

# Clarity, correctness required

The recent case of a student who would not cut his hair seems like a very minor thing to end up in a High Court case, but it illustrates two important principles:

1) All rules have to be clear and certain

2) The correct processes have to be followed and decisions have to be fair and reasonable.

The High Court held the school's hair rule was not certain. It did not refer to a student's hair being "cut" but only to it being off the collar and out of the eyes.

A school rule must be precise enough to allow students and parents to fully understand the rule and comply with it – a rule that leaves the discretion to the principal is too uncertain.

There was conflicting evidence as to whether the student's hair complied with the rule. The court invited the school to consider whether it should have a hair rule that was fair under the Bill of Rights (autonomy, individual dignity and freedom of expression).

In addition to being clear and certain, any punishment of a breach must be the least necessary in the circumstances and interfere as little as possible with a student's attendance at school. The court found the continued disobedience of the rule was not shown to be harmful or a dangerous example to other students at the school, which is required



## LEGAL MATTERS

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before a principal can suspend.

The principal also failed to ensure that serious disciplinary results were reserved for truly serious cases. A less drastic disciplinary outcome was not explored. The judge asked why did they just not ban the student from the 1st XV. The school's reply was that that was seen as too severe, to which the judge's reply was "and suspension from school is not?"

All New Zealanders are entitled to free education from age 5 to the end of year in which they turn 19. The penalty here did not minimise the disruption to the student's attendance at school.

The disciplinary committee of the school's Board of Trustees also overlooked these requirements when it continued the suspension. It required the student to cut his hair to the satisfaction of the principal if he wished to return to school. That went beyond even what the rule provided.

All processes must comply with natural justice, which means a fair and reasonable process and outcome.



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Each case has to be considered on its merits. There can be no automatic stand-downs or suspensions. The principal must consider the evidence and all the circumstances.

Students facing a disciplinary investigation have a right to:

- Remain on the school register.
- Have procedures consistently applied.
- Be told of possible outcomes (so they can decide on representation).
- Know the charges they face.
- Know all the evidence upon which the decision is based.
- Comment on and challenge the evidence.
- Defend themselves in person or with a representative.
- Have adequate time to prepare, that is, receive all information at least 48 hours prior to the School Board meeting.

The Board (or properly

delegated disciplinary committee):

- Must meet to decide on continuing or lifting the suspension within seven school days (10 days if at the end of a term).

- Must act fairly and reasonably.
- Must receive the principal's report (but no recommendation).
- Must hear matters with an open mind and listen to the student, any representative and witnesses.
- The principal can be asked to leave while the decision is made. If the principal is to stay then the student and representative must also be allowed to stay.

■ Any board members with a conflict should declare the conflict and withdraw before or at the start of the meeting.

■ While the suspension is in place the student should not attend the school unless the principal approves their attendance for a special reason, for example to sit an exam.

In the case before the court, both the school's rule and the processes followed by the principal and board were faulty and the student's suspension was overturned. The school will have to fix up its rule so that all can understand and comply with it. It must follow a fair process if it wants to enforce any new rule.

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