

# Natural Justice and Procedural Fairness

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drawn from *Being Fair: a procedural fairness manual for Australian schools*. National Children's and Youth Law Centre 1999

Natural justice and procedural fairness applied to individuals are based on two rules:

- *the rule against bias*
- *the fair hearing rule*

The **rule against bias** in an administrative matter does not require that bias be proved, rather that there is a real likelihood that it exists.

While principals are the only ones who can legally suspend and exclude, the need to monitor one's own bias and consult where one feels a danger of pre-judging is very important.

The **fair hearing rule** has several aspects

- ***the right to know the matters alleged***

If a decision is to be made about a person, then that person must be entitled to know any allegations made against them and any matter which will be taken into account by the decision maker.

*The decision-maker must not assume that it is obvious that, for example, previous similar behaviour or the severity of the behaviour, has been part of the decision of the sanction.*

- ***the right to respond***

The person has a right to respond to the allegation.

*The person against whom the allegation is made must have a real opportunity to respond and have their views and experience heard. It has been suggested that the right to be heard extends to questioning of witnesses and other third parties. There are many reasons why this may not be appropriate in schools. However, one way of addressing this is to invite the person against whom something has been alleged to name others that the investigator will interview.*

- ***the right to representation***

The right to be aware of and respond to allegations is meaningless if the person is not fully able to comprehend or respond properly.

*The concept of some advocacy or support may be relevant for a number of students eg counsellor, trusted teacher, AEW, Special Education support SSO, Bilingual SSO. This may be a question of capacity eg NESB, intellectual impairment, mental illness, or a question of cultural understanding, emotional distress or power imbalance. The right to representation will also apply to parents at suspension and exclusion conferences.*

- ***the standard of proof***

Administrative decisions have as a standard of proof "the balance of probability" i.e. the decision-maker must decide that, on the evidence, one version is more probable than the other. However, the onus is still on the person making the allegations to satisfy the decision-maker rather than on the one complained of to prove their innocence.

*One area where this can be problematic for school leaders is where it is the teacher's word against a student's. It would not be natural justice to assume that, prima facie, a teacher is more honest than a student. In this situation it is strongly urged that other parties be interviewed to seek further information.*

- ***decision based on relevant evidence***

Evidentiary rules of court do not apply. However, administrative decisions must not ignore pertinent evidence or take irrelevant factors into account. It is appropriate to consider any other penalty the party has already incurred as a result of their actions.

The standards for procedural fairness are raised in relation to the seriousness of the outcome.

Where a matter has been, or may be, referred to the police, then the student and their parents should be notified of this before the school undertakes any further investigation.