

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.

In reaching a decision the governing body should consider:

- a. any representations made by the parent, the pupil and the LA;
- b. whether on a balance of probabilities the pupil did what he or she is alleged to have done; and
- c. 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.

Pupils permanently excluded from maintained schools, academies and free schools

Where a pupil is permanently excluded from a school maintained by the local authority (other than a special school or pupil referral unit) the authority must re-determine the excluding school's budget share in accordance with [The School and Early Year Finance \(England\) Regulations 2013](#).

Maintained schools, Academies and free schools will have their funding withdrawn on a financial year basis.

Maintained Schools

- Where a pupil is permanently excluded, funding will be withdrawn for the remainder of the financial year at the rate relevant for the Key Stage in that financial year.
- Where a pupil is permanently excluded after the October School Census date, funding will be withdrawn for the remainder of the current financial year and also for the following financial year (at the funding rate applicable for the following financial year).
- Where a pupil is eligible for Pupil Premium, funding will be withdrawn for the remainder of the financial year.
- Where a pupil is permanently excluded after the January School Census date, Pupil Premium will be withdrawn for the remainder of the current financial year and also for the following financial year (at the Pupil Premium funding rate applicable for the following financial year).
- Where an excluded pupil is admitted, then the school will receive funding from the admission date to the end of the current financial year, and similarly if pupil is admitted after the October School Census date, then the school will received funding for the following financial year.

Academies and Free Schools

- Where a pupil is permanently excluded, funding will be withdrawn for the remainder of the funded year until 31st March at the rate relevant for the Key Stage in that academic year, and if the exclusion is after the October School Census date then funding allocated until the following 31st March (at the applicable rate for the following year) will also be withdrawn.
- Where a pupil is eligible for Pupil Premium, funding will be withdrawn for the remainder of the funded year, and if the exclusion is after the January School Census date then it will also be withdrawn for the following 31st March (at the applicable rate for the following year).
- Where an excluded pupil is admitted, then the academy will receive funding from the admission date to the end of the current academic year, and similarly if pupil is admitted after the October School Census date, then the school will received funding for the following academic year.

Exception

If the excluded pupil is in a transfer year and the relevant date falls between 1 April and the beginning of the new school year, then funding is removed until the end of the school year rather than the end of the financial year.

- A transfer year is the school year before a pupil starts at secondary or middle school, generally Year 6. The last year of compulsory schooling (i.e. Year 11) does not count as a transfer year. This means that if a child is excluded in their last term of school, money for the entire financial year is removed from the school's budget.
- The end of the school year is the last calendar day before the first term after July, so for example if the new school year begins on 1 September, the end of the school year will be 31 August.

Calculation

Calculation of AWPU removed from excluding school

Number of complete weeks from relevant date (sixth school day) to 31st March in current financial year - divided by 52 (weeks) - multiplied by the amount for age of pupil

Calculation of AWPU given to admitting school

Number of complete weeks from relevant date (date of admission) to 31st March in current financial year - divided by 52 (weeks) - multiplied by the amount for age of pupil

Same calculation is used if pupil attracts Pupil Premium

GOVERNORS MEETING TO REVIEW PERMANENT EXCLUSION

BEFORE THE MEETING:

- The quorum is three governors. If any governor has a connection with the pupil, or knowledge of the incident that led to the exclusion, which could affect his or her ability to act impartially, he or she should step down.
- It is advisable that a clerk is appointed to take minutes and report to parents and the Education Service.
- The meeting should be held within the statutory time limits and at a time and date convenient to all parties. Ensure that the parents and the Education Service representative have been notified of the date and time of the governors meeting as early as possible. Persons with 'parental responsibility' for the child, who live at a different address, should also be invited.
- Taking into account the pupil's age and understanding, he/she should be enabled and encouraged to attend the meeting
- No party to the review (including the headteacher) should be alone with the governors at any point before, during or after the meeting.

AT THE MEETING:

- The Chair of the governors meeting should call the Headteacher, the parent and any representative, and the Education Service representative to join the meeting together. The Headteacher must not have previously discussed the case with any governors attending the meeting.
- The Headteacher and the parents (and their representative) should be present throughout the hearing.
- Unless there are strong reasons to refuse, the Chair of the meeting should allow the excluded pupil to attend the meeting. The parent formally remains the appellant unless the pupil is 18 or over.
- The Chair should ask the Headteacher to present his/her case giving the reason(s) for the exclusion and the circumstances surrounding the decision to exclude. The Headteacher should also outline the steps taken to try and avoid the exclusion.
- The parents should be asked to make their representations about the exclusion. If the pupil wishes to make representations, he/she should be invited to do so.
- The Education Service representative should be asked if he/she has any comments.
- Either party may introduce witnesses, though these must restrict their evidence to what is directly relevant to the circumstances of the exclusion.
- All parties as well as governors should be given the opportunity to question each other.
- The role of the Chair is to make sure that all necessary information has been provided so that the governors may make an informed decision on the exclusion.

- Once the Chair is satisfied that the parties involved have completed their presentation, he/she should close the meeting and ask everyone, apart from the governors and Clerk, if present, to leave the room.
- The governors, under the guidance of the Chair, should consider all the evidence they have heard. 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. The Chair has the casting vote in all cases.

AFTER THE MEETING:

- Where the governors decide to uphold the Headteacher's decision to exclude the pupil permanently, they should write without delay to the parent and the letter should include the following information:
 1. the reason for the decision
 2. the parents' right to request that the decision is reviewed by an independent review panel, together with the name and address of the person to whom any request should be sent
 3. the date by which any request should be lodged (15 school days after the day on which notice in writing was given of the governing body's decision. Where the notice is sent by first class post, it is treated as having been given on the second working day after it was posted)
 4. that any request must set out the grounds on which it is made
 5. that, regardless of whether the excluded pupil has recognised special educational needs, parents have a right to require the local authority / academy trust to appoint an SEN expert to attend the review;
 6. that, in addition to the right to apply for an independent review panel, if parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the Equality Act 2010 to the First-tier Tribunal (Special Educational Needs and Disability), in the case of disability discrimination, or the County Court, in the case of other forms of discrimination.
- If the governors decide to direct re-instatement of the pupil, they may not attach conditions to the re-instatement.
- A copy of the decision letter should be sent to the Headteacher and to the Education Service representative
- A copy of the minutes should be circulated to all parties.

TIMETABLE TO REVIEW EXCLUSIONS

Based on the number of school days in a term that the pupil has been excluded from school; lunchtime exclusions count as half a day

Informing the Governing Body and LA

The Headteacher must inform the governing body and the LA without delay, of:

- (a) permanent exclusions
- (b) fixed period exclusions of six days or more (or more than 10 lunchtimes)
- (c) exclusions which would result in the pupil missing a public examination

For all fixed period exclusions

- During the first five school days of any exclusion the school must set work to be completed at home by the pupil;
- From the sixth school day (not cumulative) of a fixed period exclusion the governors must arrange for suitable alternative full-time education until the pupil returns to school;

Fixed period exclusion of 5 days or less

- Unless the exclusion will result in the pupil missing a public examination, the Headteacher is only required to report such exclusions to the governors and LA once a term;
- Governors do not need to meet to consider the exclusion;
- If representations are received, the governors must consider them but are not required to meet and cannot direct re-instatement;
- The government guidance gives no indication as to when this meeting should take place, but advises that the governing body should respond promptly to any request from the parents;
- Update pupil's information on SIMS. Copy of exclusion letter to parents placed on pupil's file;

Fixed period exclusion of 6 - 15 days (or cumulative)

- The governors do not need to meet, unless the parents wish to make representations;
- The government guidance states that governors must meet to consider any such representations within 50 school days of receiving notice of the exclusion but, again, should respond promptly to any request from the parents;
- The governors can uphold or overturn the exclusion but cannot increase its length;
- Update SIMS. Copy of exclusion letter to parents should be forwarded to your District Inclusion Officer, as well as being placed on pupil's school file;
- If the parents make representations, following the meeting, the governing body must inform the parents without delay of its decision in writing, stating the reasons. Copy of this letter should be sent to your District Inclusion Officer.

Fixed period exclusion of 16 - 45 days (or cumulative) or permanent exclusion

- Exclusion notification form should be completed and emailed to your District Inclusion Officer together with a copy of the exclusion letter to parents;
- Governors must meet within 15 school days of receiving notice of the exclusion and must decide whether or not to uphold the exclusion;
- Parents and LA* must be invited to the meeting. Meeting must take place even if parents do not wish to attend;
- Taking into account pupil's age and understanding, he/she should be enabled and encouraged to attend;
- The governors can uphold or overturn the exclusion, but cannot increase the length of a fixed period exclusion;
- Following the meeting the governing body must inform the parents without delay of its decision in writing, stating the reasons. Update SIMS.
- Where the governors uphold a permanent exclusion, the parents have the right to ask for the decision to be reviewed by an independent review panel.

* Local Authority is not automatically invited to this meeting if school is an Academy

NB: If any exclusion would cause the pupil to miss a public examination, the school should consult with the Education Service, in order to explore possible alternatives.