# Frequently Asked Questions –

# Managing inappropriate and hostile conduct procedure

Directions and orders are available under the [Education (General Provisions) Act 2006, (The Act) Chapter 12, Part 5](https://www.legislation.qld.gov.au/view/whole/html/inforce/current/act-2006-039#ch.12-pt.5) and through the [Legislative Delegation of Director-General’s Powers](https://ppr.qed.qld.gov.au/delegation/education-general-provisions-act-2006-director-general-delegations.pdf) under the Act.

#### What is meant by “good order and management” at a school?

#### How do directions and orders interact with human rights?

***Questions about conduct for which a direction may be given***

#### Can conduct exhibited during an incident outside the school premises be considered in deciding whether a ground for a direction exists?

#### Can conduct exhibited during an incident that occurred outside of school hours be considered in deciding whether a ground for a direction exists?

#### Can an abusive phone call be considered in deciding whether a ground for a direction exists?

#### What options are available if a person is prohibited from school grounds but loiters close by the school with the intention of causing nuisance?

***Questions about giving a direction***

#### What is meant by “forming a view a relevant ground exists”

#### When does a direction commence?

#### How is the duration of a direction determined?

1. ***Who can give a direction when the principal is not at the school?***
2. ***Who can give a direction if the inappropriate conduct has been directed at the principal?***

#### Can a written direction be given by email?

1. ***What should a witness statement include?***
2. ***Are there any legislated time limits regarding the date a direction is given after an inappropriate incident?***

***Questions about recording and sharing information***

#### How is a Hostile person record added to OneSchool?

#### Does a direction given to a parent/carer appear on the student’s OneSchool record, and for how long are records retained?

1. ***Can a school share information about a person’s inappropriate conduct with another school?***

***Questions about legal terms***

#### What is procedural fairness?

#### What is balance of probabilities?

#### What is redaction?

***Scenarios***

#### Families across more than 1 school

#### Managing students from other schools

#### Breaches to Directions and orders

#### What is meant by “good order and management” at a school?

Involves the process of managing day-to-day operations in the school in an efficient and effective way that allows educators and administrators to undertake their duties, and students to be able to learn, in a safe environment that operates at a standard expected by the department, the school and its community.

#### How do directions and orders interact with human rights?

Directions and orders given for inappropriate and hostile conduct limit human rights, particularly the right to freedom of movement (s19 of the Act).

Protecting the safety of members of the school community and ensuring the good order of a school is consistent with a free and democratic society based on human dignity, equality and freedom. People should feel safe to enter their workplace or educational setting. Children should have access to quality well run schools.

The Principal or Director-General (or delegate) must determine that the benefits of protecting the school community outweigh any limit to freedom of movement.

The intention for any direction given must be to protect the school community and ensure that the school can be effectively managed, allowing children to access their right to education.

All decisions must include a [human rights assessment](https://ppr.qed.qld.gov.au/attachment/hostile-conduct-human-rights-impact-assessment-tool.docx) and all direction letters should state, *‘In making this decision, I have given consideration to relevant human rights as outlined within the Human Rights Act 2019 (Qld).’*

***Questions about conduct for which a direction may be given***

#### Can conduct exhibited during an incident outside the school premises be considered in deciding whether a ground for a direction exists?

#### Yes, section 337, 340, 340A and 341 directions may be given for inappropriate conduct that occurred outside the school premises during a school activity or event if the decision-maker has formed the view a relevant ground exists. A section 339 oral direction (to leave the premises) cannot be given for behaviour that occurred offsite because it relates only to immediately leaving the school premises.

#### Can conduct exhibited during an incident that occurred outside of school hours be considered in deciding whether a ground for a direction exists?

Yes. Directions do not have time specifications and may be given for conduct that has occurred before, during or after school hours, on weekends, or during school holidays if the decision-maker has formed the view a relevant ground exists for the direction.

#### Can an abusive phone call be considered in deciding whether a ground for a direction exists?

Yes, if the conduct presented in the phone call (as if that conduct had occurred in person) satisfies one or more grounds for giving a direction then a direction could be given. A section 339 oral direction (to leave the premises) would **not** apply for phone calls because it relates only to leaving the school premises.

#### What options are available if a person is prohibited from school grounds but loiters close by the school with the intention of causing nuisance?

If a prohibited person loiters close to the school but not on premises (e.g., footpath, local bus stop, across the road from the school), the principal should discuss the situation with local police to determine if an offence is being committed or if other Orders may be applied for.

Principals may consider additional security requirements in consultation with the Regional Office (e.g., improved fencing or lighting, secure areas within the administration building).

***Questions about giving a direction***

1. ***What is meant by “forming a view a relevant ground exists”***

Section 337, 339, 340/340A and 341 directions each have relevant grounds that the conduct must meet before a decision on whether a direction should be given to a person. The decision-maker should be satisfied that the conduct exhibited during an incident meets one or more of the grounds before giving a direction.

The grounds for giving a direction are:

Section 337 direction about conduct or movement:

* to ensure the safety or wellbeing of other persons lawfully at the premises
* to prevent or minimise damage to the premises or to property at the premises
* to maintain good order at the premises
* for the proper management of the institution.

Section 339 direction to leave and not re-enter (the person):

* has committed, or is about to commit, an offence at the premises
* has used, or is about to use, threatening, abusive or insulting language towards another person at the premises
* has engaged, or is about to engage, in threatening or violent behaviour towards another person at the premises
* has otherwise disrupted, or is about to disrupt, good order at the premises
* does not have a good and lawful reason to be at the premises.

Sections 340/340A or 341 directions prohibition from entering premises:

* to cause physical harm to, or apprehension or fear of physical harm in, another person when the other person is at the premises; or
* to damage the premises or property at the premises; or
* to disrupt the good order or management of the institution.
1. ***When does a direction commence?***

A direction commences from the time the person receives it.

A section 339 direction to leave and not re-enter the premises requires the directed person to immediately comply and leave the premises for a 24-hour period, which begins immediately after the direction is given and the person’s compliance with the direction.

The relevant period of other directions commences after the day on which the direction is given. Therefore, if a direction notice is given on a Tuesday morning, the first day of the direction period will commence the following day on the Wednesday.

1. ***How is the duration of a direction determined?***

Legislation provides a maximum duration for each direction, however, the person giving the direction determines the appropriate duration (up to the maximum). Factors taken into consideration include:

* the extent of the behaviour for which the direction is being given
* whether a direction is required until the end of a term or the end of a school year to protect the safety and wellbeing of a person (or people) at the school
* whether the person should be allowed, or excluded from, particular upcoming school events (e.g., a graduation ceremony).
1. ***Who can give a direction when the principal is not at the school?***

A principal cannot delegate their power to give a direction to another employee. A person in the position/role of acting Principal (as nominated by the principal or principal’s supervisor) has authority to give a direction if a view is formed that a relevant ground exists for a direction.

For multi-campus schools, it is the responsibility of the principal to use all available evidence to decide if a direction should be given, even if they did not witness the hostile conduct first-hand.

1. ***Who can give a direction if the inappropriate conduct has been directed at the principal?***

The Director-General or delegate (e.g., the Regional Director) may give a section 340 direction under section 340A of the legislation or a section 341 direction depending on the seriousness of the incident or when the principal is prevented from giving a direction by the principles of natural justice relating to bias. This is appropriate where the conduct to be considered in deciding whether a ground exists includes conduct directed at the principal.

 The principal should discuss the matter with their Regional Office.

1. ***Can a direction be given by email?***

Email **cannot** be used as the primary method of giving a written direction. Only a **copy** of the direction can be emailed.

A decision-maker is required to give the written direction to the person by delivery in-person (e.g., using the services of Queensland Police Service) or by registered post, to the last known address of the person’s place of residence, to ensure the person becomes aware of and receives the direction.

Enforcement of the direction commences once the person has received the direction.

1. ***What should a witness statement include?***

There are no specific standard requirements for completing a witness statement. Statements may be handwritten or typed and should include the person’s direct speech account of what they saw or heard (including their recollection of any words spoken), details of who was involved (if known) and who was present (e.g., names or, if unknown, a description, such as ‘a group of Year 6 students’), when and where the incident occurred, and if appropriate, how it made them feel (e.g., threatened, scared). Witness statements should include the name, role and signature of the witness and the date the statement was made. As a guide use the optional [witness statement template](https://intranet.qed.qld.gov.au/Services/Capability/health-wellbeing/Pages/principal-hotline-conflict-resolution.aspx) and keep a record of the witness statement in OneSchool.

1. ***Are there any legislated time limits regarding the date a direction is given after an inappropriate incident?***

The decision-maker should consider whether a ground for a direction exists as soon as possible after the relevant facts and circumstances come to their attention. A direction should be given as soon as practicable after the view is formed that a ground for a direction exist.

***Questions about recording and sharing information***

***15. How is a hostile person record added to OneSchool?***

In OneSchool, navigate to the **Reports** tab. Use the drop-down menu to select **School Management**, and then select **Hostile Persons**. You will be able to select the type of direction given and enter details of the person’s name, date of direction and notes. Any requests by the person for a review of the direction, should also be entered in this section of OneSchool. For further advice visit [Hostile persons record](https://oneschoolhelp.eq.edu.au/school-management/hostile-persons/how-to-add-a-hostile-person-record)

***16.*** ***Does a direction given to a parent/carer appear on a student’s OneSchool record, and for how long are records retained?***

 No. Information about directions recorded as a *Hostile Persons* record on OneSchool are stored separately to student records. Information is retained in accordance to the [Queensland State Archives](https://www.forgov.qld.gov.au/information-and-communication-technology/recordkeeping-and-information-management/recordkeeping/disposal-of-records/search-for-a-retention-and-disposal-schedule/general-retention-and-disposal-schedule-grds) retention and disposal schedule.

***17. Can a school share information about a person who has been given a direction with another school?***

No, schools cannot share information with another school about a person who was given a direction.

***Questions about legal terms***

***18. What is procedural fairness?***

Procedural fairness applies to any decision that can affect the rights, interests or expectations of individuals. Procedural fairness acts as a safeguard for the individual whose rights are being affected and comprises of two elements:

• the right to be told the allegations against you, a reasonable opportunity to see and consider the evidence relied upon by the decision maker, and a reasonable opportunity to present your case and be given a fair hearing before the decision is made, and

• the right to have a decision made by an unbiased decision maker.

These rules have been designed to ensure that all decision-making is fair and reasonable.

***19. What is natural justice?***

There are generally considered to be three aspects of natural justice:

1. *The notice requirement*

The notice to the affected person must identify the critical issues and contain sufficient information for the person to be able to participate meaningfully in the decision-making process.

1. *The fair hearing rule*

A fair hearing means that the affected person is given a reasonable opportunity to ‘speak or respond’ and also that the decision-maker genuinely considers the affected person’s submission in making the decision.

1. *The lack of bias rule*

The person making the decision must act impartially in considering the matter. Bias is a lack of impartiality for any reason and may be in favour of or against the affected person. It may arise from the decision-maker having some financial or other personal interest in the outcome of the decision (conflict of interest), or giving the impression that they have prejudged the issue to be decided (prejudgement). Bias can be actual or apprehended. Apprehended (or the appearance of) bias is judged by whether a fair-minded observer properly informed as to the facts or the nature of the proceedings or process might reasonably apprehend that the decision-maker might not bring an impartial or unprejudiced mind to the resolution of the issue.

***20. What is balance of probabilities?***

The balance of probabilities requires the decision maker to weigh up all the material gathered and decide, on balance, whether the evidence supports the allegation and can ‘more likely than not’ be capable of being substantiated.

***21. What is redaction?***

Redaction is the process of obscuring information that cannot be disclosed by blocking out individual words, sentences or paragraphs or removing sections or whole pages from a document prior to its release or publication. There are a number of redaction methods, whichever method is used the end result must ensure that the text that has been removed from the document cannot be seen or ‘guessed’ by the reader. This means ensuring that the text in the document is sufficiently obscured so that it cannot be deciphered.

When giving a direction, the principal is required to provide a copy of all information used to make a decision to the directed person. Prior to releasing or sharing information, it is essential that every effort is made to redact sensitive or private information from documents, such as witness statements.

The type of information that may need to be redacted prior to release or sharing of information includes names and addresses of staff, students and members of the community.

***Scenarios***

#### Families across more than 1 school

**Situation.** A family member as been given an order from the high school to prohibit entry to the school for 80 days. The parent becomes aware of an issue involving their younger child at the local primary school. The parent does not enter the primary school, however sends their older child from the high school onto the primary school to “sort out” the situation, as stated by the high school student.

**Response:** The high school student (provided that they have been identified) is considered an exempt student. In this case, the primary school should notify the high school of the student incident and the high school is to follow the [student discipline procedure](https://ppr.qed.qld.gov.au/pp/student-discipline-procedure). The principal Advisor Education Services (PAES) should be notified of the incident. The details of the Parent’s Direction at the primary school cannot be shared between the two schools as this is considered a breach of privacy. The PAES may advise the Director General (or Delegate) of the situation and a warning letter may be issued from the Director-General (or Delegate) on behalf of the primary school. If the parent breaches or continues to exhibit hostile behaviour at the high school, the high school Principal may wish to escalate the issue to the Director-General (or Delegate) to seek a QCAT Order (s325, s353) in wh9hc case the Director-General (or delegate) can use the primary school incident as further evidence to support the Order.

#### Managing students from other schools

**Situation:** Just before the start of the school day, a student from a neighbouring school enters the school premises and starts to assault a student enrolled at the school.

**Response:** If the situation is critical and places staff and students at risk of harm, call 000. If the Principal is able to move the student from the neighbouring school into a safe location (e.g. the main office), the Principal should request the student to complete a school-based witness statement. As the student from the neighbouring school is considered an exempt student, the principal should notify the other school of the incident. It is the responsibility of the other school to follow the [student discipline procedure](https://ppr.qed.qld.gov.au/pp/student-discipline-procedure).

#### Breaches to Directions and orders

**Situation:** A parent/carer has been issued with a Direction to prohibit entry to the school premises for 65 days. It is day 50 of the direction being enforced. The parent has emailed a staff member and made threats of physical violence towards that staff member.

Response: This is considered a breach of the current direction on the grounds that the parent/carer is likely to cause physical harm or cause fear of physical harm towards someone (namely a staff member). The staff member is to report it to the principal as soon as possible. The principal can request the Director-General (or Delegate) to give a s341 direction (preventing entry for up to 1 year). If a s341 is given, it will supersede the current order and take effect (upon the parent/carer receiving the direction letter). The principal can otherwise request the Director-General (order Delegate) to seek a QCAT order (s352, s353).