

Non-attendance direction guidelines

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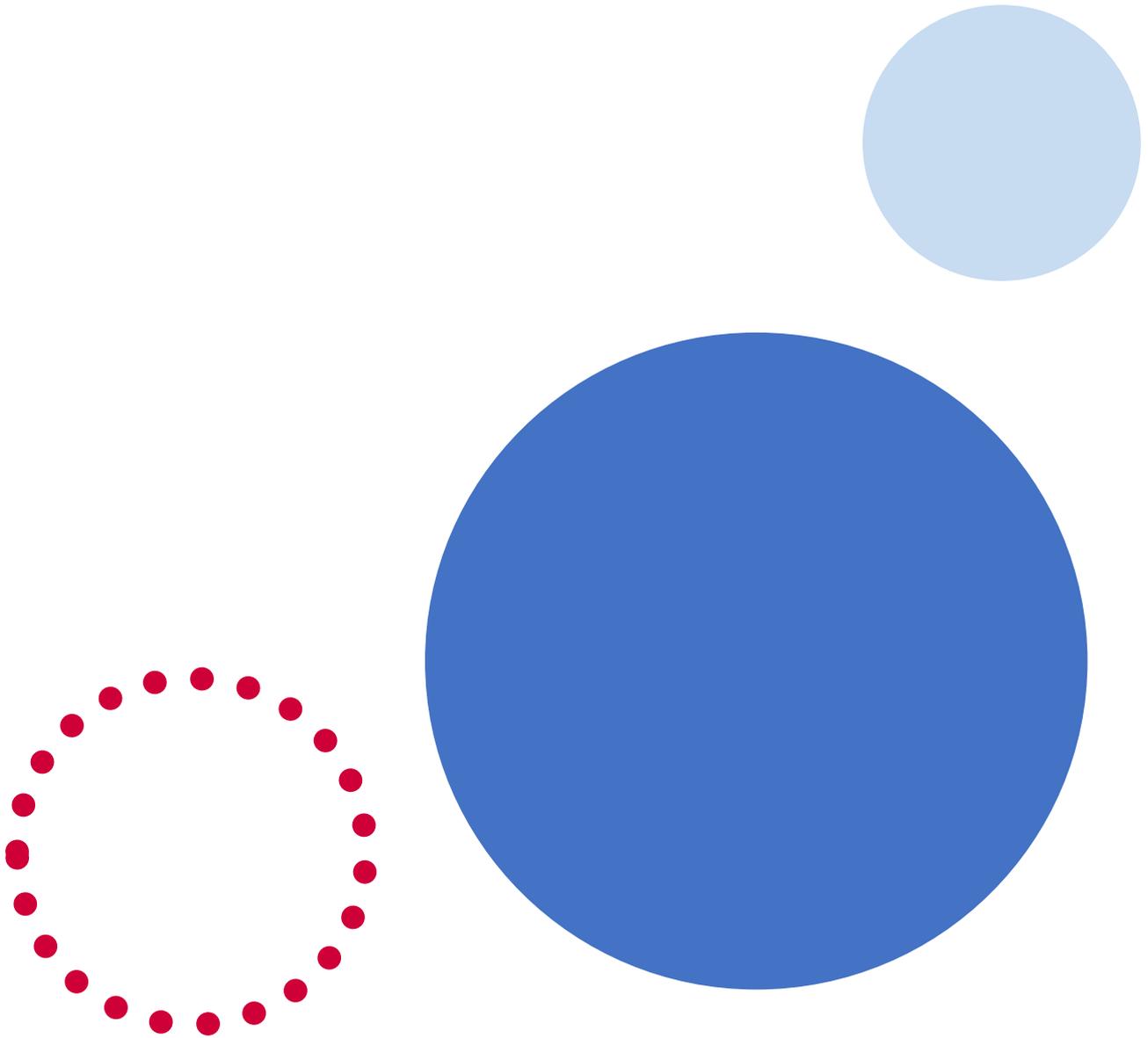


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1. Introduction

2. These guidelines have been issued by the Minister for Education and Early Childhood Learning (the Minister) under Part 5A of the Education Act 1990 (NSW) (the Act) in relation to the power to issue a non-attendance direction to a student.
3. The non-attendance direction is not intended to be used where the behaviour has occurred, and action is possible under the Department of Education's Suspension and Expulsion of School Students Procedure.
4. Principals and school staff that are concerned about students potentially engaging in serious violent conduct or extremist behaviour should contact the Department of Education's Incident Support and Report Hotline for assistance.

2. Application of these guidelines

5. The purpose of these guidelines is to provide further detail, in addition to the provisions of the Act, on how the non-attendance direction power under the Act will be used by the Minister and delegates within the Department of Education. These guidelines are made under the authority of Part 5A of the Act and therefore have the force of law.
6. These guidelines are in addition to the current Guidelines Issued under Part 5A of the Education Act 1990 for the Management of Health and Safety Risks Posed to Schools by a Student's Violent Behaviour.
7. These particular guidelines will apply to students attending NSW Government schools. At this stage they will not apply to non-government schools or to students attending Education Training Units within Juvenile Justice facilities.
8. The guidelines provide guidance to parents, legal guardians and other carers (hereafter referred to as **parents**), school principals, school staff, students and others as to when and how the non-attendance direction powers will be used, and their rights and responsibilities.

3. Why have a power to issue a non-attendance direction?

9. Education plays a vital role in the life of children and young people enabling them to become functioning, contributing and valued members of the community. Education is also a key protective factor for children and young people who are at risk of exhibiting serious violent behaviour.
10. The Act provides that every child has a right to receive an education. Parents of all children of compulsory school age must comply with the requirements of the Act for their child's education.
11. While schools are among the safest locations in the community, some of the individuals who have a propensity for violent or other behaviour giving rise to risks to health and safety, can be school students. Most behaviour that threatens the safe and secure environment of schools, including physical or psychological violence or violence that

causes damage to school property, can ordinarily be dealt with under existing legislation and policies.

12. However, some circumstances that involve the potential for serious violent conduct or extremist behaviour by students will necessitate the department taking additional and immediate action to enable it to assess and protect the significant risks to the health and safety of students and staff.
13. Accordingly, the Act has been amended to build on the department's existing strategies and mechanisms for addressing the significant risk of serious violent conduct and extremist behaviour in schools. The amendments:
 - (a) (a) enable the Minister or his or her delegate, in particular circumstances, to direct a student not to attend school for a specified period (a non-attendance direction) and
 - (b) (b) require the Minister or the delegate to assess whether the student's ongoing attendance at school constitutes a health and safety risk and, if appropriate, develop risk management strategies to enable the student to attend school.
14. These powers are not intended to be used to address minor risks to health and safety. The department recognises that a child or young person's inappropriate behaviour or interests can be symptomatic of multiple factors, including but not limited to their exposure to violence, abuse or trauma their inability to communicate effectively poor physical and mental health and disability.
15. These powers are intended to be used where the Minister or the department assesses the risk to health and safety in a school to be **significant**, until appropriate assessment, management and support strategies can be put in place.
16. In particular, the purpose of these powers is to provide the department with time to assess the risks presented by students with a propensity for serious violent conduct or extremist behaviour and, to the extent practicable, implement sound strategies to enable those students to attend school without compromising the safety of fellow students and staff.
17. The powers are for use where the Minister (or delegate) believes on reasonable grounds that:
 - there is a significant risk that a student will engage in **serious violent conduct** (refer to the definition below) or
 - a student supports terrorism or violent extremism (**extremist behaviour**), and
 - the Minister (or delegate) believes on reasonable grounds that the issuing of a non-attendance direction is necessary to protect the health or safety of the students or staff of any school.
18. **Serious violent conduct** means conduct constituting:
 - an offence involving loss of life or serious risk of loss of a person's life, serious physical or psychological injury or serious risk of such injury to a person or serious damage to property in circumstances endangering the safety of any person
 - conduct constituting a serious offence of a sexual nature or
 - conduct constituting an offence involving serious animal cruelty,regardless of whether the student cannot or might not be held criminally responsible for the conduct.
19. **Extremist behaviour** is demonstrated when a person is willing to use or support unlawful violence to promote political, ideological or religious goals.

20. It will generally be necessary for the Minister or his or her delegate to establish, based on information that comes from, or is validated by, a credible source, that the student has engaged in serious violent conduct or extremist behaviour outside of school, or is planning serious violent conduct.
21. A credible source includes, but is not limited to, a state or federal police force or law enforcement agency, information from school staff, students, parents or the head of a program that students are participating in outside of school. An assessment must be made by the decision maker as to the credibility of the source before a non-attendance direction is issued.
22. Examples of situations which give rise to a significant risk of a student engaging in serious violent conduct or extremist behaviour that affects the health and safety of students or staff at school are set out in [Attachment A](#). Attachment A also includes examples of behaviour where the risk would not be of a significant level, or where it would not be necessary to use the power to protect the health or safety of students or staff at school.

4. General principles applying to action under the guidelines

23. All students should be treated with dignity and enjoy the benefits of education and training in an educationally supportive environment which values and encourages participation and safety.
24. These guidelines only apply to students who pose a significant risk of serious violent conduct or extremist behaviour.
25. Everyone involved in action under the guidelines should be aware that:
 - everyone is entitled to be treated with dignity and respect and to have their views considered
 - parents and students play a significant role under the guidelines
 - schools must do all that is reasonably practicable to assess and control health and safety risks posed by a student's violent or potentially violent behaviour. This process is assisted by school staff, parents and the student working together
 - action under the guidelines involves, to the extent possible:
 - ensuring that any action or assessment is undertaken as quickly as possible so as to minimise any disruption to the student's education
 - everyone understanding their roles, rights and responsibilities
 - everyone understanding that to modify behaviour it is first necessary to understand why that behaviour is occurring
 - principals, school staff and employees of the department, relevant agencies and authorities, and external experts appointed having open channels of communication and
 - educational authorities, principals, school staff and schools complying with any duties at common law and any statutory responsibilities including those under health and safety legislation.
26. It is not necessary for information obtained under or in connection with Part 5A of the Act to be disclosed to any person, including in any reasons for decision to give a non-attendance direction, if there are reasonable grounds to believe that such disclosure would:
 - endanger a person's life or physical safety

- enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained
 - prejudice the investigation of a contravention, or possible contravention, of a law in any particular case or
 - not be in the public interest.
27. The person who decides to issue the non-attendance direction will be responsible for determining whether any information obtained under or in connection with Part 5A of the Act should be disclosed to any other person external to the department. Any decision to disclose information should be made following consultation with the NSW Police or other relevant law enforcement agency and will also need to take into account the non-publication provisions that apply under the Children (Criminal Proceedings) Act 1987 (NSW) and the Children and Young Persons (Care and Protection) Act 1998 (NSW) and other laws.
28. In particular, Division 3A of the Children (Criminal Proceedings) Act 1987 (NSW) and section 105 of the Children and Young Persons (Care and Protection) Act 1998 (NSW) prohibits the publication or broadcasting of any information which is likely to lead to the identification of a child that connects the child with criminal or Children’s Court proceedings.

5. Additional principles applying to Aboriginal and Torres Strait Islander students, students from other linguistically or culturally diverse backgrounds, students with disability and students in out-of-home care

29. All students have a right to fair, equitable, culturally inclusive and significant educational opportunities so that all students obtain a high quality education as a platform for enriching their life chances and achieving their full potential.

Aboriginal and Torres Strait Islander students

30. Schools and educational authorities are committed to improving the educational outcomes and wellbeing of Aboriginal students so that they can excel and achieve in every aspect of their education and training.
31. The particular importance of an Aboriginal student being able to maintain contact with, and enjoy the support of, their local community is recognised and will be a key consideration in making decisions under the guidelines.
32. Schools and educational authorities will explore every available avenue including outside government and non-government agencies to ensure Aboriginal students are supported to be able to continue with their education.
33. School based strategies to support Aboriginal and Torres Strait Islander students will be linked to the student’s personal learning pathway (where one is in place), involve the student and his or her family.

34. Best endeavours will be taken to ensure an Aboriginal or Torres Strait Islander person is with a student during discussions about behaviour that is being dealt with under the guidelines and, where relevant, gender considerations (Men's/Women's business) are taken into account.

Students from other culturally or linguistically diverse backgrounds

35. Schools should use the resources and services available to support the needs of specific groups of students including new arrivals, refugees and other students from culturally or linguistically diverse backgrounds and have planned how to support them.
36. Focus areas include cultural diversity and community relations and refugee and support programs. Existing plans to support the student should be reviewed in consultation with the student and their family.
37. Consideration should be given to arranging for an interpreter when speaking with families from linguistically diverse backgrounds. Information about interpreting and translation services is available from the department's Interpretation and translation services guidelines.

Students with disability

38. For a student with disability, consideration must be given to the requirements of the relevant anti-discrimination legislation and the Commonwealth Disability Standards for Education 2005 (see 'Discrimination' for more information).
39. Serious violent conduct or extremist behaviour for some students may be associated with impaired understanding or communication associated with a cognitive disability, developmental disability or mental health.
40. Schools should provide personalised learning and support in consultation with parents and, where practicable the student, to enable each student with disability to access and participate in educational activities on the same basis as other children.
41. Consultation with allied health and health professionals, school counselling service and behaviour support staff can provide further assistance to ensure students with disability are supported to continue their education.
42. If a student with disability exhibits the kinds of behaviours dealt with under the guidelines, existing planning for the student must be reviewed in consultation with the student, where practicable, and their parents in accordance with these guidelines. (The application of disability discrimination law is further considered below).

Students in out-of-home care

43. Given the number of people and professionals involved in the lives of children in out-of-home care, the views of the child should be sought about who they would like to be contacted and from whom they would like support, to the extent it is practicable to do so. The Department of Communities and Justice will be notified as soon as a non-attendance direction is issued to the child.

44. Where the department is informed that a child is in out-of-home care, it will work with the student's caseworker (including non-government service providers with case management responsibilities) and carers to coordinate service provision for the student. This includes reviewing the student's personalised learning and support planning to address behaviours being dealt with under the guidelines and review appropriate supports.
45. The support required by children in out-of-home care may require a trauma informed approach, providing additional time to listen to the child, liaison with carers/professionals involved with the child and higher levels of follow up support from schools in order for the child to feel supported during the non-attendance period and their return to school.

6. The legal context

Duty of care

46. Educational authorities owe all students enrolled in their schools, including a student who is at risk of engaging in violent behaviour, a common law duty of care. This is separate from the duties under work health and safety legislation.
47. The action taken to meet this duty of care depends on the particular circumstances of the situation including the age, maturity and needs of the student concerned.
48. This is not a duty to provide an absolute guarantee of safety but requires that reasonable steps are taken to protect students from risks that are reasonably foreseeable.
49. This duty extends to taking reasonable care to prevent students from injuring themselves, injuring others or damaging property. To meet this duty of care, educational authorities must be able to demonstrate systems are in place to identify risks and precautions are taken to avoid or minimise those risks.
50. Part 5A of the Act contains other mechanisms to deal with health and safety risks arising from violent behaviour by a student or prospective student (such as information exchange between NSW school systems and between all NSW schools and specified NSW government agencies, and the power to direct a student seeking enrolment in a government school to enrol in a specific school).
51. Issuing a non-attendance direction provides additional means for the department to address the significant risk to the health and safety of students and others arising from potential serious violent or extremist behaviour by students in an unambiguous manner.

Interaction with the Work Health and Safety Act 2011 (NSW)

52. The Work Health and Safety Act 2011 (NSW) (WHS Act) imposes obligations on the department in relation to the health and safety of students, school staff and other persons.
53. A summary of the key obligations under the WHS Act is set out below. However, it is important to note that the WHS Act does not, of itself, empower the department to direct a student not to attend school. The powers conferred by Part 5A of the Act will assist the department discharge its duties under the WHS Act.

Primary duty under the WHS Act

54. Section 19 of the WHS Act requires a person conducting a business or undertaking to ensure, so far as reasonably practicable:
- the health and safety of *workers* engaged or caused to be engaged by the person and workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking and
 - that the health and safety of *other persons*, including students and parents, is not put at risk from work carried out as part of the conduct of the department's business or undertaking.
55. This duty clearly extends to the risk of students engaging in serious violent or extremist behaviour whilst at school.
56. What is reasonably practicable in relation to a duty to ensure health and safety means that which is, or was at a particular time, reasonably able to be done in relation to ensuring health and safety, taking into account and weighing up all relevant matters. Relevant matters include:
- (a) likelihood of a risk occurring
 - (b) the degree of harm that might result from the risk
 - (c) what the department knows, or ought reasonably to know, about the risk and ways of eliminating or minimising it
 - (d) the availability and suitability of ways to eliminate or minimise the risk and
 - (e) after assessing the extent of the risk and the available ways of eliminating or minimising it, the cost associated with doing so.
57. Accordingly, if the department is aware of a student having a potential for serious, violent or extremist behaviour or, in the circumstances ought to have been aware of those matters, it is compelled to act. A non-attendance direction provides a means for the department to address the significant risk to the health and safety of students and others arising from a student with that potential.

Discrimination

58. All persons exercising a function under these guidelines must ensure that they do not unlawfully discriminate against any person on the grounds of race, sex, marital status, disability, homosexuality, age, transgender, carer's responsibilities or any other relevant ground of unlawful discrimination.
59. In particular, when dealing with a student with a disability, consideration must be given to the requirements of the Commonwealth Disability Discrimination Act 1992, the Disability Standards for Education 2005 and the Anti-Discrimination Act 1977 (NSW). These require, among other things, that reasonable adjustments are provided to support students with a disability to access and participate in education on the same basis as other students. An adjustment is reasonable in relation to a student with disability if it balances the interests of all parties affected including the student with disability, other students and staff.
60. The interaction of duty of care responsibilities, work health and safety law and discrimination law require consideration of what is reasonable in the circumstances. For example, the department must consider making reasonable adjustments for a student

under discrimination law and must as far as is reasonably practicable ensure the safety of students, staff and visitors to its site and protect students from foreseeable risk of harm.

61. It is not unlawful to exercise a function under the guidelines based upon, or with reference to, a relevant criminal record of a student. In fact, in some situations, the existence and nature of such a record may be a reason for action being taken in relation to a student under the guidelines.
62. However, issuing a non-attendance direction based only on the existence of a criminal record is to be avoided. Further information about the circumstances of the offence relating to the criminal record, and the potential significant risk posed to a school because of that criminal record, should be sought where possible.
63. Decision-makers should seek advice from the Legal Services Directorate as to how the various “grounds of discrimination” apply in the context of government schools and how to deal with information relating to quashed or spent convictions.

Privacy

64. The Privacy and Personal Information Protection Act 1998 (NSW) and the Health Records and Information Privacy Act 2002 (NSW) apply to NSW government schools and other public sector agencies.
65. Section 26F of the Act, section 25 of the Privacy and Personal Information Protection Act 1998 (NSW) and the Health Records and Information Privacy Protection Act 2002 (NSW) and Commonwealth Privacy Act 1988 permit certain disclosures of information obtained in connection with the exercise of the non-attendance direction power.
66. Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 permits exchange of information to facilitate the provision of services to children and young people.

7. Existing strategies and mechanisms to deal with violent and extremist behaviour in schools

67. The department has existing strategies and mechanisms to enable it to deal with violent behaviour by students at school, many of which are described in the guidelines previously issued under Part 5A of the Act, known as *Guidelines Issued under Part 5A of the Education Act 1990 for the Management of Health and Safety Risks Posed to Schools by a Student's Violent Behaviour*. These include:
 - information exchange between NSW school systems and between all NSW schools and specified agencies
 - undertaking risk assessments and putting in place risk management plans
 - directing a student to enrol in a particular government school
 - undertaking independent health assessments to assess appropriate educational support for identified health concerns
 - developing customised support plans to ensure a holistic approach to student needs across agencies
 - School Communities Working Together – [Case Management and Specialist Support Team](#)
 - Department of Education [Code of Conduct](#)
 - Department of Education [Complaints Handling Policy](#) and the [School Community and Consumer Complaints Procedure](#)

- [Enrolment of Students in NSW Government Schools](#) policy and [General Enrolment Procedures](#):
- Department of Education [Work, Health and Safety Policy](#)
- Resource documents and risk management support tools relating to the management of student behaviour
- [school counselling](#) services / SPO / [Networked Specialist Facilitators](#) / external referral services
- [Police Youth / School Liaison](#) police officer links
- [Disability Strategy resources](#)
- Department of Education [Privacy Internal Review Form](#)
- Department of Education [Every Student Every School \(ESES\)](#)
- Department of Education [Suspension and Expulsion of school students procedure](#)
- [Student Discipline in Government Schools Policy](#)
- [Student Welfare Policy](#)
- Department of Education [School Attendance Policy](#).

8. Non-attendance directions

68. The power to issue non-attendance directions augments the department's existing strategies and mechanisms (referred to above) for addressing the risk of violent and extremist behaviour in schools.
69. Non-attendance directions are intended to provide the department with time to formulate a strategy for dealing with relevant conduct. That strategy may be to devise a risk management strategy or vary an existing risk management strategy.
70. The process of formulating a strategy to address the risk of a student engaging in violent behaviour should take into account:
- the student's age
 - current (or changed) living arrangements
 - disability, needs and abilities
 - history of mental illness
 - family context and cultural values
 - any known background circumstances relevant to the student, in particular, that has increased the risk of their potential behaviour
 - existing interventions in place to support them (such as medication, an education plan or behaviour support plan) and
 - other individual circumstances (such as whether the behaviour is "out of character", may have been attributable to external factors such as exposure to domestic violence in the home, the student is in out-of-home-care or the student may have previously been engaged with Juvenile Justice supervision or programs).
71. Consideration must be given to whether any previous attempts to support the student and modify the behaviour were adequate and whether different or further measures may control or eliminate the risk posed. Consideration must also be given to:
- (a) family, community or other external supports
 - (b) any relevant behavioural needs or diagnosed behavioural conditions
 - (c) observed violent behaviour and/or relevant violent incidents that have occurred (and their frequency)
 - (d) whether the student will be at risk of entering the child protection system due to the significant risks identified that result in a non-attendance direction being issued and

(e) triggers to violent behaviour and strategies to de-escalate violent behaviour.

72. Such considerations may be of assistance when evaluating the level of risk posed by the violent behaviour and identifying the strategies that may be used to eliminate or minimise that risk.
73. A student subject to a non-attendance direction will not be allowed access to the school/schools until the direction expires, is varied or revoked. Any student under a direction that attempts to attend school will be requested to leave the school site, or may be removed by NSW Police if they do not voluntarily leave the school site.
74. **Parents do not have a right of veto over a risk assessment or strategies that are developed by schools to eliminate or control risk.** However, the department will consult with parents (and the Department of Communities and Justice in the case of students in out-of-home-care) on the strategies to be put in place. The department encourages input from all relevant parties to ensure the risk assessment is accurate and the customised support plan is effective to maintain the student's engagement with education.

9. Timeframes and educational provision

75. The issue of a non-attendance direction is not a punitive step. The non-attendance direction is not a disciplinary tool but is intended to provide time to allow for the risk assessment and management process to occur. It is understood that the more time a student is absent from school, the greater the risk of their disengagement from learning and the greater the risk of the student engaging in further inappropriate behaviour.
76. As the assessment of risk will differ from case to case, it is not possible to prescribe a timeframe in which that process should be completed. However, the guiding principle is that the risk assessment process is given a high priority so as to minimise the time the student is away from school. Also, during the non-attendance period, the student must still receive coursework from a school to continue their studies, and the school principal and relevant Director, Educational Leadership will attempt weekly contact with the student and their parents. There may be exceptional circumstances where it would not be appropriate for the principal to undertake this role, such as where the principal has been the subject of the student's serious violent behaviour. In such circumstances, another departmental staff member will contact the student and their family on the principal's behalf.

10. Types of behaviour that could result in a non-attendance direction being issued

77. In order for a non-attendance direction to be issued, the Minister or his or her delegate must be satisfied that there are reasonable grounds for believing there is a significant risk for a particular student to engage in serious violent or extremist behaviour. The Minister or delegate must also have formed the reasonable belief that it is necessary to issue the direction to protect the school community.
78. The examples contained in [Attachment A](#) provide an indication of the circumstances in which there is expected to be basis to issue a non-attendance direction.
79. The non-attendance direction is not intended to be used where the harmful behaviour has already occurred, and action is possible under the Department of Education Suspension

and Expulsion of School Students Procedure (the Procedure). The Procedure sets out a range of actions that can be taken, from learning and support strategies through to suspension or expulsion. The Procedure also identifies that a suspension needs to be resolved before the suspension ends and the student returns to school. Where a suspension has not been able to be resolved, the non-attendance direction power must not be used as a means to extend a suspension.

11. The first non-attendance direction and subsequent directions

80. A non-attendance direction can only be issued by the Minister or a person to whom the power has been validly delegated in accordance with section 119 of the Act. The Minister will delegate the power as follows:
- First Direction – non-attendance for a maximum 5 school days can be issued by an Executive Director (School Operations and Performance) or equivalent
 - Second Direction – non-attendance for a further 15 school days maximum can be issued by a Deputy Secretary or equivalent
 - Third Direction - Any further non-attendance absences in a 12-month period must be issued by the Secretary of the department.
81. The First Direction issued to a particular student:
- can be issued without prior warning to the student if the delegate considers that, in the interests of safety, it is necessary or appropriate to refrain from giving advance notice of the intention to issue the non-attendance direction and
 - must not extend beyond five school days.
82. A lack of procedural fairness does not invalidate the first non-attendance direction.
83. A second non-attendance direction issued to the student in response to the same behaviour can be issued immediately following the termination of the first direction. A second direction must not be issued for a period longer than 15 days (in addition to the period of duration of the first non-attendance direction).
84. A third non-attendance direction cannot be issued to the student in response to the same behaviour within 12 months of the first non-attendance direction being issued unless the direction is issued by the Secretary.
85. A student issued with a non-attendance direction (and their parents where appropriate) will be given a written explanation for why the non-attendance direction has been issued. The non-attendance will appear as an explained absence on the student's record.
86. For details regarding internal and external review rights, please refer to paragraphs 124 to 134 of the guidelines.

12. Who will be notified when a non-attendance direction is issued?

87. The following people and agencies must be notified when a non-attendance direction is issued:
- the student who is the subject of the non-attendance direction and his or her parents. This notification must be provided in writing as soon as possible after the direction is made. Students and parents will be provided with access to these guidelines and

factsheets to assist them to understand the effect of the direction, next steps and how to seek a review of the decision

- the Secretary of the Department of Education
- if the student who is the subject of the non-attendance direction is known to be in out-of-home care - the Minister of Communities and Justice
- the NSW Commissioner of Police and
- any other State government departments and agencies known to be involved with the student's family in provision of services relating to their safety, welfare or wellbeing.

88. In addition, it will be important to consider whether NSW Police or Juvenile Justice should be notified of a non-attendance direction having been issued. For example, NSW Police must be notified of a non-attendance direction if the relevant student is on bail and the issuing of the direction gives rise to a need to modify the student's bail conditions.
89. The department will liaise with NSW Police, (Juvenile Justice and the Children's Court where relevant) and other relevant stakeholders to ensure that the implementation of non-attendance directions does not have the unintended consequence of increasing the number of children and young people being arrested and detained for breach of bail conditions, whilst they are the subject of a non-attendance direction.
90. Also, non-government schools and non-government agencies may need to be notified in accordance with Chapter 16A of the Children and Young Persons (Care and Protection) Act 1998 (NSW).
91. Where there are reasonable grounds to believe the student may be at increased risk (for example they will not be supervised at home, or for a student in out-of-home-care the stability of their placement may be at risk) the department will convene an urgent case management meeting with relevant stakeholders (including NSW Police, the Department of Communities and Justice and NSW Health) to discuss strategies to address the student's heightened risk and support the student and their parents while the student is not at school.

13. The risk assessment process

92. Work health and safety legislation requires that the risk posed by a student's violent behaviour, or the risk of such behaviour, be assessed and eliminated or, if elimination is not reasonably practicable, minimised as far as reasonably practicable.
93. That process will require a written risk assessment and is likely to result in the development of a written risk management plan and/or customised support plan.
94. Before a non-attendance direction is issued, a parent may volunteer or agree to keep a student away from school for a defined period while a risk assessment is undertaken. In that circumstance, a delegate of the Minister can exempt the student from attending school in accordance with [section 25 of the Act](#), making it unnecessary to issue a non-attendance direction. The use of a section 25 exemption will be governed by the Department of Education's Exemption from School Procedures
95. Where a parent agrees to keep a student away from school, it is expected that a customised support plan will be developed for the student during the absence (see section 14 for further information), and the principal and Director, Educational Leadership will be in weekly contact with the student and their parents.
96. It may be necessary for a non-attendance direction to be issued if the parent(s) of the student do not agree to keep the student at home, it has not been possible to contact the parent(s), or it is a high risk situation.

97. If a parent does not agree to keep their child away from school, a non-attendance direction will be issued to help to eliminate the potential for the student, other students or staff to be placed at risk of harm or injury while the risk assessment and management planning is completed.
98. The department's [Health and Safety support tools](#) relating to the management of student behaviour should be read with the guidelines. These support tools, which have been developed under the department's [Work, Health and Safety Policy](#), can be found on the department's intranet site.
99. Various areas within the department including School Operations and Performance, Educational Services, Health and Safety, the Child Protection Services and Legal Services will work closely with the relevant principal and school staff to develop the risk assessment.
100. The student and the parents will be consulted on the risk assessment (see section 16 of these guidelines for more information). Where relevant, advice from a student's doctor, psychologist or other health workers, staff of the educational authority and staff of other relevant agencies may be sought during the process by which risks are assessed and strategies are developed to eliminate or control those risks.
101. The school principal and relevant school staff must also be consulted on the risk assessment process and the plan to return the student to school to ensure the risks have been minimised and to assist in managing a safe return for the student.

14. Customised support plans

102. The customised support plan will be developed for each student subject to a non-attendance direction in consultation with key stakeholders to document the holistic strategy of support for a vulnerable student. Those stakeholders will include parents, carers, other government agencies and non-government bodies (for example, peak culturally and linguistically diverse backgrounds community organisations). The plan will document the focus areas for the student and assign responsibility for the strategies to assist behaviours.
103. Every effort will be made to prepare the customised support plan in such a way that minimises lost learning time and/or the student's disengagement from learning. However, adequate consideration needs to be given to assessing the student's individual needs, their learning program and courses of study, and any specific modifications or supports. A trauma informed approach may also need to be considered given the background of the student.
104. The customised support plan will extend beyond ensuring the student continues to receive an education and will propose strategies to address areas of support in education, health, wellbeing, cultural and religious support, social engagement, family needs and other identified areas through a multi-agency approach. The customised support plan will also identify the consequences of not complying with the mandatory components of the plan, where non-compliance has a negative impact on managing the risk posed by the student (which could include amending the plan, or extending the timeframe of the non-attendance direction if further risk strategies need to be assessed because of the non-compliance).
105. The customised support plan will also cover broader safety strategies to manage the environment and identified risks. For example, it could include searches to determine if weapons are being brought to school.
106. In particular, the customised support plan will identify:

- specific details relating to the students learning program including learning in order to meet syllabus requirements of the curriculum
 - supervision details for the student in and beyond the school setting
 - learning and support requirements to address student wellbeing including any additional support for students with disabilities or students in out-of-home care
 - details of how the student will travel to and from a department setting (if relevant)
 - resources and assistance and/or support from external providers
 - details regarding monitoring, assessment and review dates and timeframe of the support plan and
 - any other details of the student's personal or family circumstances that are likely to impact on the student's learning.
107. Where a non-attendance direction is in place for more than 20 days the customised support plan will be amended to provide the student with a modified form of distance education. Where it is safe to do so, a meeting will be held with the student and their parents to discuss the full range of options available for the student to continue their education.
108. Through the mechanisms identified in the customised support plan, and support mechanisms already in place within schools, the student will continue to receive an education so that they are not disadvantaged by their physical absence from school.

15. Role of the department and schools

109. The delegate of the Minister in conjunction with the school principal and school staff must consult with the student and their parents when identifying, assessing and managing risk and carefully consider what they have to say. However, they are not necessarily required to adopt suggestions or requests from parents. Parents do not have a right of veto over a risk assessment or strategies that are developed by schools to eliminate or control risk. However, the department will consult with parents (and the Department of Communities and Justice in the case of students in out-of-home-care) on the strategies to be put in place.
110. As part of this consultation exercise, all relevant information obtained pursuant to Part 5A of the Act should be disclosed to the student and his or her parent or parents unless the Act or these guidelines provide otherwise. It is anticipated that the school principal, relevant teachers, school counsellor and Director, Educational Leadership will be involved in such consultation.
111. Departmental and school staff are not expected to meet with the student or their parents if that would put their own health and safety at risk. Where the student or parents pose a risk to staff if they attend a meeting with staff, they might be provided with the relevant information, given a copy of the draft written risk assessment and customised support plan and given an opportunity to provide written feedback on the assessment and plan, and participate in telephone conferences.
112. However:
- there is no requirement to consult with a student or their parents before giving the student a first non-attendance direction in respect of certain conduct or the potential for certain conduct and
 - it is not necessary to disclose information to the student or his or her parent or parents in the circumstances described in section [6] above (for example, where disclosure would endanger a person's life or physical safety).
113. Where a non-attendance direction is issued, the department and school should take steps to ensure that the student is provided with course work that he or she can undertake during

the non-attendance period, and to consult with the student's parents about the performance of that work.

16. Role of parents, students and staff

114. The parents of a student who is at risk of engaging in serious violent or extremist behaviour play a significant role in these processes. They can be an important source of information about their child. They may be well placed to give context to incidents in the student's history that will assist in assessing and managing risks posed by the student's potentially serious violent behaviour. This might include information about "triggers to the behaviour" and de-escalation and/or insights into the nature and function of the behaviour.
115. While all relevant factors should be considered, any violent incident in the student's past can be an important factor in evaluating the current risk posed by the student.
116. In addition, parents are expected to:
- actively consult with the department and their child's school about the course work to be undertaken by the student while a non-attendance direction is in place and
 - work with the department and their child's school with the aim of having their child return to school as soon as possible and
 - provide some supervision for the student while they are not attending school.
117. To assist parents to do this, the school principal and Director, Educational Leadership will each attempt to make contact with the student and their family at least once a week to ensure that the student stays engaged with their school and education.

17. Potential role of external agencies or organisations

118. Under the Act, information can be sought from relevant agencies **solely for the purpose** of:
- assessing whether a non-attendance direction should be issued to a student to address risks arising from the student's potential to engage in serious violent or extremist behaviour and
 - developing and maintaining strategies to eliminate or minimise any such risks while endeavouring to support the student's educational needs. This will include a consideration of strategies that are already working (in the current educational situation and/or at home) to eliminate or minimise risk where those strategies are made known.
119. Relevant agencies include schools, the department, a non-government schools' authority, other NSW government agencies, such as Communities and Justice and the NSW Police Force. NSW courts are not considered relevant agencies for the purposes of providing information under Part 5A of the Act and these guidelines.
120. Information should only be requested by the department from relevant agencies in circumstances where a risk to the health and safety of people at a school is posed by the potential for a student to engage in serious violent or extremist behaviour. The department must also consider whether the records from the agency will assist in undertaking an adequate risk assessment and/or developing and maintaining strategies to eliminate or minimise any risks identified. This would include seeking information from agencies to provide support to a student through an early intervention program.

121. Information requests must not purely be a “fishing expedition”. Rather, there must be something that points to the likely existence of further information being held by the particular agency the information is being sought from.
122. External agencies will also be engaged as part of the support strategy to assist with individualised needs that a student may require to assist in addressing serious violent or extremist behaviour. The agencies will be engaged to provide health, social, cultural or employment support to assist the student in addressing serious violent or extremist behaviours. In particular, where a student is issued a Non-attendance Direction due to a risk of sexual harm to others, a specialist Health service should be consulted for advice about referral and treatment options as part of the development of the customised support plan.
123. Students will be advised about what information may or may not be shared between the school, the department and external agencies when the student is referred for support.

18. Internal review

124. If the Minister, or a person acting under a delegation from the Minister, gives a non-attendance direction to a student for a period that extends beyond the initial 5 days, the student, or a parent of the student, may apply for an internal review of the decision to give the direction, unless the person is entitled to apply to the NSW Civil and Administrative Tribunal (**NCAT**) (refer to section 19 'External review' below).
125. An internal review can be sought whilst a direction is in effect using the application form available on the department’s website.
126. An application for internal review should:
 - be submitted in writing to legal@det.nsw.edu.au
 - set out the reasons why the decision to issue a direction should be reviewed
 - include any documents or other material that the applicant considers relevant to the review and
 - contact details of the person seeking the review, including any mobile telephone number and email address.
127. An internal review must be conducted by a person who is directed to do so by the Minister. However, the reviewer:
 - cannot be the person who made the decision to issue the relevant notice
 - must be a person employed in the department who was not substantially involved in making the decision to which the review application relates.
128. The reviewer is required to consider any relevant material submitted by the student or parent with their review application.
129. The review must be completed within 14 days of receipt of the internal review application. However, the person conducting the review may extend the review period by up to an additional 7 days provided that it is reasonable to do so in the circumstances (for example, to allow sufficient time for the reviewer to seek and obtain clarification or further information to conduct the review). In the circumstance where a review is not completed before the non-attendance direction expires and the student has returned to school, the review will still be finalised to ensure the department is appropriately using the non-attendance direction power.

130. The reviewer may, on determining an application for internal review, confirm the decision to issue the direction or recommend to the Minister (including a delegate) that the non-attendance direction be varied or revoked.

19. External review

131. A non-attendance direction that results in a student being directed to not attend school for more than a total of 20 school days in a 12 month-period is subject to review by NCAT, without an internal review being undertaken.
132. Subject to the *Civil and Administrative Tribunal Rules 2014 (NSW)* as amended or replaced from time to time, an external review application must be lodged with NCAT no later than 28 days after the student was notified of the decision to issue the relevant non-attendance direction.
133. A decision of NCAT may be appealed to the NCAT Appeal Panel.
134. The non-attendance direction will continue to apply to the student until it is varied or revoked. However, NCAT has the power to stay a decision that is under review.

20. Legal assistance for students and their parents

135. Students and their parents can seek legal assistance on the application of these guidelines, complying with a direction or seeking an internal or external review from the following services:
- [Legal Aid Youth Hotline: 1800 101 810](#)
 - [LawAccess NSW: 1300 888 529](#)
 - [Aboriginal Legal Service: 1800 765 767 or 1800 733 233](#)

21. Review of the guidelines

136. The guidelines and the operation of the non-attendance direction power (including whether the customised support plans were effective in meeting educational and other needs) will be reviewed after the guidelines have been in operation for 12 months. Relevant government agencies will be consulted as part of that review.

22. Reporting on non-attendance directions

137. The number of non-attendance directions issued in a school year will be publicly reported on the department's website during Term 1 of the following school year.

23. Managing Information

138. Part 5A of the Act allows information about students to be obtained from a range of people, agencies and entities to assist the Minister (or their delegate) to exercise functions relating to non-attendance directions under section 26HA.

139. Memoranda of understanding between relevant agencies for the provision of information relevant to Part 5A of the Education Act are already in place. Sensitive material will be received, held and returned or disposed of in accordance with the requirements of the relevant agency.
140. Information may be obtained by the relevant school principal, the relevant Director, Educational Leadership or other departmental staff involved in the risk assessment process and/or development of the Customised Support Plan.
141. Information obtained pursuant to those provisions:
- may be used only for that purpose, and for certain related purposes regarding enrolment, attendance and the development and maintenance of risk management strategies (see s 26B(1) of the Act) and
 - must not be disclosed unless required or permitted by law.
142. Information about a student obtained pursuant to this regime must not be disclosed under the *Government Information (Public Access) Act 2009* unless in response to an access application under that legislation made by the student, a parent of the student or any person nominated in writing by the student or parent.
143. Any decision to disclose information will also need to take into account the non-publication provisions that apply under the *Children (Criminal Proceedings) Act 1987* and the *Children and Young Persons (Care and Protection) Act 1998*. In particular, Division 3A of the *Children (Criminal Proceedings) Act 1987* and section 105 of the *Children and Young Persons (Care and Protection) Act 1998* prohibits the publication or broadcasting of any information which is likely to lead to the identification of a child that connects the child with criminal or Children’s Court proceedings.

Impact of these guidelines upon privacy legislation

144. Information provided in accordance with Part 5A the Act and these guidelines will not be considered a breach of the privacy or health principles that would normally limit the disclosure of certain information. This is provided for by section 26F of the Education Act 1990, section 25 of the Privacy and Personal Information Protection Act 1998 and in the relevant sections of the Health Records and Information Privacy Protection Act 2002 or Commonwealth Privacy Act 1988.
145. The appropriate application of the privacy principles depends on the individual staff members being clear as to the purpose of collecting, using and disclosing personal and health information under the guidelines.

Dealing with personal and health information under these guidelines

146. Relevant personal information or health information about the student will be collected and used and may be disclosed only for purposes relating to action under the guidelines. A parent’s personal information may also be collected, used and disclosed during this process (for example where an assessment is undertaken of the risk posed by the parent’s participation in the processes under the guidelines).

Access to personal or health information obtained, created or used under these guidelines

147. Access to any personal information or health information obtained or used under the guidelines will be limited to those who are:
- (a) authorised to access the personal information or health information by the guidelines or
 - (b) are otherwise entitled or permitted to access the information by law.

Access to information by staff of education authorities including schools

148. Only those staff (including school staff) who are required to exercise a function under the guidelines, provide support or advice to a person exercising a function under the guidelines, or are otherwise authorised or permitted to access the personal information or health information by operation of law, shall have access to any personal information or health information obtained while exercising a function under the guidelines.
149. Any staff member who is given access to such personal information or health information must only use it for legitimate purposes relating to their employment.
150. Any staff member who uses personal information or health information for a purpose unrelated to their employment may be subject to action by their employer to deal with their conduct.

Storage of information

151. Written records containing personal or health information must be stored in a secure location. A secure location for written information has the following features:
- (a) the information will be protected from dust, water, vermin and if possible fire
 - (b) the information is stored in a lockable filing cabinet, cupboard or similar storage facility. It should be locked when not in use and any keys, combination numbers and the like should be retained by a very small number of responsible staff and
 - (c) the room containing the filing cabinet, cupboard or similar storage facility is not generally accessible to students, school staff and visitors to the school such as contractors/community members.
152. Information obtained or created under the guidelines will often be of a sensitive nature and is to be **kept separate from a student's usual school records**. It is to be held in a secure location. Copies of documents obtained or created in the exercise of the guidelines may be placed on the student counselling file where the information is relevant to the provision of school counsellor services. Only school counselling staff can access these student counselling files. In other circumstances a separate file is to be maintained for this information.
153. The relevant agency who has provided the information may require additional storage requirements for sensitive information.

Electronic records

154. Electronic records containing personal information or health information should be stored in a secure location. A secure location for electronic records has the following features:
- (a) it is preferable for information not to be stored on a shared drive or directory but instead to be stored on a computer's own drive. A back up copy of the information is to be retained with any relevant written information held about risk to safety posed by the student as a consequence of his or her serious violent behaviour. The backup should be stored in the same secure manner as written records (see above) and
 - (b) any information stored on a shared drive is password protected. Information about the password is only available to those who have a legitimate need to access the information.

Period of retention

155. For government schools – unless required to retain the information for a longer period by any act or law or policy of the educational authority, the information provided by agencies about a student must be retained until the student turns 24. Thereafter records held by the department are dealt with in accordance with its disposal schedules and the State Records Act 1998.

Attachment A

Examples of situations which may give rise to a significant risk of a student engaging in serious violent conduct include:

- A student tries to buy a weapon over the internet and has expressed an intent to harm others;
- A student has expressed an interest in replicating school massacres that have occurred overseas;
- A student has expressed serious violent intentions and follows social media sites that show images of people subjected to violent deaths;
- Students engaging in serious criminal activity and violent behaviour outside of school (e.g. armed robbery, arson, sexual assault requiring the student to be placed on the Child Protection Register) which raise significant risks to students and staff attending the school the student attends;
- A student has made credible threats and has association with people or parties known to support violence;
- A student has expressed serious violent intentions and has a history of serious violence e.g. criminal history of mutilation of animals and streaming the incidents over social media, violence against others etc.

Examples of situations that may involve support for extremist behaviour include:

- A student is being investigated by a law enforcement body for displaying support for violent extremism;
- A student discusses with other students or family members that they intend to kill a person or multiple people to achieve ideological, political or social change;
- A student is being investigated by the police after being found with a homemade device with the intention of blowing up fellow students.

Conversely, the following examples are illustrative of circumstances in which on their own, there is **not likely** to be significant risk of a student engaging in serious violent conduct or support for extremist behaviour that requires a non-attendance direction to be issued to protect students and staff:

- A 16 year old student engages in a sexual relationship with a 15 year old student;
- A student steals a car;
- A student kicks a hole in a plaster classroom wall;
- A student with diagnosed psychological health concerns;
- A primary school student states to a friend at school that they like a flag that has been linked to violent extremism;
- A student refuses to stand for the National Anthem at a school assembly;
- A student participates in a rally seeking social or legal reforms.

Note: While a non-attendance direction may not be issued for conduct similar to these examples, the conduct may still result in a report being made to law enforcement and child protection authorities where criminal behaviour is alleged to have occurred or where there are child protection concerns or mandatory reporting requirements.