

my child in school



Permanent Exclusion

a practical guide to
parents' legal rights



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Important notes

- There are two types of exclusion – **fixed period** and **permanent**. This booklet deals with **permanent exclusions**.
- The information in this booklet is based on the laws of England.

Definitions and abbreviations

Academy Academies receive state funding but have more independence than maintained schools.

Governing body The governors with the headteacher have overall responsibility for the school. They work for the school unpaid. In this booklet 'governing body' includes the management committee of a PRU and an Academy Trust.

Headteacher In this booklet 'headteacher' includes the teacher in charge of a PRU and the Principal of an Academy.

IRP Independent Review Panel.

LA The Local Authority deals with the administration of a local council.

Maintained school Maintained schools are community schools, voluntary aided and controlled schools and foundation schools.

PRU Pupil referral unit. PRUs provide education for excluded pupils and others who are unable to attend school.

PSP Pastoral support programme.

SEN Special educational needs.

SEND First-Tier Tribunal for Special Educational Needs and Disability.

School record All the documents the school holds relating to your child.

“My child has been permanently excluded – what can I do?”

If your child is permanently excluded from school it can feel devastating both for you and your child. A permanent exclusion may be the school's final response to a history of disruptive behaviour or it may follow a serious one-off incident. This booklet will help you to:

- understand the exclusion process
- plan for your child's future education
- challenge the exclusion if you want to.

Understanding exclusions

This section will help you understand what must happen when a child is excluded. You will notice in this booklet many references to 'guidance'. This refers to the government guide 'Exclusion from maintained schools, Academies and pupil referral units in England'. This applies to all state-funded schools. It can be downloaded from the Department for Education website. See Further help page 25.

The guide contains both what schools must do by law and also 'statutory guidance' which must be followed unless there is a very good reason not to.

What is permanent exclusion?

Permanent exclusion is the most serious punishment a school can give if a child does something that is against the school's behaviour policy (the school rules). It means that the child is no longer allowed to attend the school and their name will be removed from the school roll. Permanent exclusion should only be used as a last resort.

Who can exclude?

Only the headteacher has the power to exclude a child. If the headteacher is not on site then the decision can be made by the acting headteacher. Other members of staff such as heads of year cannot exclude, though they may provide information to support the headteacher's decision.

Reasons for exclusion

All exclusions must be for disciplinary reasons only. All schools must have a behaviour policy setting out what the school rules are. Schools do vary in what they will permanently exclude for. However, guidance is clear that permanent exclusion should only happen:

- in response to a serious breach or persistent breaches of the school's behaviour policy

and

- where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

A pupil can be permanently excluded for a one-off or first offence 'a serious breach' but guidance no longer defines what that would be. It is for each school to decide that through its behaviour policy.

It is unlawful to exclude or to lengthen an exclusion for a non-disciplinary reason such as:

- failure to meet special educational needs. If a school cannot meet a child's needs, it should look at putting extra support in place
- academic attainment or ability. A child cannot be excluded because they are not likely to get good exam results.
- action of parents such as making a complaint or failing to attend a meeting
- not allowing a child back into school after a fixed period exclusion unless they meet particular conditions. For example the headteacher cannot extend an exclusion until a pupil admits guilt or apologises.

However, guidance does state that disobeying a teacher's academic instructions could be a reason for exclusion. This is not defined in detail but might include things like not completing homework.

Behaviour outside school can be a reason for exclusion but this should be in line with the school's behaviour policy. Commonly this will include behaviour on school trips, behaviour when in uniform or on the way to and from school and behaviour which may bring the school into disrepute.

All decisions to exclude must be **rational, reasonable, fair and proportionate**.

Where practical, a headteacher should allow a pupil to present their case before deciding whether to exclude.

Standard of proof

The headteacher's decision to exclude must be taken on the 'balance of probabilities'. That means that it is more likely than not that the pupil did what they are accused of. This is not the same as the 'beyond reasonable doubt' standard required in a criminal case.

Unofficial exclusions

All exclusions must follow the correct procedure and be recorded as exclusions. It is unlawful just to send a child home to 'cool off' even if parents or carers agree.

ACE advises – unofficial exclusions

Sometimes schools may ask parents to keep their child at home without excluding them. This is often portrayed as doing the parent and child a favour by not making it official. This can easily lead to a child missing considerable amounts of education or even dropping out of the system altogether. It also means that your rights to make representations to the governors or to attend a meeting will not be triggered.

Children should not be asked to stay at home because the school can't provide for their special educational needs or to get them out of the way during an inspection. If this happens, remind the school that this amounts to an unlawful unofficial exclusion. You may also wish to inform the exclusions officer in your local authority that this is happening.

Managed moves

Sometimes parents and schools may agree that a new start in a different school would benefit a child who is at risk of exclusion. The transfer can then be arranged between the two schools. This is known as a 'managed move' and is usually at first on a trial basis.

Guidance is clear that schools must not use the threat of exclusion to get parents to take their child out of school. You do not have to agree to a managed move if you do not want to.

Off-site education

Maintained schools (not Academies) have the power to direct a pupil to off-site provision in order to improve their behaviour. They do not need parents' consent to do this, but parents must be informed in writing and the placement must be regularly reviewed. Pupils at Academies may be educated off-site if parents agree.

Informing parents

When a child is permanently excluded, parents must be notified in writing without delay.

The letter must state:

- the reason for the exclusion
- the fact that it is permanent
- the right to make representations (put forward your views) to the governing body
- the right to attend the meeting of the governing body and be represented and to bring a friend.

Factors affecting exclusion

Before deciding to exclude headteachers should take account of factors that may have affected the child's behaviour.

Vulnerable pupils

Headteachers should take account of any factors which may have contributed to the poor behaviour. These might be:

- bullying
- mental health issues
- bereavement
- unidentified SEN.

Alternatives to exclusion and early intervention

Early intervention and multi-agency assessments

If a child is displaying persistent disruptive behaviour, heads should consider a multi-agency assessment. This may pick up SEN but also wider family issues affecting the child. A multidisciplinary assessment may be carried out following the Common Assessment Framework. This is commonly known as a CAF assessment and it will be a chance for everyone involved with a child to share information and identify needs. The CAF is entirely voluntary and you do not have to agree if you do not want to. As a parent you can request a CAF yourself. Ask any professional who is working with your child or contact your local authority children's services department.

Some groups are overrepresented in exclusion statistics. These include children with SEN, children eligible for free school meals, children from particular racial groups and looked after children. Headteachers should look at providing extra support to these groups to try to reduce the risk of exclusion.

Looked after children

Schools should work together with foster carers, children's homes and the local authority that looks after the child to try to avoid exclusion. This might include putting in additional support or looking at whether a different school would be more suitable. If you are a foster carer you have the same rights in education law as other parents if the child you look after is excluded. Headteachers should, as far as possible, avoid permanently excluding looked after children.

Children with special educational needs

If a child with SEN is showing poor behaviour or is at risk of exclusion, the school should look first at what additional support is needed. It would be good practice to involve outside professionals in this. If a child has a statement of SEN, then the school should consider bringing forward the annual review or holding an emergency review. The review might look at whether an alternative placement would be more appropriate to the child's needs. Headteachers should, as far as possible, avoid permanently excluding pupils with statements.

Discrimination and the Equality Act

The Equality Act 2010 covers discrimination based on a range of 'protected characteristics'. For pupils in school these are disability, race, sex, religion or belief, pregnancy or maternity, sexual orientation or gender reassignment.

Exclusion from school is specifically covered by the Act. This does not mean that a school cannot exclude a pupil with a protected characteristic, but they must not do it just because for instance the child has a disability or is from a particular racial group.

Schools must also make sure that their policies such as the behaviour policy or uniform policy do not unfairly disadvantage pupils with protected characteristics.

Disabled pupils must also not be discriminated against because of behaviour connected to their disability, unless there is a very good reason for it. For example, a child with autism who is very literal in what she says should not be treated in the same way as another child who is deliberately rude to a teacher.

Schools must also make 'reasonable adjustments' to the way they do things in order to avoid disabled pupils being put at a disadvantage.

More information is available in the ACE booklet **Disability Discrimination** and in guidance from the EHRC. See Further help page 25.

Your child has been excluded – what now?

If your child has been excluded you are probably feeling upset and possibly very angry about what has happened. A permanent exclusion may feel like the end of the world, but there are things that you can do and many permanently excluded children go on to lead successful lives.

This section will tell you about what will happen while your child is excluded. It will also help you look to the future to make sure that your child can move forward to the right educational setting.

Check the status of the exclusion

You should have had a letter telling you about the exclusion. See 'Informing parents' page 4.

No letter

If you haven't had a letter by the end of the first day of exclusion, you should contact the school to check that your child has been formally excluded. You could remind the school that informal exclusions are not allowed. This may be an opportunity to negotiate an alternative sanction or a managed move to another school if you think your child needs a fresh start elsewhere.

Letter, but exclusion not yet permanent

In some cases the headteacher may be considering permanent exclusion, but does not want to make a hasty decision or is looking for additional evidence. This may be the case when there has been a serious incident but not all witnesses have yet been interviewed. The school may then impose an initial fixed period exclusion with the option of making it permanent. In this case you may want to use this period to negotiate with the school to avoid permanent exclusion. See Negotiating with the school page 8.

Once the initial fixed period has ended, your child must be allowed back in school unless the exclusion has been extended or made permanent.

Letter – permanent exclusion

In this case the governing body must meet to review the exclusion. The exclusion will not become final until the governors have upheld it. You will be able to make your case for your child to be reinstated see page 2.

The headteacher can withdraw an exclusion if it has not yet been reviewed by the governors, so you may also want to try to negotiate.

Will your child miss an exam?

If your child is excluded and will miss a public exam such as GCSE or a national curriculum test, contact the school straight away to find out what the arrangements are.

In this case the governors must meet if possible before the date of the exam to consider whether to reinstate the child. See page 11 for advice on taking your case to the governors.

It may also be possible for a child to be allowed onto the school premises just to take an exam. In this case you might need to escort your child to and from school.

First five days

Even though your child is not allowed on school premises, they still should be receiving education. Schools should take reasonable steps to set and mark work for the first five days of any exclusion. If no work has been sent home, contact the school and ask for some. Many schools have work available to pupils on the school's website. Any work set should be accessible and achievable to pupils outside school.

During these five days you are responsible for your child's whereabouts. You must make sure they are not in a public place without reasonable justification during school hours. This duty is similar to that on school attendance and you could be fined if you breach it. The fine is £60 and goes up to £120 if you do not pay within 28 days. Failure to pay within 42 days could lead to prosecution.

Day six and beyond

The local authority has a duty to provide suitable full-time alternative education from day 6 of a permanent exclusion. That is most likely to take place at a pupil referral unit or other alternative provision.

For children with statements of special educational needs, the alternative provision must be able to meet the child's needs as set out in the statement. The placement must be identified in consultation with parents.

For looked after children it is recommended that alternative educational provision start from the first day of an exclusion.

Negotiating with the school

If the exclusion is not officially permanent or if you think the headteacher may be persuaded to withdraw it, you could negotiate for an alternative.

Ask for a meeting with the headteacher to discuss this. Before the meeting think carefully about what might be best for your child. You could ask for:

- for young people aged 14–16, a flexible curriculum
- additional support for your child
- a managed move to another school.

If it is a one off offence and your child has not otherwise been in trouble, then a letter from the young person asking to be given another chance may help.

However it's important to understand that the headteacher does not have to change their decision even if you think it is wrong or unfair. You should then concentrate on making a good case to the governing body.

If your child has a statement of Special Educational Needs, the school should have looked at holding an early or interim review. If this is not happening, then put in a request yourself. Contact the SEN section in your local authority. There is more information on reviews in the ACE booklet *Understanding annual reviews*.

Your child's future education

Initially your child will probably be given a place in a pupil referral unit or other alternative provision. You may be happy for them to remain there for a while so their needs can be assessed or you may wish to try to find a place in a new school as soon as possible.

Fair access protocol (FAP)

The fair access protocol is a local agreement for getting children without a school place back into school as quickly as possible. The protocol must also cover provision for children who are not yet ready to go back into mainstream schooling. Permanently excluded children will be covered by this. Children can be given a school place under the fair access protocol even if a school is full. The FAP should be available on you local authority's website or from the school admissions section.

Applying for a school yourself

You can also apply for a school yourself under the normal admissions system and in most cases appeal if the school is full. See the ACE booklets on *Applying for a school* and *Appealing for a school*.

There are some cases when a school may refuse entry even if it has places. These are:

- twice permanently excluded children within two years of the last exclusion
- in some circumstances, children with challenging behaviour. They must then be dealt with under the fair access protocol.

Children with statements

If your child has a statement of special educational needs, the LA will need to change the name of the school after a permanent exclusion. You have a right of appeal if you disagree and want a different school. See the ACE booklet *Getting the statement right*.

Home education

If you feel your child would be best educated out of a formal school environment you have the right to educate them at home. You still have the legal responsibility for making sure they get a suitable education either by teaching them yourself or by arranging other teaching at your own expense. You would need to think very carefully before taking this step, as it does not suit all families. You must not be put under any pressure to home educate in order to avoid a permanent exclusion.

Challenging the exclusion – the governors

You may wish to challenge your child's permanent exclusion if:

- you want your child to be reinstated and go back to the excluding school
- you don't want your child back in the school but you disagree with the exclusion and you want your child's school record to state that it was not justified.

This could be because you consider that:

- your child didn't do what they are accused of
- there were factors affecting your child that weren't taken into account
- it was an unfair or disproportionate punishment.

This section will explain what rights you have to have the exclusion reviewed and how to put your case together. It will give an overview of how the governors' meeting will be run.

What rights do you have?

Responsibility for reviewing exclusions lies with the Governors of the school. This may be delegated to a subcommittee which may be called the behaviour or discipline committee. The subcommittee must have at least 3 members.

The governors must be informed of a permanent exclusion without delay. They must meet within 15 school days to consider the exclusion.

You as a parent must be invited to attend the meeting and put forward your views. You have a right to be represented and also to take a friend with you.

If the governors uphold the decision you may ask for their decision to be reviewed by an independent review panel. The IRP does not have the power to reinstate your child but may direct the governors to look at their decision again.

Preparing your case

This section will help you put forward your views to the governors. It is sensible to do this in writing even if you attending the governors' meeting in person. Keep copies of all letters and emails.

It is fairly rare for governors to overturn a headteacher's decision. You will need to convince them that the decision to exclude your child was not reasonable, fair or proportionate. Make sure you have read section 1 of this guide so you understand the rules around exclusions.

Useful documents

There are a number of documents that may be useful to you if you are challenging your child's exclusion:

- the school behaviour policy
- the school SEN policy (if your child has SEN which may be relevant to the exclusion)
- a copy of your child's school record – you need to request this in writing and the school may make a charge for copying
- incident report and witness statements – the school should have compiled a report of the incident and may have taken witness statements from the pupils involved.

If you are planning to challenge the exclusion, ask for these documents in writing from the school straight away.

Procedures

Check that the school has followed the proper procedures in accordance with the guidance. Was it the headteacher who excluded the child?

Were you notified in writing without delay? Did the letter give reasons for the exclusion?

Lawful?

What reasons are given for the exclusion? Are these genuine disciplinary reasons? See page 2 for a list of invalid reasons.

Was the offence against the school's behaviour policy?

Evidence

If you think that your child did not do what they are accused of or were not involved to the extent the school says, then you will need to consider the evidence very carefully.

Remember that the standard of proof for an exclusion is that it is more probable than not that that your child did it.

Talk to your child about what happened. It is sensible to do this as soon as possible. Try to get them to focus on the facts of the incident. You may wish to ask some direct questions such as:

- show me exactly where you were
- who else was in the room?
- did any other staff see what happened?
- did anything lead up to it?

Your child's school record, the incident report and any witness statements will be useful here. Do they reflect your child's view of events? Are there differences between the statements? Highlight any inaccuracies. Are there important people who were not asked for a statement? If so you could ask the school to get their views.

Has your child been in trouble before? Is it likely that they would behave in this way?

Sometimes children with an otherwise good record do get caught up in misbehaviour and do something silly. Teenagers in particular do not always think through the consequences of their actions.

Effect on other people in the school

The second condition for permanent exclusion is that allowing your child to remain in school would be harmful to other people in the school. Think about the effect your child has on other children. Is your child seriously disrupting the class? Are they a risk to other children or staff? If it's a one off serious offence, how likely is it that it will happen again?

Was the exclusion fair?

Look at the school's behaviour policy. Do they generally exclude for this offence? Are they applying their behaviour policy consistently? If other children were involved in the incident, how were they treated? Were they given the same punishment?

Factors affecting your child

Was your child affected by anything going on at home or at school? This could be a family bereavement or divorce or bullying at school. Was this something you told the school about?

If your child has been bullied, was the school's anti-bullying policy followed?

Support for your child

If your child has been having ongoing problems with behaviour, has the school put in extra support to try and address this? Have they considered a CAF or other multidisciplinary assessment?

SEN

Schools must not exclude children simply because they have SEN. If your child does not have identified SEN, has this ever been considered? It may be something that you have already raised with the school.

How do your child's special educational needs affect their behaviour?

Has the school followed its SEN policy?

Was your child receiving the support they should have been? For example, if the statement says your child must have one to one support at playtimes and this wasn't forthcoming, was the incident a result of the lack of support? Has the school looked at putting in additional support? Has an alternative placement been discussed?

Discrimination

Was the exclusion affected by something like race, gender, disability or sexual orientation?

If your child has a disability, was the behaviour being punished a direct consequence of their disability?

Were there reasonable adjustments the school could have made to avoid the incident? Give examples of what they could have done differently.

You can find more information in the guidance from the Equality and Human Rights Commission. See Further help page 25.

Was the exclusion proportionate?

You may think that permanent exclusion is too severe for what your child did. Have a look at the school's behaviour policy. Is there a scale of punishments related to the seriousness of the offence? What alternatives might have been available?

Your summary

Once you have gathered all this information it is sensible to prepare a summary of your case. You can send this in advance to the governors. If you don't do this, make sure you take enough copies to hand round to everyone at the meeting. The model summary below will help you organise your points. Not all the points may apply to you so just use the ones that do.

Summary

1. Reasons for exclusion

For example:

"I understand that a child should only be permanently excluded for a serious breach or persistent breaches of the school's behaviour policy and if their being in school would harm the education or welfare or themselves or others.

In my child's case I consider that

- this is not a single serious breach [explain why you think it is not serious] or
- there have not been persistent breaches [give evidence for this]

I do not think that allowing my child to return to school would be harmful to others in the school" [explain why]

2. Evidence

"I disagree with my child's exclusion, because s/he:

- did not do what s/he is accused of...
- did not do all of the things s/he is accused of..."

[give details of all the evidence you have accumulated showing discrepancies and inaccuracies in the case against your child]

3. Not proportionate

"I do not feel that this exclusion was a proportionate punishment. It was too severe because..."

[give reasons e.g. behaviour policy suggests lesser sanction, other pupils not punished as severely, child has never been in trouble before]

continued on page 15

4. Early intervention

“I disagree with my child’s exclusion, because the school has not taken into account the pressure my child is under [e.g. family matters you have told them about before] and has not offered any support [e.g. through a multidisciplinary assessment – say what kind of support you think would help]...”

5. Other factors

“I disagree with my child’s exclusion because s/he:

- has special educational needs but is not getting all the help that s/he needs...” [say why]
- was affected by discrimination...” [say how]
- was affected by bullying...” [say why]

6. Alternative solutions

You may wish to suggest an alternative punishment. “If my child is reinstated, I would like to suggest that s/he participates in restorative justice/mediation.” [say what you have in mind]

7. Procedures

For example:

“I feel the school has failed to follow the correct procedures in line with some of the government guidance on exclusions. I have marked this on pages...” [attach the relevant pages if you can and say how this affected your child’s exclusion]

8. Conclusion

This could include:

- evidence from the school record of good things about your child
- any damage you think will occur as a result of being permanently excluded, such as worries you have about reintegration into another school or missing part of their education.

If you want your child to be reinstated, stress that although this is a difficult time, you do want to work together with the school in the future.

The governors' meeting

Guidance sets out how the meeting should be run and what the governors should take into account.

Who will be there?

- the panel of governors. There must be at least three governors on the panel. They should not be biased, so do raise any possible conflicts of interest. That could be for example if one of the panel were related to the alleged victim.
- a clerk to take notes and advise on procedure. It is normal practice to have a clerk but is not a legal requirement.

The following people must be invited to the meeting:

- the headteacher, who will explain the school's case for excluding the child
- parents. You must be allowed to bring a friend or representative to support you at the meeting if you wish
- a representative of the local authority must be invited and may make representations.

If the school is an Academy you may ask for a local authority representative to be present as an observer. They will not be invited if you do not ask and they can only make representations if the governing body agrees.

Other people who may attend:

- witnesses. Consider whether there are any witnesses who could help your case. You could ask for a character witness to be there to present your child in a positive light
- your child – should be encouraged and supported to attend if they wish. See further under *A fair hearing* below.

When the governors send you the papers they should include a list of everyone who will be present at the meeting.

Time and date

The meeting must happen within 15 school days. The governors must try to arrange the meeting at a time that is convenient to everyone.

Papers

The governors should ask for written material to be submitted in advance. That would include witness statements and information from the school about a child's SEN.

They should try to circulate the papers at least five days before the meeting so you have a chance to read them.

If any new papers are brought up at the hearing, ask for a short break in order to read them.

A fair hearing

Guidance is very clear about your right to a fair hearing and what the governors should do to ensure this.

The governors should not discuss the exclusion with any of the parties outside the meeting. That means that they shouldn't have a private meeting with the headteacher about it without you there.

Parents may be accompanied by a friend or representative. Think about what will help you and who can go with you. This could be a personal friend or a family member. It can be helpful to have another person to take notes to leave you to concentrate on presenting your case. There may also be community organisations that can support you. If your child has SEN, contact your local parent partnership service. See Further help page 25.

If you have a disability, the governors must take steps to make sure you are not put at a disadvantage because of this. You may want to ask for an accessible venue or materials in alternative formats or even a bit of extra time to present your case.

The guidance also states that all parties should be supported to participate and have their views heard. Make sure you ask if you need any other support such as an interpreter.

Your child's views are really important and they should be encouraged to go to the meeting if possible. They could also be supported by being allowed to bring a friend or given information in a way that they can understand.

Think about the best way for your child to be involved. Particularly for younger children, it may be upsetting or confusing for them to attend the whole meeting. In this case it may be better for them to come to part of the meeting to give their views or an apology and then leave.

What will happen at the hearing?

The order of the hearing is not set out in guidance. A typical order of proceedings might be:

- the chair introduces everyone and explains what will happen
- the headteacher gives the school's case for excluding the child
- questions to the headteacher
- the parent puts their case
- questions to the parent
- summing up by the headteacher and the parents.

The parents and the headteacher will then be asked to leave, as the governors must make the decision on their own. A clerk may stay with them to help by referring to notes of the meeting.

The governors' decision

When making their decision, the governors must:

- consider the interests and circumstances of the excluded pupil
- have regard to the interests of other pupils and people working at the school.

They will look at the facts on the balance of probabilities and consider whether the headteacher's decision was lawful, reasonable and procedurally fair.

Minutes should be taken of the meeting as a record of the evidence that was taken into account.

The governors may either:

- uphold the exclusion
- direct reinstatement immediately or on a particular date.

If reinstatement is not practical because you do not want your child to go back to the school, the governors must still consider whether the headteacher's decision was justified.

After the meeting

The governors should log the outcome on the child's school record along with copies of the relevant papers.

The governors must let you know the outcome and the reasons for their decision in writing without delay.

If they uphold the exclusion the letter must also tell you:

- the fact that it is a permanent exclusion
- your right to ask for the decision to be reviewed by an independent review panel
- timescales for applying for a review
- your right to ask for an SEN expert at the review
- your right to be represented
- additional rights to make a claim in discrimination cases. See page 24.

The Independent Review Panel

The Independent review panel has replaced the Independent appeal panel for all exclusions from 1st Sept 2012.

The IRP's role is to review the decision of the governing body to check that it was properly made. The IRP cannot reinstate a child. It can quash the decision and direct the governing body to reconsider its decision. It can also recommend that the governors look at the exclusion again. The rules around IRPs are highly complex and this is just a summary. For full details go to the Government guidance on exclusions. See Further help page 25.

Asking for a review

The letter you get from the governors will tell you who to write to in order to ask for a review.

You have 15 school days from the date of the letter to ask for a review. It is important to send in your response in good time. If you miss the deadline your application will be rejected.

At the same time you can ask for:

- attendance of an SEN expert if you think SEN are relevant to your child's exclusion
- attendance of LA rep. If your child is a pupil at an Academy, a representative of the LA will only be invited if you ask for it.

The IRP meeting **must** take place within 15 school days of your application being received. The meeting may be adjourned if necessary.

The IRP meeting

Who will be there?

- the Panel members. The panel will be made up of 3 or 5 members. There are strict rules about who can and can't be on a panel. The panel members must be independent and must not appear to be biased in any way
- the clerk – it is good practice to have a clerk but this is not a legal requirement. The clerk should not be the same as the clerk to the governing body meeting
- the headteacher
- someone from the governing body

- LA rep – a representative will be invited if your child is at a maintained school. For Academies you need to ask specifically and their role will be limited to observing
- SEN expert if you have requested this. See box page 22 for details
- excluded child – your child must be allowed to attend and encouraged to participate. If they don't attend, they can put their views forward in writing or through a representative
- witnesses – may be present but it is more usual to have written statements if the witnesses are pupils at the school
- the alleged victim also has a right to be present or put in written views.

Think about whether there is anyone you want to be there as a witness. You can ask for a character witness to attend if the panel agrees.

Representation

The headteacher and the governors have the right to be represented. They may be represented by lawyers.

You as parents have a right to be represented, including legally. You would need to arrange this yourself. See Further help page 25 for organisations that may be able to help. You can also take a friend.

Papers

As with the governors' meeting, the clerk should try to make sure that the papers are sent to all parties 5 school days before the review.

You should also be told who will be at the meeting and what their role will be.

Evidence

The panel will take into account all evidence that was before the governing body. They can look at new evidence but they may be limited in how they can use it.

It is particularly important to flag up any evidence that you put forward that you think the governing body ignored or evidence like school policies that the governing body ought to have been aware of but weren't.

There may also be completely new evidence that has come to light since the governors' meeting. This could be something like a new diagnosis of a particular disability affecting your child. The panel can look at completely new evidence when deciding whether to recommend reconsideration by the governing body, but not when deciding whether to quash the decision.

A fair hearing

The principles relating to fair hearings for the governing body meeting (see page 17) also apply to the IRP.

You have a right to have your views properly heard and guidance also states that the review “should be conducted in an accessible, non-threatening and non-adversarial manner”.

The meeting is likely to follow a similar order to the governing body meeting. The chair should explain the procedure to you at the beginning of the hearing.

The SEN expert

Making a request

If you want to ask for an SEN expert to be present, you must do this at the same time as you ask for your case to be heard by the IRP. Your child does not have to have identified SEN for you to ask for an SEN expert. It may be that you have flagged it up as a possibility but the school has ignored this.

Who is the SEN expert?

The SEN expert must have experience in assessing and supporting children with SEN. They must also understand schools’ legal responsibilities relating to SEN and disability. Guidance suggests that the SEN expert could be someone like an educational psychologist, a SENCO, a specialist teacher or a behaviour support teacher. It must not be anyone who has had direct involvement with your child or other children in your family.

What the SEN expert can do

The SEN expert’s role is to provide impartial advice on how SEN may be relevant to the exclusion. They can look at whether the school followed all the right procedures in identifying or providing support for your child’s SEN. They can then advise on the effect that any SEN might have had on the circumstances of your child’s exclusion.

The SEN expert must base their advice on the evidence that is before the panel.

What the SEN expert can’t do

The SEN expert cannot assess your child.

If the school followed the right procedures, the SEN expert should not criticise them just because they could have done things differently.

The IRP decision

The IRP can make three different decisions:

Quash the governing body's decision

The threshold for this decision is set very high indeed. It is not enough for the panel to disagree with the exclusion. The panel should consider:

- illegality – did the headteacher or governing body do something that they don't have the legal power to do?
- irrationality – was the governing body's decision one that no-one in their right mind could possibly have made?
- procedural impropriety – did the headteacher or governing body seriously fail to follow proper procedure to the extent that justice was clearly not done?

If the decision is quashed, the governing body must meet again to reconsider and make a new decision. They would normally be expected to reinstate the pupil. If they do not, there is a financial penalty on the school.

Recommend reconsideration by the governing body

The IRP can make this decision if the evidence isn't strong enough for quashing, but the panel consider the governing body should look at their decision again.

The governing body must meet again but there is no penalty if they do not decide to reinstate.

Uphold the governing body's decision

This means that your child is permanently excluded and their name will be removed from the school roll.

After the meeting

If the IRP has directed or recommended reconsideration, the governing body must meet again within 10 school days. They must notify you of their decision in writing without delay.

The letter must also tell you about any information that will be added to your child's school record to reflect the decision.

Discrimination cases

If you feel that your child's exclusion amounts to discrimination under the Equality Act (see Discrimination and the Equality Act page 5), you have further rights to make a claim.

Disability

Children with special educational needs and disabilities are statistically more likely to be permanently excluded than the average. If your child has a disability, whether formally diagnosed or not, which affected the exclusion, you can make a claim to the First-Tier Tribunal for Special Educational Needs and Disability (SEND).

You can make a claim to SEND as well as or instead of going to the Independent Review Panel. SEND's powers are different from those of the IRP.

SEND will look at the disability aspects of the exclusion afresh. This is not just a review of the governing body decision.

SEND has the power to reinstate your child, even if their name has already been removed from the school roll.

You must lodge your claim within 6 months of the exclusion.

For more information on SEND see Further help page 25.

Other forms of discrimination

Claims for other forms of discrimination e.g. race or sex, must be made to the County Court.

The time limit for making a claim is 6 months and the County Court also has the power to reinstate a child.

Further help

From ACE

Information and free advice booklets can be downloaded from www.ace-ed.org.uk including

- Fixed Period Exclusion
- Getting Extra Help
- Disability Discrimination

From the Department for Education

- Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion

Free to download from: www.education.gov.uk/schools/pupilsupport/behaviour/exclusion

- School behaviour advice and guidance – good practice advice and statutory guidance

Free to download from: www.education.gov.uk/schools/pupilsupport/behaviour/behaviourpolicies

- DfE and ACPO Drug Advice for Schools
- Special Educational Needs Code of Practice

Free to download from: www.education.gov.uk/publications

From Parent Partnership

Parent Partnership is an impartial service funded by the LA to support parents of children with SEN. You can find details of your local service via the National Parent Partnership Network.

www.parentpartnership.org.uk
020 7843 6058

From your local authority

You can find details of your local authority via the DirectGov website: www.direct.gov.uk

You may wish to contact your LA children's services department or the exclusions officer.

From SEND – First Tier Tribunal (SEN and Disability)

01 325 392760

www.justice.gov.uk/tribunals/send/appeals

- Disability Discrimination in schools – how to make a claim

From the Equality and Human Rights Commission

www.equalityhumanrights.com

0845 604 6610

- What equality law means for you as an education provider – schools

Sources of free representation

The following law schools run exclusion representation projects in collaboration with barristers' chambers. Representation is by law students trained and supported by qualified barristers.

BPP School Exclusions Project

www.facebook.com/schoolexclusionsproject

Email: schoolexclusions@my.bpp.com

City/4-5 School Exclusions Project

www.city.ac.uk/schoolexclusions

Email: schoolexclusions@city.ac.uk

Other useful websites and advice lines

Coram Children's Legal Centre

www.childrenslegalcentre.com

Family, child and education law advice line:
08088 020 008

Contact a Family

For families with disabled children

www.cafamily.org.uk

National SEN advice line 0808 808 3555

Advice on all aspects of education for children with SEN.

ACE is a charity and depends on grants and donations to operate our advice services. If you have found our advice helpful and would like to make a donation please visit www.ace-ed.org.uk
Thank you.

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