

ADVICE TO GOVERNORS/MANAGEMENT COMMITTEE (PRU) REGARDING PERMANENT EXCLUSION

The current government guidance is available here:

<https://www.gov.uk/government/publications/school-exclusion>

Head teachers, teachers in charge of a Pupil Referral Unit (PRU), governing bodies, LAs and Independent Review Panels must have regard to the exclusions guidance and it should be followed unless there is good reason not to. The decision to exclude a pupil must be lawful, reasonable, fair and proportionate. Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.

Under the Equality Act 2010 (“the Equality Act”) schools must not discriminate against, harass or victimise pupils because of their: sex; race; disability; religion or belief; sexual orientation; for a reason connected with pregnancy / maternity; or because of gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices and in terms of the support given to them.

In carrying out their functions under the Equality Act, the public sector equality duty means schools must also have due regard to the need to:

- eliminate discrimination and other conduct that is prohibited by the Equality Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

These duties need to be taken into account when deciding whether to exclude a pupil. Schools must also ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act allow schools to take positive action to deal with particular disadvantages affecting one group, where this can be shown to be a proportionate way of dealing with such issues.

Headteachers should as far as possible avoid permanently excluding a child with a Statement of Special Educational Needs / Education, Health & Care Plan, or a looked after child.

The decision to exclude a child permanently should be taken only:

- 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 decision to exclude a child permanently is a serious one and should only be taken where the basic facts have been clearly established on the balance of probabilities. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies which have been tried without success. It is an acknowledgement by the school that it has exhausted all available strategies for dealing with the child and should only be used as a last resort.

Where the pupil has a history of poor behaviour, the governors should normally be satisfied that a programme of support has been tried and has failed. For pupils who suffer from a disability it should be clear that all available reasonable adjustments to support the child have been exhausted. Any programme of support (which could be a Behaviour Plan, a Pastoral Support Programme or part of an Individual Education Plan for a pupil with special needs) should set out the strategies which have been attempted by the school in order to avoid the need for exclusion. It should be up-to-date and reviewed as required.

The governing body's role is to review exclusions imposed by the head teacher, who alone has the power to exclude. The governing body cannot increase the severity of an exclusion, for example by extending the period of a fixed period exclusion or by imposing a permanent exclusion in substitution for a fixed period exclusion. There are only two decisions open to the governors - to uphold the exclusion or to direct the pupil's re-instatement, either immediately or by a particular date.

- a) In reaching a decision the governing body should consider:
- b) Any representations made by the parent, the pupil and the LA;
- c) Whether on a balance of probabilities the pupil did what he or she is alleged to have done;
- d) Whether the decision to exclude was lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention of Human Rights), rational, reasonable, fair and proportionate.

The LA is not required (and it may not be practical) to send a representative to all governing body exclusion meetings in its area. The LA should send a representative to all permanent exclusion meetings and to longer fixed period exclusion meetings if possible. The LA's role at the governing body meeting is not to give its view on the merits of the particular exclusion. But it can make a statement to the governing body in general terms, for example about how other schools in the area (and the LA itself, if applicable) have dealt with similar incidents, and it can advise on alternative arrangements for the pupil to continue his or her education if the exclusion is upheld.

The LA representative should also draw the attention of governors to issues where there is a lack of clarity or where more information may be needed or where guidance appears to have been ignored. The head teacher should attend the meeting to clarify points and answer any questions relating to the incident or events leading to the exclusion. No party to the review should be alone with the governors at any point before, during or after the meeting.

Where the excluding school is an Academy, a representative from the Local Authority is not automatically invited to this meeting; however the parent may invite a representative to attend as an observer. The representative can make representations with the governing body's consent.

If the exclusion is upheld, the parents have the right for this decision to be reviewed by an independent review panel. Where there is an allegation of discrimination (under the Equality Act) in relation to a fixed-period or permanent exclusion, parents can also make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination). A claim of discrimination made under these routes should be lodged within six months of the date on which the discrimination is alleged to have taken place e.g. the day on which the pupil was excluded.

Where a pupil's name is removed from the school register and a discrimination claim is subsequently made, the First-tier Tribunal or County Court has the power to direct that the pupil should be reinstated.