens only once. In other cases it is the **persistence of misconduct** which makes it gross misconduct.

BE IT RESOLVED that the STF prepare a document relating to teachers’ specific legal responsibilities and obligations in the event a student leaves a teacher’s supervision without permission or is sent home for disciplinary reasons, and that such a document be available to teachers no later than the beginning of the 2000-2001 school year.

- A. Teachers and principals stand in the place of a parent in relation to students and as such owe a duty of care. Teachers could be held liable for injuries occurring to students who leave the school premises or other supervised activity areas with or without permission if the teacher’s actions are found to be below the standard of a reasonably careful or prudent parent.
- B. **A student leaves a teacher’s supervision without permission:** Some of the factors to be taken into consideration are: the circumstances under which the student left the school, the age and maturity of the student, whether or not the parents were notified, whether or not any steps were taken to locate the student.
- C. **A student is sent home for disciplinary reasons:** A teacher cannot send a student home for disciplinary reasons, only a principal can. A teachers’ authority is limited to excluding a student from the class for overt opposition to the teacher’s authority or other gross misconduct. If a principal sends a student home for disciplinary reasons, parents should be contacted immediately to ensure whether adult supervision was available upon the student’s arrival at home.

The Rights of Students and Parents

It is important that the principles of natural justice are followed when giving the student a hearing or assessing the circumstances of the case. The courts are usually more concerned about the process and are content to let the discretion rest with the principal in determining what is serious or gross misconduct.

In the case of a suspension of up to three days, the principal is only required to notify the parents. This would best be done by a telephone call followed up by a letter explaining the circumstances [154(b)].

For a longer suspension the requirements for natural justice are more rigorous. They are outlined in Section 154(3):

- a) report the matter to the director,
- b) inform the pupil of the reason for the suspension,
- c) prepare a written report of the circumstances for the suspension and give that report to the director and the parent or guardian,
- d) provide a hearing to either the student or the parent or guardian if requested.

The Role of School Boards

Boards may develop policies which provide guidance to the principal and teachers. However, these policies **MAY NOT** restrict the **duty** of teachers to exclude students from a class for overt opposition to authority or gross misconduct. Policies might include what procedures are to be followed when a student is excluded, but they could not, for example, forbid exclusion from class or require approval of a principal or director before the exclusion.

Board policies may not take away from principals the discretion they have in making suspensions. These policies might impose some additional requirements about reporting or provide guidelines for how the notification of parents is to be done or how hearings are to be conducted.

A school board may:

- 1) initiate its own investigation when a student has been suspended by a principal for more than three days,
- 2) confirm, modify or overturn a suspension of more than three days [154(4)],
- 3) expel a student for up to one year from all schools in the school division [154(7)],
- 4) exclude a student for more than one year from attendance in any or all schools within the school division [155(1)].

Considering the Age of Students

It does not matter whether the child is of compulsory school age (7-16). The law is applied the same for all students.

It is important that the focus be on the fact that **the behaviour is unacceptable** rather than on the nature of the child. The child is being removed because he or she did something bad not because the child is bad.

