

Children's Services

# Exclusion guidance supplement

## September 2017

Hertfordshire County Council guidelines on exclusion from  
maintained schools, Academies and Education Support Centres  
(ESCs)



# Contents

Item	Page
About this guide	3
Part 1: Promoting positive behaviour and early intervention	5
Part 2: Key points	7
Part 3: The head teacher's power to exclude	9
Part 4: The head teacher's duty to inform parties about an exclusion	24
Part 5: The governing board's and Local Authority's duties to arrange education for excluded pupils	31
Part 6: The governing board's duty to consider an exclusion	33
Part 7: The head teacher's duty to remove a permanently excluded pupil's name from the school register	44
Part 8: The Local Authority's/Academy Trust's duty to arrange an independent review panel	46
Part 9: The duties of independent review panel members, the clerk and the SEN expert in the conduct of an independent review panel	55
Part 10: The duties of independent review panel members, the clerk and the SEN expert in the conduct of an independent review panel	61
Part 11: The Local Authority's role in overseeing the financial readjustment / payment	63
Part 12: Guidance to head teachers, governing bodies, independent review panel members and clerks on police involvement and parallel criminal proceedings	65
Appendix 1: A summary of the governing board's duties to review the head teacher's exclusion decision	68
Appendix 2: A non-statutory guide for head teachers	69
Appendix 3: A guide for parents and carers	76
Appendix 4: Removal of pupils from schools in exceptional circumstances	81
Appendix 5: Removal of pupils on medical grounds	82
Appendix 6: Parenting contracts and parenting orders	83
Appendix 7: Procedures to be followed in the application of a fixed penalty notice in relation to exclusions	98
Appendix 8: Model protocol for the management of children who have been excluded from secondary schools for longer than five days or otherwise removed	118
Appendix 9: Guidance on illegal and informal exclusions	123
Appendix 10: Guidance on part time timetables	125
Appendix 11: Model exclusion letters	131

# About this guide

This guidance<sup>1</sup> updates and replaces all previous guidance regarding exclusion from maintained schools, academies and Pupil Referral Units (ESCs) including special schools published by Hertfordshire County Council, herein after referred to as the Local Authority (LA). It applies equally to children with and without Education Health and Care plans. It is intended to supplement the statutory exclusion guidance published by the Department for Education (DfE)<sup>2</sup>, “*Exclusion from maintained schools, Academies and Pupil Referral Units in England: Statutory Guidance for those with Legal Responsibilities in Relation to Exclusion – September 2017*”. Whilst the DfE document is the definitive guide, this document is intended to complement it by providing additional information. It should therefore be regarded as a guide to best practice. There is nothing in this guidance that contradicts anything in the DfE guidance

Other than Part One the headings and paragraph numbers of this guide are identical to the DfE guidance for ease of reference. Text presented in normal typeface is taken directly from the statutory DfE guidance. Text presented in italics is additional non-statutory guidance from the LA. Whilst not bound by its provisions the LA encourages schools, academies and ESCs to follow all guidance provided unless there is good reason to depart from it.

This guidance is intended to be of assistance to all parties involved in the exclusion process including Head Teachers, governing bodies, academy Trusts, LA representatives, members of Independent Review Panels and those appointed as Special Educational Needs (SEN) experts. It is also intended to be of assistance to parents and excluded children.

The term “head teacher” in this document applies equally to the teacher in charge at an Education Support Centre (ESC) and to the principals of academies.

The term “governing board” also applies to ESC management committees. In respect of academies, references to the “governing board” should be read to mean the board of directors or the directors of the academy Trust.

Except where specifically stated, this guide applies to all maintained schools, academy schools (including free schools), Alternative Provision Academies (including AP Free Schools) and ESCs. The term “school” in this document is used to describe any school to which the guidance applies. Where the term “academy” is used it refers to any category of academy to which the guidance applies.

The requirements of the guide apply in relation to all pupils, including those who may be below or above compulsory school age, such as those attending nursery classes or sixth forms.

The definition of a parent for the purposes of the Education Act is broadly drawn. In addition to the child's birth parents, references to parents in this guidance include any person who has parental responsibility (which includes the LA where it has a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives. Where practicable it is expected that all those with parental responsibility should be encouraged to engage with the exclusion process.

Children's Services (CS) maintains an Integration Team, which should be the first point of contact for any queries head teachers, governors, parents, pupils or others may have regarding exclusions. The Integration Team may be contacted on 01992 – 588495 or 01992 – 588285.

<sup>1</sup>Available at the following location:

<http://www.thegrid.org.uk/info/welfare/exclusions.shtml>

<sup>2</sup>Available at the following location:

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

# Part 1: Promoting positive behaviour and early intervention

## Introduction

- a. *In most cases exclusion, especially permanent exclusion, will be the last resort after a range of measures have been tried to improve a pupil's behaviour all without lasting success. Schools should put a range of strategies in place to address the types of behaviour which may lead to exclusion.*
- b. *Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. Head teachers should also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems<sup>3</sup> (DfE exclusion guidance paragraph 19)*

## Managing behaviour in schools

- c. *Schools must have policies, procedures and staff training in place that promote good behaviour and prevent poor behaviour. These behaviour policies must be widely publicised so that all pupils including those who are admitted mid-year, school staff and parents are aware of the standards of behaviour expected of pupils and the range of sanctions that may be imposed. The governors should review the school's behaviour policies and updates them as necessary on an annual basis. Schools must apply their behaviour policies in a consistent, rigorous and non-discriminatory way and all areas of their application must be monitored routinely to satisfy legal requirements under race, disability and gender discrimination law. Guidance on school discipline and pupil behaviour policies, which is available at <https://www.gov.uk/government/publications/behaviour-and-discipline-in-schools>*
- d. *Schools should intervene as early as possible to address emerging behaviour problems, including those masking underlying learning difficulties or disabilities, thereby minimising the need for permanent exclusion. Appropriate measures could include*
  - *working collaboratively with parents;*
  - *a change of teaching set or class;*
  - *curriculum alternatives at Key Stage 4, including attendance at a further education college or another form of alternative provision;*

- *temporary placement in an in-school Learning Support Unit as part of a planned positive programme for pupils;*
  - *temporary or part-time placement at the local ESC or with a voluntary / private sector alternative provider, where the pupil can receive educational provision intended to improve their behaviour;*
  - *a managed move to another school, with the consent of all parties involved;*
  - *consideration by the Special Educational Needs Co-ordinator (SENCO), with colleagues, of possible interventions within the school for a pupil with SEN, seeking advice from the Educational Psychologist, Behaviour and Attendance team or specialist SEN Teacher as appropriate;*
  - *where the pupil has an Education Health and Care Plan, arranging a review of the plan in consultation with the local SEN Team*
  - *assessment of special educational needs, including possible placement in a special school;*
  - *allocation of a key worker such as a Learning Mentor or Connexions Personal Adviser; and*
  - *referral to a specific support service, such as the Targeted Youth Service or the Child and Adolescent Mental Health Service.*
- e. *Many schools find Pastoral Support Programmes (PSPs) useful to help pupils better manage their behaviour. A PSP will normally involve a number of interventions such as those listed in paragraph (d). It is particularly appropriate for those pupils whose behaviour is deteriorating rapidly. Guidance on PSPs is available at <http://webarchive.nationalarchives.gov.uk/20070110195734/http://www.teachernet.gov.uk/supplyteachers/detail.cfm%3F%26vid%3D4%26cid%3D17%26sid%3D111%26ssid%3D4030901%26opt%3D0>*
- f. *The Common Assessment Framework (CAF) is a voluntary process common to all children's services to help identify a child's needs as early as possible and agree what support is appropriate. Resulting early intervention should help reduce the risk of problems reaching the point where exclusion is considered necessary. A CAF may be undertaken as part of PSP or at any stage. It may be particularly appropriate to carry out a CAF in cases of multiple fixed period exclusions. In all cases where a child is receiving support from more than one agency, one practitioner should act as the "lead professional" to coordinate support and provide a single point of contact for the child and family.*

<sup>3</sup>Non-statutory guidance for head teachers of maintained schools on the place of multi-agency assessments within a school's behaviour policy is provided by, *Behaviour and Discipline in Schools – Advice for Head teachers and School Staff* (January 2016).

## Part 2: Key points

- The legislation governing the exclusion process remains unchanged. This statutory guidance has been updated in a small number of areas, in particular to provide greater confidence to head teachers on their use of exclusion and to provide greater clarity to independent review panels and governing boards on their consideration of exclusion decisions.
- In January 2015, the Department amended regulations to clarify that a governing board's duty to arrange education from the sixth day of a fixed-period exclusion is triggered by consecutive fixed-period exclusions totalling more than five days<sup>4</sup>
- Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. The Government supports head teachers in using exclusion as a sanction where it is warranted. However, permanent exclusion should only be used as a last resort, 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.
- The decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race. Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.
- Disruptive behaviour can be an indication of unmet needs. Where a school has concerns about a pupil's behaviour, it should try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent exclusion. In this situation, schools should consider whether a multi-agency assessment that goes beyond the pupil's educational needs is required.
- Schools should have a strategy for reintegrating a pupil who returns to school following a fixed period exclusion and for managing their future behaviour.
- All children have a right to an education. Schools should take reasonable steps to set and mark work for pupils during the first five school days of an exclusion; and alternative provision must be arranged from the sixth day. There are obvious benefits in arranging alternative provision to begin as soon as possible after an exclusion.
- Where parents dispute the decision of a governing board not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel. Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents can also make a claim to

the First-tier Tribunal (Special Educational Needs and Disability) or the County Court for other forms of discrimination.

- An independent review panel does not have the power to direct a governing board to reinstate an excluded pupil. However, where a panel decides that a governing board's decision is flawed when considered in the light of the principles applicable on an application for judicial review, it can direct a governing board to reconsider its decision. The panel will then be expected to order that the school must make an additional payment of £4,000 if it does not offer to reinstate the pupil. Whether or not a school recognises a pupil as having Special Educational Needs (SEN), all parents have the right to request the presence of an SEN expert at a review meeting. The SEN expert's role is to advise the review panel, orally or in writing or both, impartially, of the relevance of SEN in the context and circumstances of the review. For example, they may advise whether the school acted reasonably in relation to its legal duties when excluding the pupil.
- Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and ability to understand.

<sup>4</sup>Education (Provision of Full-Time Education for Excluded Pupils) (England) (Amendment) Regulations 2014, amending the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007.

## Part 3: The head teacher's power to exclude

There are four sets of circumstances in which individual pupils may be required to leave the school site, namely where

- a) *there is sufficient evidence that a pupil has committed a disciplinary offence and if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school. In these circumstances the pupil may be excluded from school for a fixed period or permanently;*
- b) *a pupil is accused of a serious criminal offence but the offence took place outside the school's jurisdiction. In these circumstances the head teacher may decide that it is in the interests of the individual concerned and of the school community as a whole for that pupil to be educated off site for a certain period, subject to review at regular intervals. This is not an exclusion. Appendix 2 of this guidance deal with these circumstances;*
- c) *for medical reasons, a pupil's presence on the school site represents a serious risk to the health or safety of other pupils or school staff. In these circumstances a head teacher may send the pupil home after consultation with the pupil's parents. This is not an exclusion and may only be done for medical reasons. Appendix 3 of this guidance deals with these circumstances; and*
- d) *the pupil is given permission by the head teacher or person authorised by them, to leave the school premises briefly to remedy breaches of the school's rules on appearance or uniform, where this can be done quickly and easily; this should be for no longer than is necessary to remedy the breach. This is not an exclusion but an authorised absence. However, if the pupil continues to breach uniform rules in such a way as to be sent home to avoid school, the pupil's absence may be counted as unauthorised absence. In all such cases the parent must be notified and the absence should be recorded. When making this decision, the child's age and vulnerability, and the parent's availability, will need to be considered.*

These are the **only** circumstances in which individual pupils may be required to leave the school site.

### A guide to the law<sup>5</sup>

1. **Only the head teacher<sup>6</sup> of a school can exclude a pupil and this must be on disciplinary grounds.** A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in a single academic year), or permanently. A fixed period exclusion does not have to be for a continuous period. (Annex B of this guidance, a non-

statutory guide for head teachers, summarises the requirements for head teachers, but should not be used as a substitute for this guidance or the relevant legislation.)

*Other exclusion-related activities do not have to be undertaken by the head teacher personally, but may be delegated.*

*The limit of 45 school days applies to the pupil and not to the institution. Therefore, any days of fixed period exclusion served by the pupil in any school or ESC in the same school year will count towards the total. It is important therefore that, when a pupil transfers to a new school during the academic year, records of any fixed period exclusions a pupil may have received and served so far during the current academic year are also transferred promptly to the new school.*

*A decision to exclude a pupil for a fixed period should be taken only in response to a breach or breaches of the school's behaviour policy, including persistent disruptive behaviour, where these are not serious enough to warrant permanent exclusion and lesser sanctions such as detention are considered inappropriate. **Individual fixed period exclusions should be for the shortest time necessary**, bearing in mind that exclusions of more than a day or two makes it more difficult for the pupil to reintegrate into the school afterwards. Ofsted inspection evidence suggests that 1-3 days are often long enough to secure the benefits of exclusion without adverse educational consequences. Where it is clear that fixed period exclusions are not being effective in deterring poor behaviour, for example if they are being repeatedly imposed on a pupil in response to the same behaviour, head teachers/teachers in charge should consider alternative strategies for addressing that behaviour. Many schools have found that internal isolation, sometimes referred to as internal exclusion or seclusion, is a far more effective deterrent to poor behaviour than fixed period exclusion.*

**Exclusions may not be given for an unspecified period, for example until a meeting can be arranged.** Such a practice amounts to an indefinite exclusion for which no legal authority exists. A fixed period exclusion does not have to be for a continuous period: for example, a pupil may be normally attending school three days a week and a local further education college for the other two; so a five-day exclusion from the school could be for three days in one week and two days in the next week.

2. A fixed-period exclusion can also be for parts of the school day. For example, if a pupil's behaviour at lunchtime is disruptive, they may be excluded from the school premises for the duration of the lunchtime period. The legal requirements relating to exclusion, such as the head teacher's duty to notify parents, apply in all cases. Lunchtime exclusions are counted as half a school day for statistical purposes and in determining whether a governing board meeting is triggered.

*Taking into account the child's age and vulnerability, the head teacher/teacher in charge should in the event of a lunchtime exclusion ensure that a parent/carer has been contacted and is available, if appropriate, to arrange collection and supervision of the pupil during the exclusion. A lunchtime exclusion for an indefinite period, like any other indefinite exclusion, would not be lawful. The Local Authority does not expect lunchtime exclusion to be used for a prolonged period, e.g. for longer than a week. In the long run another strategy for dealing with the problem should be determined. Arrangements should be made for pupils who are entitled to free school meals to receive their entitlement which may mean, for example, providing a packed lunch.*

3. The law does not allow for extending a fixed-period exclusion or 'converting' a fixed-period exclusion into a permanent exclusion. In exceptional cases, usually where further evidence has come to light, a further fixed-period exclusion may be issued to begin immediately after the first period ends; or a permanent exclusion may be issued to begin immediately after the end of the fixed period.

*Whilst a fixed period exclusion may not be "converted" into a permanent exclusion, in situations where a head teacher/teacher in charge believes that a fixed period exclusion may be followed by a permanent exclusion pending further investigation or further consideration of the details of the case, this should be made clear in the letter issued to parents notifying the fixed period exclusion.*

4. **The behaviour of pupils outside school can be considered as grounds for exclusion**

*This will be a matter of judgement for the head teacher in accordance with the school's published behaviour policy. The school's behaviour policy should provide for the circumstances where the school may discipline pupils for poor behaviour outside school. Pupils' behaviour outside school "on school business" or where representing the school, for example, on school trips, away school sports fixtures, or work experience placements, may be subject to the school's behaviour policy. Poor behaviour in such circumstances should be dealt with as if it had taken place in school. For behaviour outside school, but not "on school business", a head teacher may, if allowed within the school's behaviour policy, exclude a pupil if there is a clear link between that behaviour and maintaining good behaviour and discipline among the pupil body as a whole. This will be a matter of judgment for the head teacher. Guidance on school discipline and pupil behaviour policies, which is available at*

*<https://www.gov.uk/government/publications/behaviour-and-discipline-in-schools>*

*Pupils' behaviour in the immediate vicinity of the school, or on a journey to or from school may be grounds for exclusion again subject*

*to the provisions of the school's behaviour policy. Members of the school's staff who intervene to control the behaviour of pupils on public transport or in public places should be mindful of the fact that unless they have lawful charge or control of the pupil concerned they are not empowered to use measures beyond their normal common law powers as citizens.*

**5. The head teacher may withdraw an exclusion that has not been reviewed by the governing board**

*Where a child has been permanently excluded schools and academies are encouraged to work with each other and with the LA to see if an alternative way forward may be found, such as a managed move to another provision provided that the parents/carers are in complete agreement and have been made aware of their rights to make representations should a permanent exclusion be imposed.*

**6. Any decision of a school, including exclusion, must be made in line with the principles of administrative law** i.e. that it is: lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention of Human Rights and the Equalities Act 2010); rational; reasonable; fair; and proportionate.

**7. Head teachers must take account of their legal duty of care when sending a pupil home following exclusion.**

*If a parent does not comply with an exclusion, for example by sending the excluded child to school, or by refusing to collect, or arrange collection of him or her, including at lunchtime, the school must have due regard for the pupil's safety in deciding what action to take. An exclusion should not be enforced if doing so may put the safety of the pupil at risk. If efforts to resolve the issue with the parents are unsuccessful the school should consider whether to contact the contact the Integration Team for advice. In some circumstances, police or community support officers could become involved. Where there is a persistent lack of parental co-operation and this is affecting the child's behaviour, the school may consider applying for a parenting order (see Appendix 4).*

**8. When establishing the facts in relation to an exclusion decision the head teacher must apply the civil standard of proof;** i.e. "on the balance of probabilities" it is more likely than not that a fact is true, rather than the criminal standard of "beyond reasonable doubt" This means that the head teacher should accept that something happened if it is more likely that it happened than it did not happen.

*Thus, if it is more probable than not that the pupil did what he or she is alleged to have done, the head teacher may exclude the pupil. However, the more serious the allegation and thus the possible*

*sanction, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard of “beyond reasonable doubt” to be applied but it does mean that when investigating more serious allegations, in determining whether it is **distinctly** more probable than not that the pupil has behaved as alleged, head teachers will need to gather and take account of a wider range of evidence. In some cases this may extend to evidence of the pupil's past behaviour **but only if relevant to the seriousness of the present allegation.***

*This is of particular significance if a child is permanently excluded for a first or “one-off” offence because it naturally follows that the offence must be of a very serious nature to warrant this sanction being applied as a result of a single incident.*

*Examples of those exceptional circumstances where, in the head teacher’s judgement, it is appropriate to permanently exclude a child for a first or “one-off” offence might include*

- a) **serious** actual or threatened violence against another pupil or a member of staff;
- b) sexual abuse or assault
- c) supplying an illegal drug
- d) carrying an offensive weapon

*This list is not exhaustive but indicates the degree of severity of offence that might warrant a permanent exclusion for a first or “one-off” offence. Schools should inform the police where it is believed that a criminal offence may have taken place. They should also consider making referrals to other agencies, e.g. in relation to child protection, as appropriate to the circumstances of the case.*

9. **Under the Equality Act 2010 (“the Equality Act”) schools must not discriminate against, harass or victimise pupils because of: sex; race; disability; religion or belief; sexual orientation; pregnancy / maternity; or because of a gender reassignment.** For disabled children, this includes a duty to make reasonable adjustments to policies and practices.
10. 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; and
- foster good relations between people who share a protected characteristic and people who do not share it

11. **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, needs, or low participation affecting one group, where this can be shown to be a proportionate way of dealing with such issues<sup>7</sup>
12. **The Head teacher and governing board must comply with their statutory duties in relation to SEN when administering the exclusion process.** This includes having regard to the SEN Code of Practice<sup>8</sup>.
13. **It is unlawful to exclude for a non-disciplinary reason.** For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment / ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting. However, a pupil who repeatedly disobeys their teachers' academic instructions could, be subject to exclusion
14. **“Informal” or “unofficial” exclusions, such as sending a pupil home “to cool off” are unlawful, regardless of whether they occur with the agreement of parents or carers.** Any exclusion of a pupil, even for short periods of time, must be formally recorded

*See Appendix 9*

15. **Maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour<sup>9</sup>.** A pupil at any type of school can also transfer to another school as part of a “managed move” where this occurs with the consent of the parties involved, including the parents and the admission authority of the school. However, the threat of exclusion must never be used to influence parents to remove their child from the school.

*The LA encourages head teachers to consider a range of alternatives to exclusion, particularly permanent exclusion. Options available include*

*a) restorative justice, which enables the offender to redress the harm that has been done to a “victim”, and enables all parties with a stake in the outcome to participate fully in the process. This has been used*

successfully to resolve situations that could otherwise have resulted in exclusion. All the professionals need to be thoroughly involved in the process and this can only work with the consent of all parties; further information is available from the Youth Justice Board at <http://www.yjb.gov.uk/en-gb/practitioners/WorkingwithVictims/RestorativeJustice/RJinSchools.htm> ;

b) mediation through a third party, usually a trained mediator, is another approach that may lead to a satisfactory outcome, particularly where there has been conflict between two parties, e.g. a pupil and a teacher, or two pupils;

c) internal exclusion which can be used to defuse situations that occur in schools that require a pupil to be removed from class but may not require removal from the school premises. The internal exclusion could be to a designated area within the school, with appropriate support and supervision, or to another class on a temporary basis, and may continue during break periods. Internal exclusion should be for the shortest time possible and should be subject to review. Learning Support Units should not be used to provide internal exclusion (further guidance on using internal exclusion is available at <http://webarchive.nationalarchives.gov.uk/20110202125509/http://www.teachernet.gov.uk/docbank/index.cfm%3Fid%3D12506>

d) managed move to another school to enable the pupil to have a fresh start. This should only be done with the full knowledge and co-operation of all the parties involved, including the parents, governors and the LA, and in circumstances where it is in the best interests of the pupil concerned. Parents should **never** be pressured into removing their child from the school under threat of a permanent exclusion, nor should pupils' names be deleted from the school roll on disciplinary grounds unless the formal permanent exclusion procedures set out in statute and in this guidance have been adhered to or unless a managed move has been agreed by all the relevant parties. Parents should also be informed of their right to make representations should an exclusion be imposed.

The Fair Access Protocol describes the procedures that should be followed in effecting a managed move and the LA will assist schools, academies, parents and children by providing impartial third party advice and support, mediating as required and managing the process

## Statutory guidance on factors that a head teacher should take into account before taking the decision to exclude

### 16. A decision to exclude a pupil permanently should only be taken:

- 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.

***Exclusion should not be imposed in the heat of the moment,*** unless there is an immediate threat to the safety of others in the school or the pupil concerned. Where a head teacher believes that a permanent exclusion may be warranted but further mature consideration of the details of the case is necessary, or where the circumstances of the case are unclear and relevant information is still emerging, the LA considers it good practice for head teachers to impose a fixed period exclusion in the first instance, making it clear in the letter notifying the parents that this may be followed by a permanent exclusion.

17. **The decision on whether to exclude is for a head teacher to take.** However, where practical, head teachers should give pupils an opportunity to present their case before taking the decision to exclude.

*Children should be allowed and encouraged to give their version of events and to participate fully throughout the exclusion process*

*Before deciding whether to exclude a pupil, either permanently or for a fixed period, the head teacher/teacher in charge should **ensure that a thorough investigation has been carried out.** The head teacher should delegate this task to a senior member of staff who should keep meticulous notes as to the actions taken in carrying out the investigation, maintain written records of interviews with relevant members of staff and pupils. Witness statements should also be taken where relevant and these should, wherever possible, be signed and dated (see paragraph 118). The member of staff who carried out the investigation should then report his/her findings to the head teacher. Before reaching a final decision as to the sanction to apply the head teacher should*

- *review the evidence that has been submitted, taking account of the school's behaviour and equal opportunities policies and, where relevant, the Equalities Act (2010);*
- *allow and encourage the pupil to give their version of events;*
- *consider any relevant mitigating and aggravating factors (see paragraph 18);*
- *review the child's file;*
- *consult as necessary, e.g. with the LA's local Integration Officer, Chair of Governors, other members of the SLT and/or another head teacher but not with anyone who may later have a role in reviewing the head teacher's decision, e.g. a member of the governing board who may sit on the reviewing panel;*
- *meet with the child and his/her parents to discuss the situation.*

*Where the decision to exclude is based partially or entirely on the basis of the on-going risk the child poses to the health and safety of other members of the school community the head teacher should carry out a Risk Assessment Management Profile (RAMP) which specifies the hazards, risks and mitigation measures that could be taken.*

*Taking these steps makes it more likely that eventual decision is sound and also enables the head teacher to demonstrate that he/she has been reasonable, not acting in the heat of the moment.*

***When reviewing the outcome of an investigation into a breach of the school's behaviour policy which might lead to exclusion, head teachers should consider if a different sanction could be applied and if so, that sanction should be imposed instead (see paragraph 15).***

*When interviewing a pupil who may later be excluded, schools are not expected to follow the requirements of the Police and Criminal Evidence (PACE) Act. However, the points below illustrate how the principles behind that legislation may be adapted*

- *Attempt to have only two adults present one of whom asks questions whilst the other takes notes. Having more than two adults could be considered as creating an intimidating environment.*
- *However, it may be appropriate to have another adult present to support the pupil, e.g. a parent or a member of the school's pastoral team. Crucially this additional adult should not contribute to the pressure on the pupil, but advise and help the pupil put their case.*
- *Avoid asking complicated or leading questions and maintain a neutral tone. A record of the questions asked should be made as well as the answers given.*
- *Keep a record of the dates and times of any interviews and any comings and goings from the room. It is also helpful to keep a record of where the pupil is between interviews.*
- *Pupils and their supporters should be given the opportunity to amend errors or point out omissions in the notes taken. This makes the school's case more solid. Once the text is agreed it may be signed by all parties.*
- *Pupils should write a statement in their own words. A writing frame may be helpful.*
- *Where a pupil has weak literacy skills or is refusing to cooperate with statement writing, an adult may take down directly dictated text for the pupil but wherever possible children should write their own statements.*
- *If the veracity of a pupil's statement is in question because it is at odds with other information available, the pupil should be asked to write a further statement with corrections or more detail.*

- *Statements should be signed and dated. It may also be helpful to record the time statements were written.*
- *If the investigation and interviews are prolonged, bear in mind the pupil's physical and emotional needs. Allow toilet breaks; provide water; enable them to eat at mealtimes; avoid leaving them for long periods on their own in isolated situations; let them get some fresh air.*

***Witness statements should normally be attributed***, as the accused person should know the source and substance of the evidence presented. However, if the school has a genuine concern for the health and safety of a witness should his/her statement be attributed, the head teacher may allow the statement to be made anonymous on the basis of his/her duty of care. It will be a matter for anyone reviewing the decision to exclude how much weight they wish to attach to an unattributed statement bearing in mind that witnesses do not normally appear in person.

18. **Whilst an exclusion may still be an appropriate sanction, the head teacher should take account of any contributing factors that are identified after an incident of poor behaviour has occurred.** For example, where it comes to light that a pupil has suffered bereavement has mental health issues or has been subject to bullying.

*When considering whether or not to exclude a child the head teacher should consider the mitigating and aggravating factors that apply in the circumstances of the case. Such consideration leaves the school less vulnerable to a charge that any subsequent decision to exclude was ill-judged or that it was too severe. It also demonstrates that the decision was not taken in the heat of the moment.*

*Examples of possible mitigating factors are*

- *the incident was provoked, e.g. as a result of persistent bullying or racial abuse or sexual harassment*
- *the general medical and emotional condition of the pupil*
- *new to the school (possible unawareness of school's behaviour code)*
- *the pupil was coerced or encouraged by others*
- *the incident was impulsive or committed in the heat of the moment*
- *it was a first offence*
- *previous behaviour and character of the pupil suggest that repetition of the behaviour is unlikely*
- *the pupil has apologised for his/her behaviour*
- *the pupil is repentant and shows a willingness to assume responsibility for his/her conduct*
- *the pupil cooperated voluntarily with the investigation*
- *the pupil admitted the offence*

- *the pupil played a relatively minor role in the incident compared to others*
- *readiness to make restitution towards the victim(s)*

*Examples of possible aggravating factors are*

- *the pupil failed to heed warnings about similar behaviour in the past*
- *the pupil had been warned of the risk of exclusion*
- *the offence was premeditated*
- *a weapon was used*
- *there is a history of similar incidents*
- *there has been witness intimidation*
- *the victim(s) sustained physical injury requiring medical attention*
- *the victim was particularly vulnerable, e.g. a much younger or weaker pupil*
- *the pupil has received significant support from the school in the past to modify his/her behaviour*
- *the pupil encouraged others to behave inappropriately in relation to the offence*
- *the pupil shows no contrition or a willingness to accept responsibility for his/her actions*
- *the pupil did not cooperate with the investigation or worse, actively sought to frustrate and prolong it*

19. **Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have.** The head teacher should also consider the use of a multi-agency assessment for a pupil who demonstrates persistent disruptive behaviour. Such assessments may pick up unidentified SEN but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems<sup>10</sup>

*See paragraphs (c) to (f) in Part 1 of this guidance.*

20. Where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed period exclusion in an academic year, the head teacher should consider whether exclusion is providing an effective sanction.

*See paragraph 1*

## Statutory guidance to head teachers on the exclusion of pupils from groups with disproportionately high rates of exclusion

21. The exclusion rates for certain groups of pupils are consistently higher than average. This includes: pupils with SEN; pupils eligible for Free School Meals; looked after children<sup>11</sup>; and pupils from certain ethnic groups. The ethnic groups with the highest rates of exclusion are: Gypsy / Roma; Travellers of Irish Heritage; and Black Caribbean communities.
22. In addition to the approaches on early intervention set out above, the head teacher should consider what extra support might be needed to identify and address the needs of pupils from these groups in order to reduce their risk of exclusion. For example, schools might draw on the support of Traveller Education Services, or other professionals, to help build trust when engaging with families from Traveller communities.

*Head teachers may in this regard consider making a referral to the LA's Access to Education Team for Refugees and Travellers*

## Statutory guidance to the head teacher on the exclusion of pupils with Education, Health and Care Plans (EHC plans)<sup>12</sup> and looked after children

23. As well as having disproportionately high rates of exclusion, there are certain groups of pupils with additional needs who are particularly vulnerable to the impacts of exclusion. This includes pupils with EHC plans and looked after children. The head teacher should, as far as possible, avoid permanently excluding any pupil with an EHC plan or a looked after child.

### **SEN**

*Statutory guidance on identifying, assessing and making provision for pupils with SEN, including those with behavioural, social and emotional needs, is given in the Special Educational Needs Code of Practice<sup>8</sup>.*

**Schools and Academies must have regard to this guidance.**

*School governing bodies have a statutory duty to do their best to ensure that the necessary provision is made for any pupil who has SEN. Early identification and intervention, accurate assessment and the arrangement of appropriate provision to meet pupils' SEN usually leads to better outcomes.*

*Other than in the most exceptional circumstances, schools should avoid permanently excluding pupils with EHC plans. In most cases, the head teacher will be aware that the school is having difficulty managing a pupil's behaviour well before the situation has escalated. They should*

*also make every effort to avoid excluding pupils who have identified SEN including those who are undergoing statutory assessment. Where pupils have severe and complex SEN schools may ask the LA to consider whether statutory assessment may be necessary.*

*Schools should try every practicable means to maintain pupils with SEN (including those with EHC plans) in school. Specialist advice and intervention may be sought from the Educational Psychologist, the local ESC or a teacher with a special expertise in the pupil's area of SEN/disability. An interim or part time placement at the ESC may be appropriate. For a pupil with an EHC plan, the school should liaise with the local SEN Team about initiating an interim review of the pupil's plan. It will then be possible to consider whether the pupil's needs have changed and whether amendments to the plan are required as an alternative to the pupil being excluded*

*In the exceptional event of a pupil with an EHC plan being permanently excluded the head teacher/teacher in charge should use the period between his or her initial decision and the meeting of the governing board to work with the LA to see whether more support can be made available or whether the plan can be changed to name a new school. If either of these options is possible, the head teacher/teacher in charge may consider withdrawing the exclusion.*

*It is extremely important that parents of children with SEN who are excluded from school receive advice on the options available for their child's future education. Schools might usefully advise parents that advice and information on SEN is available through the SEND Information and Advice Service (SENDIAS), formerly known as Parent Partnership. SENDIASS should also be able to provide details of voluntary agencies that offer support to parents, including those that can offer advice concerning exclusions.*

### **Children Looked After (CLA)**

**Exclusion of looked after children should be an absolute last resort.** *It is vital that schools and ESCs and social workers work together in partnership with other professionals and try every practicable means to maintain them in schools and ESCs (where that is where they are placed) **and to exclude them only in the most exceptional circumstances.** Before excluding, schools/ESCs, in conjunction with the LA, should first consider alternative options for supporting the looked after child or young person. No looked after child should be excluded from a school or ESC without prior discussion with the LA to ensure that there is suitable alternative provision available elsewhere.*

*In cases where a looked after child or young person is excluded, anyone who is legally defined as a parent will have the right to make representations and to appeal. The definition of a parent for the*

*purposes of the Education Acts is broadly drawn and includes any person who has parental responsibility (which includes the local authority where they have a care order in respect of the child) and any person with whom the child lives (for example, a foster carer). These are in addition to the child's birth parent(s). This means that there could be a number of people who will have the right to make representations.*

24. **Schools should engage proactively with parents in supporting the behaviour of pupils with additional needs.** In relation to looked after children, schools should co-operate proactively with foster carers or children's home workers, the local authority that looks after the child and the local authority's virtual school head.

*Looked after children are no less able than other children. Many looked after children have unmet social and emotional needs and, as a group, are more likely to be at risk of exclusion. **The LA expects schools and academies to proactively support and co-operate with foster carers and the LA as a corporate parent in doing everything possible to avoid excluding a looked after child.** Exclusion from school/ESCs, and permanent exclusion in particular, can place great strain on care placements and lead to even more disruption in a child's life if the care placement breaks down as a result. LAs, schools/ESCs, social workers and carers all share the responsibility for reducing exclusions of looked after children. Schools/ESCs, should liaise with the Virtual School for CLA to put strategies in place to reduce the need for exclusion of CLA.*

*Even where the local authority does not have parental responsibility, (i.e. where the child is accommodated under Section 20 of the Children Act 1989 but is not the subject of a care order) the child's social worker should be involved at the earliest opportunity about the possibility of any exclusion. The designated teacher for looked after children will be able to advise on the legal status of looked after children in the school.*

25. Where a school has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with an EHC plan or a looked after child, it should, in partnership with others, (including the local authority as necessary) consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN. Where a pupil has a statement of SEN, schools should consider requesting an early annual review or interim / emergency review.

*See paragraphs 23 and 24*

<sup>5</sup>Section 51A Education Act 2002 and regulations made under that section.

<sup>6</sup>In a maintained school, 'head teacher' includes an acting head teacher by virtue of section 579(1) of the Education Act 1996. An acting head teacher is someone appointed to carry out the functions of the head teacher in the head teacher's absence or pending the appointment of a head teacher. This will not

necessarily be the deputy head teacher: it will depend who is appointed to the role of acting head teacher. In an academy, 'principal' includes acting principal by virtue of regulation 21 of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.

<sup>7</sup>Non-statutory advice from the Department for Education is available to help schools to understand how the Equality Act affects them and how to fulfil their duties under the Act and can be downloaded at the following link: <https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools>

<sup>8</sup>The SEND code of practice can be found here: <https://www.gov.uk/government/publications/send-code-of-practice-0-to-25>

<sup>9</sup>Section 29A of the Education Act 2002. The legal requirements and statutory guidance relating to this power are set out in guidance on alternative provision: <https://www.gov.uk/government/publications/alternative-provision>

<sup>10</sup>Non-statutory guidance for head teachers of maintained schools on the place of multi-agency assessments in a school's behaviour policy is provided by *Behaviour and Discipline in Schools – A Guide for Head teachers and School Staff* (2016) <https://www.gov.uk/government/publications/behaviour-and-discipline-in-schools>

<sup>11</sup>As defined in section 22 of the Children Act 1989.

<sup>12</sup>References to pupils with EHC plans include pupils with statements of SEN whilst they remain.

## Part 4: The head teacher's duty to inform parties about an exclusion

*Head teachers should follow carefully the procedures set out in law and in the statutory guidance which are designed to ensure fairness and openness in the handling of exclusions. Following this guidance will also reduce the chance of any successful legal challenge to the exclusion at a later stage.*

**All exclusion cases should be treated in the strictest confidence.** Only those who need to know the details of an exclusion should be informed of them.

### 4.1 The head teacher's duty to inform parents about an exclusion

#### A guide to the law<sup>13</sup>

26. **Whenever a head teacher excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reason(s) for it.**

*Whenever a head teacher/teacher in charge excludes a pupil, the parent (or pupil if aged 18) must be notified immediately, ideally by telephone followed up by a letter within 24 hours of the exclusion being imposed. When the parent must be notified in writing depends on when the pupil is excluded.*

- *Where the pupil is excluded at the end of the afternoon session and the exclusion takes effect from the next school day, notice should be given before the start of that day.*
  - *Where the pupil is excluded in the morning session and the exclusion takes effect from that afternoon, notice should be given before the start of the afternoon session.*
  - *Where the pupil is excluded in the afternoon session and the exclusion takes effect that afternoon, the notice should be given by the end of the afternoon session.*
27. They must also, without delay, provide parents with the following information in writing:
- the reasons for the exclusion;
  - the period of a fixed period exclusion or, for a permanent exclusion, the fact that it is permanent;
  - parents' right to make representations about the exclusion to the governing board (in line with the requirements set out in paragraphs 52 to 60) and how the pupil may be involved in this;

- how any representations should be made; and
- where there is a legal requirement for the governing board to consider the exclusion, that parents have a right to attend a meeting, to be represented at that meeting (at their own expense) and to bring a friend.

*If the exclusion is permanent, the date the exclusion takes effect should be mentioned*

28. Written notification of the information in paragraph 27 can be provided by: delivering it directly to the parents; leaving it at their usual or last known home address; or by posting it to that address. Notices can be given electronically if the parents have given written agreement for this kind of notice to be sent in this way<sup>14</sup>
29. Where an excluded pupil is of compulsory school age the head teacher must also notify the pupil's parents of the days on which they must ensure that the pupil is not present in a public place at any time during school hours. These days would be the first five school days of an exclusion (or until the start date of any alternative provision or the end of the exclusion where this is earlier). Any parent who fails to comply with this duty without reasonable justification commits an offence and may be given a fixed penalty notice or be prosecuted. The head teacher must notify the parents of the days on which their duty applies without delay and, at the latest, by the end of the afternoon session<sup>15</sup>

*During the initial period of up to five school days of any exclusion, whether fixed period or permanent, the parents of the excluded pupil must ensure that he or she is not present in a public place during normal school hours without reasonable justification. This requirement applies whether or not the pupil is in the company of the parent. A failure to comply with this requirement is an offence. Parents can each be given a fixed penalty notice of £60 if they fail to do this. The penalty payable increases to £120 if unpaid after 28 calendar days, and if this is still unpaid after 42 days the parent will be subject to prosecution for the original offence. Appendix 5 gives details of the procedures to be followed in the application of a fixed penalty notice under these circumstances. The pupil may also be removed from the public place by the police and taken to designated premises*

30. If alternative provision is being arranged then the following information must be included with this notice where it can reasonably be found out within the timescale:
- the start date for any provision of full-time education that has been arranged for the pupil during the exclusion;
  - the start and finish times of any such provision, including the times for morning and afternoon sessions where relevant;

- the address at which the provision will take place; and
  - any information required by the pupil to identify the person he / she should report to on the first day.
31. Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session it may be provided in a subsequent notice, but it must be provided without delay and no later than 48 hours before the provision is due to start. The only exception to this is where alternative provision is to be provided before the sixth day of an exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.
32. The information in paragraphs 29 to 31 must be provided in writing but can be provided by any effective method (paragraph 37 provides guidance on this issue).
33. **The failure of a head teacher to give notice of the information in paragraphs 29 and 30 by the required time does not relieve the head of the duty to serve the notice.** A notice is not made invalid solely because it has not been given by the required time.
34. If a child is excluded for a further fixed-period following their original exclusion, or is subsequently permanently excluded, the head teacher must inform parents without delay and issue a new exclusion notice to parents.

## 4.2 Guidance to head teachers on informing parents about an exclusion

35. For notifications under paragraph 26, although this must not delay notification, ideally, notification should be in person or by telephone in the first instance as this would give the parents an opportunity to ask any initial questions or raise concerns directly with the head teacher.
36. When notifying parents about an exclusion, the head teacher should set out what arrangements have been made to enable the pupil to continue their education prior to the start of any alternative provision or the pupil's return to school, in line with legal requirements and guidance in section 5.
37. For notifications under paragraphs 29 and 30, effective methods for providing the information may include email or text message, giving the notice directly to the parents or sending the information home with the excluded pupil. Where information is sent home with a pupil, the head teacher should consider sending a duplicate copy by an alternative method or confirming that the information has been received.

38. When notifying parents about an exclusion head teachers should draw attention to relevant sources of free and impartial information. This information should include:
- a link to this statutory guidance on exclusions (<https://www.gov.uk/government/publications/school-exclusion>) a link to sources of impartial advice for parents such as the Coram Children’s Legal Centre: ([www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)), or ACE Education (<http://www.ace-ed.org.uk>) and their advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time); and
  - where considered relevant by the head teacher, links to local services, such as Traveller Education Services, the Information Advice & Support Services Network (formerly known as the local parent partnership) (<https://councilfordisabledchildren.org.uk/information-advice-and-support-services-network/about>), the National Autistic Society (NAS) School Exclusion Service (England) (0808 800 4002 or [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk) ), or Independent Parental Special Education Advice (<http://www.ipsea.org.uk/>).

*The LA recommends that head teachers also draws attention to this exclusion guidance at <http://www.thegrid.org.uk/info/welfare/exclusions.shtml> when notifying parents about an exclusion*

39. Head teachers should ensure that information provided to parents is clear and easily understood. Where the parents’ first language is not English consideration should be given, where practical, to translating the letter or taking additional steps to ensure that the details of the exclusion and their right to make representations to the governing board have been understood.

## 4.3 The head teacher’s duty to inform the governing board and the Local Authority about an exclusion

### A guide to the law<sup>13</sup>

40. The head teacher must, without delay, notify the governing board and the Local Authority of:
- any permanent exclusion (including where a fixed period exclusion is followed by a decision to permanently exclude the pupil);
  - any exclusion which would result in the pupil being excluded for more than five school days (or more than ten lunchtimes) in a term; and

- any exclusion which would result in the pupil missing a public examination or national curriculum test.

*In the event of any of the above, the LA recommends that the governing board and the LA are notified within 24 hours of the decision to exclude*

***Where the governing board has a duty to, or intends to, review the head teacher's decision to exclude a child the head teacher should provide a report which should be circulated to all relevant parties at least five school days in advance of the review.*** The report should set out the grounds for the exclusion and the details of the case. Although there is no prescribed format for an exclusion report, head teachers may wish to use the following suggested structure. The pages of the report should be numbered for ease of reference during the hearing.

- *A statement from the head teacher to include*
  - *an overview of the case including a detailed account of the reason(s) for the exclusion;*
  - *an illustration of how the current DfE exclusion guidance has been adhered to;*
  - *where relevant, that a full range of behaviour modification strategies has been attempted without lasting success;*
  - *an explicit statement as to what mitigating and aggravating factors apply in the case (if any); see paragraph 18;*
  - *an indication of how the sanction that has been applied is consistent with the school's behaviour policy;*
  - *a statement to explain how the school's expectations with regard to behaviour are communicated to pupils and to parents;*
  - *a statement to the effect that the decision is consistent with the way that similar cases have been dealt with in the past and that others who may have been involved in the present exclusion have been dealt with in a manner proportionate to their involvement;*
  - *the alternative sanctions that were considered (if applicable);*
  - *an indication of the consultations that took place before the decision to exclude was finally reached*
  - *where applicable, the fact that the pupil and his/her parents were warned of the risk of permanent exclusion;*
  - *in the case of a child with SEN, or a looked after child, or a disabled child, that the relevant DfE guidance was considered before the decision to exclude was taken;*

- *that in reaching the decision to exclude, equality legislation was considered and has been complied with;*
  - *in the case of a permanent exclusion, the perceived consequences of allowing the excluded child to remain in school in terms of the education and welfare of the pupil or others in the school and the impact on the maintenance of good order and discipline; and*
  - *where appropriate, a comment about the head teacher's duty of care and the need to balance the needs of the individual against the needs of the whole school community.*
- *As appropriate, a list of the interventions that have taken place to modify the child's behaviour, including a table to show any fixed term exclusions that have been applied giving dates, duration and reasons for exclusion. This should be augmented with appropriate evidence, e.g. where applicable, a copy of the child's PSP and reports of the reviews that have taken place, letters to parents, etc.*
  - *A behaviour log containing brief details of incidents that have occurred in the past with the relevant dates and actions taken. It would not be appropriate to include a behaviour log to support the exclusion of a child excluded for a one-off offence, unless the previous behaviour mentioned is similar to that which led to the exclusion (see paragraph 8).*
  - *Details of any investigation that has taken place including, where appropriate, witness statements which should normally be attributed and dated (see paragraph 17) and diagrams and photographs, where relevant*
  - *A copy of the school's behaviour policy. It is useful to highlight that part which indicates that exclusion of the type imposed is a sanction that might be applied in circumstances such as those alleged.*

41. The head teacher must also notify the Local Authority and governing board once per term of any other exclusions not already notified.

***The LA would be obliged to schools and Academies if they would notify fixed period exclusions as they occur*** for the purposes of keeping up to date records. Where schools use SIMS a link may be established to transfer this information automatically in an electronic format. Further advice may be obtained by contacting the School IT Systems Support (SITTS) Team on [sitss.mis@lea.herts.sch.uk](mailto:sitss.mis@lea.herts.sch.uk) or 01438 - 844777

42. Notifications must include the reasons for the exclusion and the duration of any fixed-period exclusion.

43. In addition, within 14 days of a request, governing board must provide to the Secretary of State and (in the case of maintained schools and

PRUs) the Local Authority, information about any exclusions within the last 12 months<sup>16</sup>.

44. For a permanent exclusion, if the pupil lives outside the Local Authority area in which the school is located, the head teacher must also notify the pupil's "home authority" of the exclusion and the reason(s) for it without delay.

*The LA recommends that out of county LAs are notified within 24 hours of the decision to permanently exclude*

<sup>13</sup> Section 51A Education Act 2002 and regulations made under that section.

<sup>14</sup>Section 572 Education Act 1996

<sup>15</sup>Sections 103 to 105 Education and Inspections Act 2006 and regulations made under these sections.

<sup>16</sup>As set out in the Education (Information About Individual Pupils) (England) Regulations 2013.

## Part 5: The governing board's and Local Authority's duties to arrange education for excluded pupils

### A guide to the law<sup>17</sup>

45. For a fixed-period exclusion of more than five school days, the governing board (or local authority in relation to a pupil excluded from a PRU) must arrange suitable full-time education for any pupil of compulsory school age. This provision must begin no later than the sixth school day of the exclusion. Where a child receives consecutive fixed-period exclusions, these are regarded as a cumulative period of exclusion for the purposes of this duty. This means that if a child has more than five consecutive school days of exclusion, then education must be arranged for the sixth school day of exclusion, regardless of whether this is as a result of one fixed-period or more than one fixed-period exclusion.

*Where a governing board or LA has an obligation to arrange suitable full-time education for an excluded pupil and that pupil has an EHC plan, any special educational requirements specified in the plan must be provided.*

*Where there is a need for alternative full-time provision to be put in place for an excluded pupil the local ESC may be able to assist. Alternatively, schools in local areas could collaborate to assist each other in these circumstances. A suggested protocol as to how this might operate is provided in Appendix 6.*

46. For permanent exclusions, the Local Authority must arrange suitable full-time education for the pupil to begin no later than the sixth school day of the exclusion<sup>18</sup>. This will be the pupil's "home authority" in cases where the school is maintained by (or located within) a different local authority.
47. In addition, where a pupil has an EHC plan, the Local Authority may need to review the plan or reassess the child's needs, in consultation with parents, with a view to identifying a new placement<sup>19</sup>.
48. The Local Authority must have regard to the relevant statutory guidance when carrying out their duties in relation to the education of looked after children.
49. Provision does not have to be arranged by either the school or the Local Authority for a pupil in the final year of compulsory education who does not have any further public examinations to sit.

## Statutory guidance on the education of pupils prior to the sixth day of an exclusion

50. It is important for schools to help minimise the disruption that exclusion can cause to an excluded pupil's education. Whilst the statutory duty on governing boards or Local Authorities is to provide full-time education from the sixth day of an exclusion, there is an obvious benefit in starting this provision as soon as possible. In particular, in the case of a looked after child, schools and Local Authorities should work together to arrange alternative provision from the first day following the exclusion.
51. Where it is not possible, or appropriate, to arrange alternative provision during the first five school days of an exclusion, schools should take reasonable steps to set and mark work for the pupil. Work that is provided should be accessible and achievable by pupils outside of school.

*Work set for pupils in these circumstances should be appropriate to the child's age and ability.*

<sup>17</sup>Section 100 of the Education and Inspections Act 2006, section 19 of the Education Act 1996 and regulations made under those sections.

<sup>18</sup>The education arranged must be full-time or as close to full-time as in the child's best interests because of their health needs.

<sup>19</sup>Section 44 of the Children and Families Act 2014 provides for reviews and reassessments, with further detail in Part 2 of the Special Educational Needs and Disability Regulations 2014.

# Part 6: The governing board's duty to consider an exclusion

## 6.1 The requirements on a governing board to consider an exclusion

### A guide to the law<sup>20</sup>

52. The governing board has a duty to consider parents' representations about an exclusion. The requirements on a governing board to consider an exclusion depend upon a number of factors (these requirements are illustrated by the diagram in Appendix 1 of this guidance, "A summary of the governing board's duties to review the head teacher's exclusion decision").
53. In the case of a maintained school, the governing board may delegate their functions with respect to the consideration of an exclusion decision to a designated sub-committee consisting of at least three governors.

*Where the governing board has a duty to review a head teacher's decision to exclude a child, that duty is normally delegated to a sub-committee referred to throughout this guidance as the Governors' Disciplinary Committee (GDC)*

54. In the case of an academy, the governing board may delegate to a smaller sub-committee if the trust's articles of association allow them to do so.

*Paragraph 124 of this guidance specifies the arrangements that LAs and Academy Trusts must take to ensure that all members of an Independent Review Panel and clerks have received training to discharge the duties incumbent upon them. Having taken legal advice and bearing in mind the provisions of paragraph 6 of this guidance, the Local Authority strongly recommends that the same requirement for training applies to any member of a GDC who may be called upon to review a head teacher's/teacher in charge's/principal's decision to exclude a child.*

55. The governing board must consider the reinstatement of an excluded pupil within 15 school days<sup>21</sup> of receiving notice of the exclusion if:
- the exclusion is permanent;
  - it is a fixed period exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term; or

- it would result in a pupil missing a public examination or national curriculum test.

*It is the view of the LA that exclusions that are to be reviewed by the governing board should not be reviewed at least within the first five school days following an exclusion even though they are not prevented from doing so. This gives the school a reasonable time in which to produce a written case, the governors and the parents a reasonable time in which to consider its details and the school and the parents to engage support, including legal representation, if they so wish. This is consistent with the provisions of paragraph 6 of this guidance and the provisions of the third bullet point of paragraph 61 in effect preclude this in any event.*

56. The requirements are different for fixed-period exclusions where a pupil would be excluded for more than five but less than 15 school days in the term. In this case, if the parents make representations, the governing board must consider within 50 school days of receiving the notice of exclusion whether the excluded pupil should be reinstated. In the absence of any representations from the parents, the governing board is not required to meet and cannot direct the reinstatement of the pupil.
57. Where an exclusion would result in a pupil missing a public examination or national curriculum test, there is a further requirement for a governing board. It must, so far as is reasonably practicable, consider the exclusion before the date of the examination or test. If it is not practicable for a sufficient number of governors to consider the decision before the examination or test, the chair of governors in the case of a maintained school may consider the exclusion alone and decide whether or not to reinstate the pupil<sup>22</sup>. In the case of an academy the exclusion may be considered by a smaller sub-committee if the trust's articles of association allow them to do so. In such cases parents still have the right to make representations to the governing board and must be made aware of this right.
58. The following parties must be invited to a meeting of the governing board and allowed to make representations:
- parents (and, where requested, a representative or friend);
  - the head teacher; and
  - a representative of the local authority (in the case of a maintained school or PRU)<sup>23</sup>

*Although the role of the Local Authority at governors' hearings is not defined in the statutory guidance the Local Authority's position will be one of neutrality where the representative in attendance would not give his/her view on the merits of the particular exclusion as they would see it or "push" for a particular outcome but rather, if asked by any party, to*

*make a statement to the panel in general terms, for example as to how other schools in the area have responded in similar circumstances. Additionally, the Local Authority will draw the attention of panel to issues where there is a lack of clarity or where more information may be needed or where guidance appears not to have been adhered to. In essence, the Local Authority representative will act as an impartial third party, providing objective and dispassionate representations to assist the process.*

*A footnote in the statutory guidance<sup>23</sup> states that a parent may invite a representative of the Local Authority to attend a meeting of an Academy's governing board as an observer and that representative may only make representations with the governing board's consent.*

***The Local Authority strongly encourages Academies to themselves invite a representative of the Local Authority to attend hearings and allow him/her to make representations for the following reasons:***

- *even though governors may have received training for the duty of reviewing a head teacher's decision to exclude a child it is a task that they will only rarely be called upon to discharge. Where a suitably qualified clerk has not been engaged, governors often comment how helpful it is to have a Local Authority representative present and thus be able to draw upon his/her wealth of knowledge and expertise acquired at a local level and to benefit from the representative's impartial and dispassionate advice.*
- *Where the Local Authority representative has brought such issues to a panel's attention that it might otherwise have missed the panel is in a much stronger position to reach a balanced and defensible conclusion. It also contributes to the validity of the proceedings from the parents' perspective and makes it less likely that a parent will feel compelled to refer the matter to the Independent Review Panel and beyond*
- *Head teachers often comment positively on the part played by the Local Authority representative and normally wish to be reassured that someone from the Local Authority will be in attendance. Parents have also commented as to how reassuring they found it for a Local Authority representative to be present to provide objective advice and guidance.*
- *On those occasions where a case has progressed to the Independent Review Panel, the Local Authority will prepare a report in advance which will be circulated to all parties which provides a clear, impartial and objective account of the proceedings at the GDC. Panels have explicitly mentioned that they have found very helpful.*

59. The governing board must make reasonable endeavours to arrange the meeting for a date and time that is convenient to all parties, but in compliance with the relevant statutory time limits set out above. However, its decision will not be invalid simply on the grounds that it was not made within these time limits.
60. In the case of a fixed period exclusion which does not bring the pupil's total number of days of exclusion to more than five in a term, the governing board must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

*Governing bodies may meet with parents under these circumstances at their discretion, perhaps to foster good relationships. If they do, there is no requirement for the meeting to be structured in any particular way.*

## Statutory guidance to a governing board in preparing for the consideration of an exclusion

61. Where the governing board is legally required to consider the reinstatement of an excluded a pupil they should:
- not discuss the exclusion with any party outside of the meeting;
  - ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school such as those relating to a pupil's SEN);
  - where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting;
  - allow parents and pupils to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing board should first seek parental consent and invite the parents to accompany their child to the meeting);
  - comply with their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that has an impact upon their ability to attend the meeting or to make representations); and
  - identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding; or how the excluded pupil may feed their views by other means if attending the exclusion meeting is not possible.

***All exclusion cases should be treated in the strictest confidence.***

*Only those who need to know the details of an exclusion should be informed of them.*

*Parents and head teachers may be accompanied by a supporter or representative, including a legal representative. If a party wishes to be accompanied by more than one supporter/representative it will be for the panel to decide if this is acceptable, but this should normally be allowed unless there is good reason not to.*

*Pupils over the age of 18 may make their own representations. Pupils below this age may attend GDC hearings. If they do, they should be allowed and encouraged to make representations to the panel. They should not, however, be subject to questioning. Questions should be directed to the pupil's representative(s).*

## **Statutory guidance to a governing board on exclusions that would result in a pupil missing a public examination or national curriculum test**

62. Whilst there is no automatic right for an excluded pupil to take an examination or test on the excluding school's premises, the governing board should consider whether it would be appropriate to exercise its discretion to allow an excluded pupil on the premises for the sole purpose of taking the examination or test.

*This should normally be allowed unless there is good reason not to.*

## **6.2 The requirements on a governing board when considering the reinstatement of an excluded pupil**

### **A guide to the law<sup>2</sup>**

63. **Where the governing board is legally required to consider reinstating an excluded pupil they must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.**

*The governing board should balance the needs and well-being of the excluded pupil against the needs and well-being of the rest of the school community.*

64. The governing board must also consider any representations made by:
- parents;
  - the head teacher; and
  - the Local Authority (in the case of a maintained school or PRU)

*See paragraph 58*

65. When establishing the facts in relation to an exclusion decision the governing board must apply the civil standard of proof; i.e. 'on the balance of probabilities' (it is more likely than not that a fact is true) rather than the criminal standard of 'beyond reasonable doubt'.

66. In the light of their consideration, the governing board can either:
- decline to reinstate the pupil; or
  - direct reinstatement of the pupil immediately or on a particular date.

*These are the only two decisions open to the governing board. The panel may not decide that, because of exceptional circumstances or for other reasons, it is not practical to give a direction for reinstatement, but that it would otherwise have been appropriate to give such a direction. In other words, if the panel's verdict is that the exclusion was not appropriate, it must direct the pupil's reinstatement.*

*It should be noted that the governing board's remit is to review exclusions imposed by the head teacher, who alone has the power to exclude. It follows that the governing board 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. Neither can it impose conditions to a direction to reinstate the pupil.*

67. Where reinstatement would make no practical difference because for example, the pupil has already returned to school following the expiry of a fixed-period exclusion or the parents make clear they do not want their child reinstated, the governing board must still consider whether the pupil should be officially reinstated. If it decides against reinstatement of a pupil who has been permanently excluded the parents can request an independent review.

*If the governing board decides that an exclusion was not appropriate but cannot direct reinstatement because the period of exclusion has expired and the pupil has returned to school, it should place a copy of its findings on the pupil's school record.*

## Statutory guidance to a governing board on considering the reinstatement of an excluded pupil

68. The governing board should identify the steps they will take to ensure all parties will be supported to participate in its consideration and have their views properly heard. This is particularly important where pupils under 18 are speaking about their own exclusion or giving evidence to the governing board.

*See paragraph 61*

69. The governing board should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by governing board. These minutes should be made available to all parties on request.
70. The governing board should ask all parties to withdraw before making a decision. Where, present a clerk may stay to help the governing board by reference to their notes of the meeting and with the wording of the decision letter.

*It is for the panel to decide if it wishes the parents/child to wait outside the room in which the hearing took place whilst it deliberates and then call them back in to deliver its verdict. The Local Authority's recommendation is, however, that the parents/child are not asked to wait outside but informed that they will receive the panel's verdict in writing within 24 hours.*

*The Local Authority recommends that governing boards seek the support of a suitably qualified clerk who is able to offer appropriate advice and guidance.*

71. **In reaching a decision on whether or not a pupil should be reinstated, the governing board should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the head teacher's legal duties and any evidence that was presented to the governing board in relation to the decision to exclude.**

*The LA recommends that the panel considers the following factors when reaching its decision:*

- *On the balance of probabilities, has the pupil done what he or she is alleged to have done? The more serious the allegation, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard of "beyond reasonable doubt" to be applied, but it does mean that when*

*considering more serious allegations, the head teacher will need to have presented evidence which suggests that it is distinctly more probable than not that the pupil has committed the offence. The panel may take account of evidence of the pupil's past behaviour **if relevant to the allegation, but disregard evidence which is not relevant**. In determining whether If the pupil should be reinstated or not for more than one incident of misconduct, the panel should decide in relation to each one;*

- *Has the head teacher complied with the law and had regard to the statutory guidance in deciding to exclude the pupil? While the panel should not decide to reinstate a pupil solely on the basis of technical defects in procedure, procedural issues would be relevant if there was evidence that the process was so flawed that important factors were not considered or justice was clearly not done;*
- *Has there been a clear and serious breach of the school's published behaviour policy, enough to warrant exclusion;*
- *Has the school has done what could reasonably have been expected of it to have prevented the situation reaching the point of exclusion (such support may not be appropriate in the case of a child excluded for a first or one-off offence);*
- *Has the school acted fairly in excluding the child in relation to the treatment of any other pupils involved in the same incident?*

72. The governing board should note the outcome of their consideration on the pupil's educational record, along with copies of relevant papers for future reference.

73. In cases where the governing board considers parents' representations but does not have the power to direct a pupil's reinstatement, it should consider whether it would be appropriate to place a note of its findings on the pupil's educational record.

*This might apply where a pupil's total number of days of exclusion is not more than five in a term (see paragraph 60)*

74. Claims of discrimination to the First-tier Tribunal (Special Educational Needs and Disability) in relation to a disability, or County Court, for all other forms of discrimination, can be made up to six months after the discrimination is alleged to have occurred. Where practicable, schools should retain records and evidence relating to an exclusion for at least six months in case such a claim is made.

## 6.3 The governing board's duty to notify people after their consideration of an exclusion

### A guide to the law<sup>3</sup>

75. Where legally required to consider reinstating an excluded pupil, the governing board must notify parents, the head teacher and the Local

Authority of its decision, and the reasons for their decision, in writing and without delay. Where the pupil resides in a different Local Authority from the in which the school is located, the governing board must also inform the pupil's "home authority".

*The governing board should notify as specified above within 24 hours of making their decision.*

76. In the case of a permanent exclusion where the governing board decided not to reinstate the pupil, the governing board's notification must also include the information below.
- The fact that it is permanent.
  - Notice of parents' right to ask for the decision to be reviewed by an independent review panel and the following information:
    - a) the date by which an application for a review must be made (i.e. 15 school days from the date on which notice in writing of the governing board's decision is given to parents – see paragraph 78);
    - b) where and to whom an application for a review (and any written evidence) should be submitted;
    - c) that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's SEN are considered to be relevant to the exclusion;
    - d) that, regardless of whether the excluded pupil has recognised SEN, parents have a right to require the Local Authority / Academy Trust to appoint an SEN expert to advise the review panel;
    - e) details of the role of the SEN expert and;
    - f) that parents may, at their own expense, appoint someone to make written and/or oral representations to the panel.
  - That, in addition to the right to apply for an independent review panel, if parents believe that there has been unlawful discrimination in relation to the exclusion 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.
  - That a claim of discrimination under the Equalities Act 2010 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).

77. The governing board may provide the information in paragraphs 75 and 76 by delivering it directly to parents, delivering it to their last known address, or by posting it first class to that address.
78. Notice is deemed to have been given on the same day if it is delivered or on the second working day after posting if it is sent by first class mail.

## **Statutory guidance to a governing board on providing information to parents following their consideration of an exclusion**

79. **The governing board should set out the reasons for its decision in sufficient detail to enable all parties to understand why the decision was made.**
80. Where relevant, it will be for schools to confirm the details of where the parents' application for an independent review panel should be sent. This is normally the clerk of the independent review panel. The notice should make it clear that parents are entitled to bring a friend to the review.
81. In providing details of the role of the SEN expert, the governing board should refer to the statutory guidance provided to SEN experts in paragraphs 164 to 167. The notice should explain that there would be no cost to parents for this appointment and that parents must make clear if they wish for an SEN expert to be appointed in any application for a review.
82. Where the governing board decides to uphold an exclusion they should draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision. This information should be included in the letter notifying parents of a decision to uphold an exclusion and should include:
  - a link to this statutory guidance on exclusions (<https://www.gov.uk/government/publications/school-exclusion>):
  - a link to guidance on making a claim of discrimination to the First-tier Tribunal (Special Educational Needs and Disability) (<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>) or the County Court;
  - a link to sources of impartial advice for parents such as the Coram Children's Legal Centre ([www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)) or ACE Education (<http://www.ace-ed.org.uk>) and their limited advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time); and

- where considered relevant by the head teacher, links to local services, such as Traveller Education Services, the Information Advice & Support Services Network (formerly known as the local parent partnership) (<https://councilfordisabledchildren.org.uk/information-advice-and-support-services-network/about>), the National Autistic Society (NAS) School Exclusion Service (England) (0808 800 4002 or [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk)), or Independent Parental Special Education Advice (<http://www.ipsea.org.uk/>).

<sup>20</sup>Section 51A Education Act 2002 and regulations made under that section, as well as the School Governance (Roles, Procedures and Allowances) (England) Regulations 2013.

<sup>21</sup>A governing board is no longer prevented from meeting within the five school days after an exclusion.

<sup>22</sup>Where the chair is unable to make this consideration, then the vice-chair may do so instead.

<sup>23</sup>Parents may request that the Local Authority and/or the home Local Authority attend a meeting of an academy's governing board as an observer; that representative may only make representations with the governing board's consent.

## Part 7: The governing board's duty to remove a permanently excluded pupil's name from the school register

### A guide to the law<sup>24</sup>

83. The governing board must ensure that a pupil's name is removed from the school admissions register if:
- 15 school days have passed since the parents were notified of the governing board's decision not to reinstate the pupil and no application has been made for an independent review panel; or
  - the parents have stated in writing that they will not be applying for an independent review.
84. Where an application for an independent review panel has been made within 15 school days, the school must wait until the review has been determined, or abandoned, and until the governing board has completed any reconsideration that the panel has recommended or directed it to carry out, before removing a pupil's name from the register. Where a pupil's name is to be deleted from the school admissions register because of a permanent exclusion the school must make a return to the local authority. The return must include all the particulars which were entered in the admission register, the address of any parent with whom the pupil normally resides and the grounds upon which their name is to be deleted from the admissions register (i.e. permanent exclusion). This return must be made as soon as the grounds for deletion are met and no later than the deletion of the pupil's name.
85. Where a pupil's name is removed from the school register and a discrimination claim is subsequently made, the First-tier Tribunal (Special Educational Needs and Disability) or County Court has the power to direct that the pupil should be reinstated.

### Guidance to schools on marking attendance registers following exclusion

86. Whilst an excluded pupil's name remains on a school's admissions register the pupil should be marked using the appropriate attendance

code. Where alternative provision has been made and the pupil attends it, an appropriate attendance code, such as Code D (if the alternative provision is at a PRU or independent school where the pupil is dual registered) or Code B (if the provision is an approved educational activity that does not involve the pupil being registered at any other school), should be used. Where pupils are not attending alternative provision, they should be marked absent using Code E<sup>25</sup>.

<sup>24</sup>Regulations 8(1)(m), 8(3)(e) and 8(4)(d) of the Education (Pupil Registration) (England) Regulations 2006, as amended, set out the circumstances in which a permanently excluded pupil must be removed from the register. Regulation 12(7) of the Education (Pupil Registration) (England) Regulations 2006 as inserted by Regulation 5 of the Education (Pupil Registration) (England) (Amendment) Regulations 2016 sets out the information that must be submitted to the local authority.<sup>25</sup> Departmental advice on attendance codes can be found at the following link:

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

<sup>25</sup>Departmental advice on attendance codes can be found at the following link:

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# Part 8: The Local Authority's/Academy Trust's duty to arrange an independent review panel

## 8.1 Arranging a date and venue

### A guide to the law<sup>3</sup>

87. If applied for by parents within the legal time frame, the Local Authority or (in the case of an academy) the academy trust must, at their own expense, arrange for an independent review panel hearing to review the decision of a governing board not to reinstate a permanently excluded pupil.
88. The legal time frame for an application is:
- within 15 school days of notice being given to the parents by the governing board of its decision not to reinstate a permanently excluded pupil (in accordance with the requirements in paragraph 75); or
  - where an application has not been made within this time frame, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion<sup>26</sup>.
89. Any application made outside of the legal time frame must be rejected by the Local Authority/Academy Trust.
90. The Local Authority/Academy Trust must not delay or postpone arranging an independent review panel where parents also make a claim of discrimination in relation to the exclusion to the First-tier Tribunal (Special Educational Needs and Disability) or the County Court<sup>27</sup>.
91. Parents may request an independent review panel even if they did not make representations to, or attend, the meeting at which the governing board considered reinstating the pupil.
92. The Local Authority/Academy Trust must take reasonable steps to identify a date for the review that all parties, and any SEN expert appointed to give advice in person, are able to attend. However, the review must begin within 15 school days of the day on which the

parent's application for a review was made (panels have the power to adjourn a hearing if required).

93. The venue must be accessible to all parties<sup>28</sup>
94. The Local Authority/Academy Trust must arrange a venue for hearing the review. Whatever the venue, the panel must hold the hearing in private unless the Local Authority/ Academy Trust directs otherwise.
95. Where the issues raised by two or more applications for review are the same, or connected, the panel may combine the reviews if, after consultation with all parties, there are no objections.

## Statutory guidance to Local Authorities and Academy Trusts on arranging a date and venue for a review

96. The Local Authority/Academy Trust should take all reasonable steps to ensure the venue for the review is appropriate and has a suitable area for the parties to wait separately from the panel before the review.
97. Where the issues raised by two or more applications for review are the same, or connected, but the panel does not combine the reviews the Local Authority/Academy Trust should take reasonable steps to ensure fairness and consistency. Where possible, the same panel members should hear all related reviews.

## 8.2 Appointing panel members

### A guide to the law<sup>3</sup>

98. The Local Authority/Academy Trust must constitute the panel with either three or five members (as decided by the Local Authority/Academy Trust) representing each of the three categories below. A five member panel must be constituted with two members from each of the categories of school governors and head teachers<sup>29</sup>.
  - A lay member to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer.
  - Current or former school governors (including members of PRU management committees and directors of academy trusts) who have served as a governor for at least 12 consecutive months in the last five years, provided they have not been teachers or head teachers during that time.
  - Head teachers or individuals who have been a head teacher within the last five years.

99. A person may not serve as a member of a review panel if they:
- are a member / director of the Local Authority/Academy Trust or governing board of the excluding school;
  - are the head teacher of the excluding school or anyone who has held this position in the last five years;
  - are an employee of the Local Authority/Academy Trust, or the governing board, of the excluding school (unless they are employed as a head teacher at another school);
  - have, or at any time have had, any connection with the Local Authority/Academy Trust, school, governing board, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality (though an individual must not be taken to have such a connection simply because they are employed by the Local Authority/Academy Trust as a head teacher at another school); or
  - have not had the required training within the last two years (see paragraph 124);
100. In relation to panel members appointed by Local Authorities, sections 173(4) and 174(1) of Local Government Act 1972 apply when determining allowances for financial loss, travel or subsistence. It is for Academy Trusts to determine their own payment arrangements for panel members.
101. The Local Authority/Academy Trust must make arrangements to indemnify panel members against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review which are taken in good faith.

## Statutory guidance to Local Authorities and Academy Trusts on appointing independent review panel members

102. Every care should be taken to avoid bias or an appearance of bias. The Local Authority/Academy Trust should request that prospective panel members declare any conflict of interest at the earliest opportunity.
103. Where possible, panel members who are governors or head teachers should reflect the phase of education (primary / secondary) and type of school from which the pupil was excluded, for example: special school; boarding school; PRU; Academy or maintained school.
104. The Local Authority/Academy Trust should consider whether the chair should be someone with a legal qualification or other legal experience.

This is particularly important where a clerk will not be providing legal expertise to the panel.

105. In order to meet their duties within the statutory time frame, Local Authority/Academy Trusts should identify a number of eligible individuals in each of the different categories required to constitute an independent review panel in advance of an application for a review.

## 8.3 Appointing a clerk and the clerk's role

### A guide to the law<sup>3</sup>

106. The Local Authority/Academy Trust may appoint a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.

*The LA strongly recommends that an appropriately qualified clerk is appointed.*

107. Where appointed the clerk must perform the following additional functions.
- Make reasonable efforts to inform the following people that they are entitled to: make written representations to the panel; attend and make oral representations to the panel; and be represented;:
    - a) the parents;
    - b) the head teacher;
    - c) the governing board; and
    - d) the Local Authority (in the case of a maintained school or PRU).
  - Make reasonable efforts to circulate to all parties copies of relevant papers at least 5 school days in advance of the review. These papers must include:
    - a) the governing board's decision;
    - b) the parents' application for a review; and
    - c) any policies or documents that the governing board was required to have regard to in making its decision.
  - Give all parties details of those attending and their role, once the position is clear.

- Attend the review and ensure that minutes are produced in accordance with instructions from the panel.

*Where a representative of the LA attended the GDC hearing at an Academy that representative should be invited to also attend the independent review panel. Where the LA representative made representations he/she will provide a report to all parties in advance of the hearing and will make further representations and/or answer questions about the report at hearing.*

108. Where a clerk is not appointed the functions in paragraph 107 become the responsibility of the Local Authority/Academy Trust.

## Statutory guidance to Local Authorities/Academy Trusts on appointing an independent review panel clerk

109. The clerk should not have served as clerk to the governing board meeting at which the decision was made not to reinstate the pupil.
110. In addition to the training required by law, clerks should have an up-to-date understanding of developments in case law which are relevant to exclusion.
111. Where a clerk is not appointed, the Local Authority/Academy Trust should consider what additional steps it may need to take to ensure that the independent review panel is administered properly.

## Statutory guidance to Local Authority/Academy Trust regarding the clerk's role on preparing for an independent review

112. The Local Authority/Academy Trust should ensure that the clerk follows the advice below (paragraphs 113 to 123)
113. The clerk should identify in advance of the meeting whether the pupil will be attending. Where an excluded pupil is attending the hearing, consideration should be given in advance as to the steps that will be taken to support his/her participation. If the excluded pupil is not attending it should be made clear that they may feed in their views through a representative or by submitting a written statement
114. The clerk should inform the parents of their right to bring a friend to the hearing.
115. In order to review the governing board's decision the panel will generally need to hear from those involved in the incident, or incidents,

leading to the exclusion. The clerk should also try to ascertain whether an alleged victim, if there is one, wishes to be given a voice at the review. This could be in person, through a representative or by submitting a written statement.

116. In the case of witnesses who are pupils of the school it will normally be more appropriate for the panel to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and, if they are under 18, with their parents' consent. In such cases, that pupil's parents should be invited to attend the meeting in support of their child.
117. Where character witnesses are proposed the clerk should seek the agreement of the panel, but this should be allowed unless there is good reason to refuse.
118. All written witness statements should be attributed, signed and dated, unless the school has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements. The general principle remains that excluded pupils are entitled to know the substance behind the reason for their exclusion. *See paragraph 15*
119. Parties attending the hearing have the right to be represented. Representatives may make written or oral representations to the panel. If any of the parties wish to bring more than one friend or representative, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the review. However, all parents may attend, if they wish to do so, and each can make representations and be represented.
120. In addition to written witness statements, the clerk should request written evidence from the school in order to circulate it in advance of the meeting, such as policies and documents of the school which the governing board would reasonably have been expected to take account of in reaching its decision on reinstatement.
121. Where the school's case rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the panel. Where there are difficulties in retaining physical evidence, photographs or signed witness statements should be used.
122. Where an excluding head teacher has left the school, the panel may use its discretion in deciding whether to also invite this person to make representations,
123. The clerk should notify the panel where requested documents have not been provided so that the panel can take a decision on whether to adjourn the hearing to allow for the documents to be provided.

## 8.4 Ensuring that panel members and clerks are trained

### A guide to the law<sup>3</sup>

124. The Local Authority/Academy Trust must ensure that all panel members and clerks have received training within the two years prior to the date of the review. This training must have covered:
- the requirements of the primary legislation, regulations and statutory guidance governing exclusions (which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision making);
  - the need for the panel to observe procedural fairness and the rules of natural justice;
  - the role of the chair of a review panel;
  - the role of the clerk to a review panel;
  - the duties of head teachers, governing bodies and the panel under the Equality Act 2010; and
  - the effect of section 6 of the Human Rights Act 1998 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act in a manner compatible with human rights protected by that Act.

## 8.5 Appointing an SEN expert

### A guide to the law<sup>3</sup>

125. If requested by parents with their application for an independent review panel, the Local Authority/Academy Trust must appoint a SEN expert to attend the panel and must cover the associated costs of this appointment.
126. The SEN expert must be someone who has expertise and experience of special educational needs considered by the local authority/academy trust as appropriate to perform the functions specified in the legislation.
127. The Local Authority/Academy Trust must make arrangements to indemnify the SEN expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.

128. Parents have a right to request the attendance of a SEN expert at a review, regardless of whether the school recognises that their child has SEN.
129. The SEN expert's role is set out in paragraphs 164 to 167.
130. Individuals may not serve as a SEN expert if they have, or at any time have had, any connection with the Local Authority, Academy Trust, school, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially. However, an individual is not taken to have such a connection solely because he/she is an employee of the Local Authority/Academy Trust.

## Statutory guidance to Local Authorities and Academy Trusts on appointing a SEN expert

131. The SEN expert should be a professional with first-hand experience of the assessment and support of SEN, as well as an understanding of the legal requirements on schools in relation to SEN and disability. Examples of suitable individuals might include educational psychologists; specialist SEN teachers; special educational needs coordinators (SENCOs); and behaviour support teachers. Recently retired individuals are not precluded from fulfilling this role, though the Local Authority/Academy Trust would need to assure themselves that the individual had a good understanding of current practice and the legal requirements on schools in relation to SEN.
132. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, a Local Authority/Academy Trust, they should not have had any previous involvement in the assessment or support of SEN for the excluded pupil, or siblings of the excluded pupil. The Local Authority/Academy Trust should request that prospective SEN experts declare any conflict of interest at the earliest opportunity.
133. The final decision on the appointment of an SEN expert is for the Local Authority/Academy Trust to make but it should take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEN expert. Where possible, this may include offering parents a choice of SEN expert. In order to meet its duties within the statutory time frame, the Local Authority/Academy Trust should consider maintaining a list of individuals capable of performing the role of SEN expert in advance of a request.
134. It is for the Local Authority/Academy Trust to determine the amount of any payment in relation to the appointment of the SEN expert, such as financial loss, travel and subsistence allowances.

<sup>26</sup>The First-tier Tribunal (Special Educational Needs and Disability) and County Court have the jurisdiction to hear claims of discrimination under the Equality Act 2010 which relate to exclusions.

<sup>27</sup>In such circumstances, the Tribunal or Court may decide to delay its consideration until after the independent review panel process has been completed.

<sup>28</sup>When arranging a venue for the review, the local authority/academy trust must comply with its duties under the Equality Act 2010 and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the review (for example where a parent or pupil has a disability in relation to mobility or communication that impacts upon his/her ability to attend the meeting or to make representations).

<sup>29</sup>Head teachers/principals/teachers in charge of a PRU and governors/management committee members of maintained schools, PRUs and Academies are eligible to be members of independent review panels considering an exclusion from any type of school covered by this guidance.

## Part 9. The duties of independent review panel members, the clerk and the SEN expert in the conduct of an independent review panel

### A guide to the law<sup>3</sup>

135. Panel members and, if appointed, the SEN expert must declare any known conflict of interest to the Local Authority/Academy Trust before the start of the review.
136. The role of the panel is to review the governing board's decision not to reinstate a permanently excluded pupil. In reviewing the decision the panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.
137. The panel must apply the civil standard of proof; i.e. "on the balance of probabilities" it is more likely than not that a fact is true, rather than the criminal standard of "beyond reasonable doubt". This means that the panel should accept that something happened if it is more likely that it happened than that it did not happen
138. Following its review the panel can decide to:
  - uphold the governing board's decision;
  - recommend that the governing board reconsiders reinstatement, or
  - quash the decision and direct that the governing board reconsiders reinstatement again.
139. The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied decision the chair has the casting vote.
140. The independent review panel's decision is binding on the: pupil; parents; governing board; head teacher and Local Authority.
141. The panel may only quash a governing board's decision if it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review (statutory guidance on this consideration is provided by paragraphs 157 to 162).

142. New evidence may be presented to the panel, though the school may not introduce new reasons for the exclusion or for the decision not to reinstate the pupil and panels must disregard any new reasons that are introduced.
143. In deciding whether the governing board's decision was flawed, and therefore whether to quash the decision, the panel must only take account of the evidence that was available to the governing board at the time of making their decision not to reinstate. This includes any evidence which the panel considers would, or should, have been available to the governing board and that it ought to have taken into account if they had been acting reasonably.
144. If evidence is presented that the panel considers is unreasonable to have expected the governing board to have been aware of at the time of their decision, the panel can take account of the evidence when deciding whether to recommend that the governing board reconsider reinstatement.
145. Where present, the panel must seek and have regard to the SEN expert's view of how SEN might be relevant to the pupil's exclusion. Where a SEN expert has been requested but is not present, the panel should make parents aware of their right to request that the review is adjourned until such time as an SEN expert can attend.
146. The jurisdiction of the First-tier Tribunal (Special Educational Needs and Disability) and County Court to hear claims of discrimination relating to a permanent exclusion does not preclude an independent review panel from considering issues of discrimination in reaching its decision.
147. If a panel directs a governing board to reconsider reinstatement it may order the local authority to make an adjustment to the school's budget or (in the case of an academy) the Academy Trust to make an equivalent payment to the Local Authority in whose area the school is located, unless within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil. Paragraph 163 provides statutory guidance to panels on the circumstances under which this payment should not be ordered. The sum of this adjustment/payment must be £4,000 and would be in addition to any funding that would normally follow an excluded pupil. The panel does not have the power to order a financial readjustment or payment in circumstances where it has only recommended that the governing board reconsiders reinstatement of the pupil.
148. The panel may adjourn on more than one occasion, if necessary. However, consideration must be given to the effect of adjournment on the parties to the review, the excluded pupil and their parents, and any victim.

149. A review cannot continue if the panel no longer has representation from each of the three categories of members required (see paragraph 98). In this event, the panel must be adjourned until the number can be restored.
150. Once a review has begun, no panel member may be substituted by a new member for any reason. Accordingly, if the required representation cannot be restored from the original members, a new panel must be constituted to conduct the review afresh. In the case of a five-member panel, the panel may continue in the absence of any of its members, provided all three categories of member are still represented.
151. Following the review, the panel must issue written notification to all parties without delay. This notification must include:
- the panel's decision and the reasons for it;
  - where relevant, details of any financial readjustment / payment to be made if a governing board subsequently decides not to offer to reinstate a pupil; and
  - any information that the panel has directed the governing board to place on the pupil's educational record.

### Statutory guidance to independent review panel members on the conduct of an independent review panel

152. The chair should outline the procedure to be followed and explain to all parties that the panel is independent of the school, the Local Authority and (in the case of an academy) the Academy Trust.
153. It is for the panel to decide whether any witnesses should stay after giving evidence for the rest of the review, but they should not be present before giving evidence.
154. In the interests of fairness and transparency, care should be taken to ensure that no one, other than the clerk, is present with the panel in the absence of the other parties. This includes the SEN expert. The panel should ask everyone, apart from the clerk, to withdraw before the panel makes a decision. The clerk may stay to help the panel by referring to the notes of the meeting and providing advice on the wording of the decision letter.
155. In any event, the panel must always make one of three fundamental decisions: it must uphold the governing board's decision; or recommend reconsideration; or quash the decision. Where parents are not seeking reinstatement for their child, this fact should be acknowledged by the panel, but it should not affect the conduct of the panel or its decision. Recording of the panel's findings on a child's educational record and an acknowledgement by the governing board

that it would be appropriate for it to offer to reinstate the pupil are both potential outcomes in these circumstances.

156. In the event that a panel cannot continue because it no longer has representation from each of the three categories of members required (see paragraph 98) it should, having regard to the particular circumstances and the effect on the parties, victim, and pupil/parent, adjourn to allow reasonable time for enough missing members to become available.

## Statutory guidance to independent review panel members on coming to a decision

157. The panel's decision should not be influenced by any stated intention of the parents or pupil not to return to the school. The focus of the panel's decision is whether there are sufficient grounds for them to direct or recommend that the governing board reconsider its decision to uphold the exclusion.
158. Public law principles underpin good decision-making. All decisions of a governing board must be made in accordance with public law. Panels are expected to understand the legislation that is relevant to exclusions and the legal principles that apply. Head teacher and governing board members of panels are likely to have first-hand experience of the education context that may be relevant to considerations about whether or not a decision was reasonable in the circumstances.
159. When considering the governing board's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:
- Illegality – did the governing board act outside the scope of its legal powers in deciding that the pupil should not be reinstated?
  - Irrationality – did the governing board rely on irrelevant points, fail to take account of all relevant points or make decision so unreasonable that no governing board acting reasonably in such circumstances could have made it?
  - Procedural impropriety – was the governing board's consideration so procedurally unfair or flawed that justice was clearly not done?
160. Procedural impropriety means not simply a breach of minor points of procedure but something more substantive, that has a significant impact on the quality of the decision making process. This will be a judgement for the panel to make but the following are examples of the types of things that could give rise to procedural impropriety: bias; failing to notify parents of their right to make representations; the

governing board making a decision without having given parents an opportunity to make representations; failing to give reasons for a decision; or being a judge in your own cause (for example, if the head teacher who took the decision to exclude were also to vote on whether the pupil should be reinstated).

161. Where the criteria for quashing a decision have not been met, the panel should consider whether it would be appropriate to recommend that a governing board reconsiders their decision not to reinstate the pupil. This should not be the default option, but should be used where evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision, but which the panel believe justify a reconsideration of the governing board's decision. This could include where new evidence presented at the review hearing was not available to the governing board at the time of its decision.
162. In all other cases the panel should uphold the exclusion.

### Statutory guidance to independent review panel members on the financial readjustment / payment

163. In the case of a maintained school or PRU, where a panel has quashed the governing board's decision and directed that it reconsiders, the panel should order that a readjustment must be made to the school's budget, unless within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil. In the case of an academy, where the panel has quashed the governing board's decision, the panel should order that the academy trust must make a payment directly to the Local Authority in whose area the academy is located, unless within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil.

### Statutory guidance to SEN experts on their conduct during an independent review panel

164. The SEN expert's role is analogous to an expert witness, providing impartial advice to the panel on how SEN might be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel. The SEN expert's role does not include making an assessment of the pupil's special educational needs.
165. The focus of the SEN expert's advice should be on whether the school's policies which relate to SEN, or the application of these policies in relation to the excluded pupil, were lawful, reasonable and procedurally fair (in line with the explanations in paragraph 159). If the SEN expert believes that this was not the case they should, where

possible, advise the panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

166. Where the school does not recognise that a pupil has SEN, the SEN expert should advise the panel on whether they believe the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEN that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.
167. The SEN expert should not criticise a school's policies or actions simply because they believe a different approach should have been followed or because another school might have taken a different approach.

### Statutory guidance to the clerk and Local Authority / Academy Trust on the record of the proceedings of a review panel

168. The clerk to a review panel should ensure that minutes of the proceedings are taken, including details of the attendance, the voting and the decision.
169. The minutes are not public documents but should be retained by the Local Authority/Academy Trust for a period of at least five years, as they may need to be seen by a court or (in the case of maintained school) by the Public Service Ombudsman. The Local Authority/Academy Trust should be aware of its duties under the Freedom of Information Act 2000 and the Data Protection Act 1998 when retaining information.

### Statutory guidance to the independent review panel and clerk on notifying parties of the outcome of the review

170. If the panel upholds the governing board's decision, the clerk should immediately report this to the Local Authority as well as notifying the parents and the governing board. If the pupil lives outside the Local Authority in which the school is located, the clerk should make sure that the 'home authority' is also informed in writing without delay of the outcome of the review. This includes any situation where parents withdraw or abandon their application for a review.

# Part 10: The governing board's duty to reconsider reinstatement following a review

## A guide to the law<sup>3</sup>

171. Where the panel directs or recommends that the governing board reconsider whether a pupil should be reinstated, the governing board must reconvene to do so within ten school days of being given notice of the panel's decision. Notice is deemed to have been given on the same day if it is delivered directly or on the second working day after posting if it is sent by first class mail.
172. It is important that the governing board conscientiously reconsiders whether the pupil should be reinstated, whether the panel has directed or merely recommended it to do so. Whilst the governing board may still reach the same conclusion as it first did, it may face challenge in the courts if it refuses to reinstate the pupil, without strong justification.
173. Following a direction to reconsider, unless within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil an adjustment may be made to the school's budget in the sum of £4,000 if the panel has ordered this. In the case of an academy, the school would be required to make an equivalent payment directly to the local authority in which the school is located. This payment will be in addition to any funding that would normally follow an excluded pupil.
174. If the governing board offers to reinstate the pupil within the specified timescale but this is declined by the parents, no budget readjustment or payment can be made. The governing board must comply with any direction of the panel to place a note on the pupil's educational record. The clerk must also note, where a pupil is not reinstated following a direction to reconsider, the exclusion does not count towards the rule that an admission authority may refuse to admit a child who has been excluded twice; or in the case of a community or voluntary controlled school, the governing board may appeal against the decision of the local authority as the admission authority to admit the child.
175. In the case of either a recommended or directed reconsideration, the governing board must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:
- the parents;
  - the head teacher;

- the Local Authority and, where relevant, the ‘home authority’.

*Notification of the reconsidered decision should be sent to relevant parties within 24 hours of the decision having been reached.*

## Statutory guidance on the governing board’s duty to reconsider reinstatement following a review

176. The reconsideration provides an opportunity for the governing board to look afresh at the question of reinstating the pupil, in light of the findings of the independent review panel. There is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting. The governing board is not prevented from taking into account other matters that it considers relevant. It should, however, take care to ensure that any additional information does not make the decision unlawful. This could be the case, for example, where new evidence is presented or information is considered that is irrelevant to the decision at hand.
177. The governing board should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the governing board. These minutes should be made available to all parties on request.
178. The governing board should ask any parties in attendance to withdraw before making a decision. Where present, a clerk may stay to help the governing board by reference to their notes of the meeting and with the wording of the decision letter.
179. The governing board should note the outcome of its consideration on the pupil’s educational record, along with copies of any papers for future reference.
180. The governing board should base its reconsideration on the presumption that a pupil will return to the school if reinstated, regardless of any stated intentions by the parents or pupil. Any decision of a governing board to offer reinstatement which is subsequently turned down by the parents should be recorded on the pupil’s educational record. The governing board’s decision should demonstrate how they have addressed the concerns raised by the independent review panel; this should be communicated in standard English for all parties to understand.

# Part 11: The Local Authority's role in overseeing the financial readjustment / payment<sup>30</sup>

## A guide to the law

181. The Local Authority cannot require a maintained school or academy to make any additional payments following a permanent exclusion, other than the budget share deductions set out in regulations, or the payments which an academy has to make under its funding agreement<sup>31</sup>.
182. The Local Authority will be responsible for adjusting the budget share for maintained schools and PRUs with delegated budgets if a pupil is permanently excluded, so funding follows the pupil. The process and requirements are set out in the School and Early Years Finance (England) Regulations, issued on an annual basis.
183. A Local Authority may ask an Academy Trust to enter into an arrangement for the transfer of funding for a pupil who has been permanently excluded, on the same basis as if the academy were a maintained school. The Academy Trust may be obliged under its funding agreement to comply with such a request.
184. If a review panel has ordered a financial adjustment, the Local Authority will be responsible for reducing the budget share for the excluding school by a further £4,000. If the excluding school is an academy, the Academy Trust must pay £4,000 to the Local Authority.
185. If a review panel has made a financial adjustment order and the excluded pupil is given a place at another school, including a PRU, ("the admitting school"), the Local Authority may, if it chooses, pass any or all of the amount of the financial adjustment (i.e. up to £4,000) to the admitting school.
186. The Local Authority will be responsible for adjusting the budget share for maintained schools and PRUs with delegated budgets in circumstances where a panel has ordered a financial adjustment (see paragraph 163).

## Statutory guidance on the governing board's duty to reconsider reinstatement following a review

187. This financial readjustment should be made within 28 days of notification of a direction from the panel. The Academy Trust should be

expected to make payment to the Local Authority in which the academy is located within the same timescale.

188. If an academy fails to comply with its legal requirement to pay following a direction from an independent review panel then the local authority will be responsible for enforcing this requirement. However, the Local Authority should also inform the Education and Skills Funding Agency.
189. If an excluded pupil has been found a place at another school by the time the governing board has reconsidered and decided not to reinstate the pupil, the local authority may, if it chooses, pass the amount of the financial readjustment to the pupil's new school.

<sup>30</sup>Section 51A Education Act 2002 and regulations made under this section. The requirements for the transfer of funding following an exclusion from a maintained school or PRU are set out in The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999. Academy funding agreements may require an academy to enter into a similar agreement with the Local Authority.

<sup>31</sup>This does not include circumstances where a school or academy has voluntarily entered into a separate legally binding agreement with the Local Authority.

## Part 12: Statutory guidance to the head teacher, governing board and independent review panel members on police involvement and parallel criminal proceedings

*A school-related incident may sometimes also be the subject of a police investigation which may subsequently result in criminal proceedings. This can mean that the evidence available to head teachers/teachers in charge, governing bodies/management committees and Independent Appeal Panels is very limited. They may not, for example, be able to hear relevant witnesses or to consider relevant material; it may not be known whether a criminal charge is to be brought; if a charge has been brought, the eventual outcome of any court proceedings may be uncertain. It should be remembered that the police and the courts will be applying the criminal standard of proof (beyond reasonable doubt), whereas the head teacher/governing board and the independent review panel must apply the civil standard of proof (the balance of probabilities).*

190. The head teacher need not postpone taking a decision on an exclusion solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, the head teacher will need to take a decision on the evidence available to them at the time.

*If, having considered the evidence, on a balance of probabilities the head teacher concludes that it is distinctly more likely that the pupil committed the alleged offence, then the head teacher/teacher in charge may proceed to take a decision on exclusion. The head teacher/teacher in charge should apply the normal principles having regard to the school's behaviour policy, and consider whether exclusion is a proportionate response. Normally the head teacher should exclude the pupil at that stage if it would be appropriate to do so, for example if he/she represented a danger to other persons at the school. It may be advisable, where the evidence is not clear cut or is still coming to light, to make alternative provision, or where it is clear on balance of probabilities that the pupil committed the disciplinary offence, but the full circumstances and the seriousness have not yet been established, first to exclude the pupil for a fixed period. Appendix 4 provides head teachers with alternatives where exclusion on disciplinary grounds is inappropriate. Relevant considerations include the fact that:*

*a) a serious allegation has been made against the pupil by another pupil or member of staff at the school/ESC which is the subject of a police investigation which may result in criminal proceedings being brought; and*

*b) pending the conclusion of any such criminal proceedings, the pupil's continued presence in the school/ESC may have an adverse effect on the complainant and other potential witnesses and on the promotion of good order and discipline at the school generally.*

191. Where the evidence is limited by a police investigation or criminal proceedings, the head teacher should consider any additional steps they may need to take to ensure that the decision to exclude is fair. However, the final decision on whether to exclude is for the head teacher to make.
192. Where the governing board is required to consider a reinstatement in these circumstances, it cannot postpone its meeting and must decide whether or not to reinstate the pupil on the evidence available.
193. The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:
- whether any charge has been brought against the pupil and, if so, what the charge is;
  - whether relevant witnesses and documents are available;
  - the likelihood of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the school; and
  - whether an adjournment or declining to adjourn, might result in injustice.
194. Where a panel decides to adjourn, the clerk (or Local Authority/Academy Trust where a clerk is not appointed) should monitor the progress of any police investigation and/or criminal proceedings and reconvene the panel at the earliest opportunity. If necessary the panel may adjourn more than once (in line with the requirements summarised in paragraph 148).

## Useful links

### Departmental advice on Alternative Provision:

<https://www.gov.uk/government/publications/education-for-children-with-health-needs-who-cannot-attend-school>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/268940/alternative\\_provision\\_statutory\\_guidance\\_pdf\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268940/alternative_provision_statutory_guidance_pdf_version.pdf)

### Departmental advice on behaviour and Mental Health:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/416786/Mental Health and Behaviour - Information and Tools for Schools 240515.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/416786/Mental_Health_and_Behaviour_-_Information_and_Tools_for_Schools_240515.pdf)

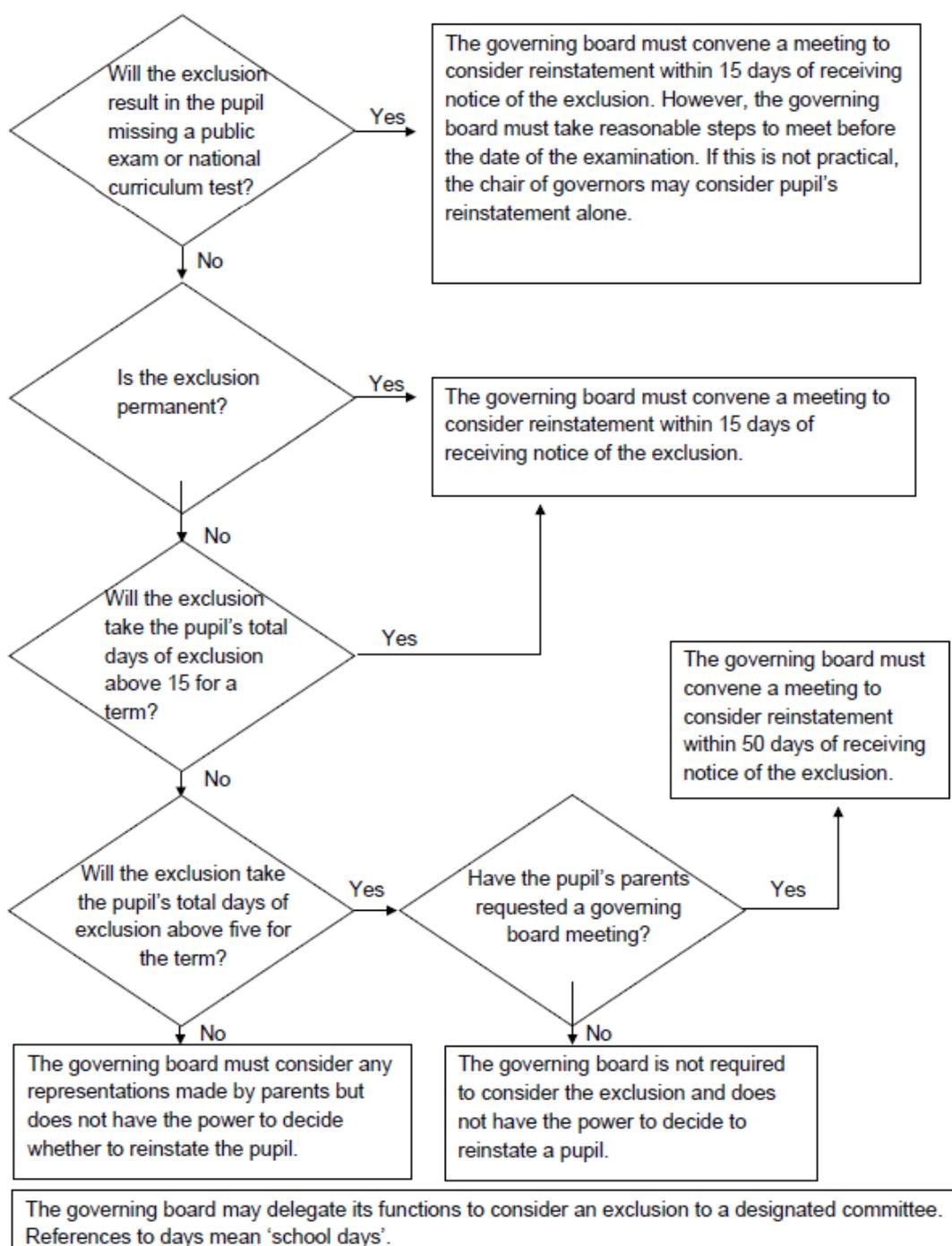
### Children with Special Educational Needs and Disabilities:

<https://www.gov.uk/children-with-special-educational-needs/overview>

### Departmental advice on attendance:

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

# Appendix 1: A summary of the governing board's duties to review the head teacher's exclusion decision



## Appendix 2: A non-statutory guide for head teachers

### Exclusion process for head teachers, academy principals and teachers in charge of pupil referral units

This non-statutory document should be read alongside the statutory guidance. This document is meant to help schools through the process and ensure that they have sufficient procedures in place.

#### Glossary

The term '**must**' refers to what head teachers/governing boards/academy trusts/local authorities and parents are required to do by law. The term '**should**' refers to recommendations for good practice as mentioned in the exclusions guidance.

In this document and in the exclusion guidance, '**parents**' refers to parent(s)/legal guardian(s)/foster carer(s) of pupils under 18, as well as to pupils over 18, and the term '**governing board**' includes the governing board of a maintained school, management committee of a PRU and the academy trust of an academy.

### Early Intervention

**You<sup>39</sup> must establish a behaviour policy and should have processes for identifying and supporting pupils' additional needs.**

#### Things to consider

- Does the school behaviour policy clearly set out behaviour expectations and sanctions and reflect the requirements of the Equality Act 2010?
- Are governors/staff (including sixth form staff in school sixth forms) clear about their roles and when to escalate issues/involve parents?
- Is the behaviour policy understood by pupils and parents?
- Are sanctions monitored to identify any inconsistency or potential discrimination (e.g. Special Educational Needs and Disability (SEND) or ethnicity)?
- Are systems in place to identify pupils showing persistent poor behaviour and if there are any underlying causes?

#### Further sources of information

Departmental advice on setting the behaviour policy

<https://www.gov.uk/government/publications/behaviour-and-discipline-in-schools>

What maintained schools must publish online <https://www.gov.uk/guidance/what-maintained-schools-must-publish-online>

What academies, free schools and colleges must publish online  
<https://www.gov.uk/guidance/what-academies-free-schools-and-colleges-should-publish-online>

## **You should have a system in place to ensure you are aware of a pupil showing persistent poor behaviour or not responding to low level sanctions.**

### **Things to consider**

- Are underlying factors (for example SEND, family issues or bullying) or specific triggers (for example the time of day or specific lessons) affecting behaviour? Are staff working with the pupil aware of any behavioural trigger points, relevant issues and the ways in which they should be managed?
- Are staff aware of mechanisms for escalation and referral routes to access external support?
- Have I ensured that this pupil's parents are aware of their behaviour issues?
- Should I request an special educational needs (SEN) assessment, a multi-agency assessment or external support (e.g. counsellors or alternative provision)?
- Did I consider if the pupil was a looked after child? (E.g. did I engage with foster carers or children's home workers, the local authority that looks after the child and the local authority's virtual school head?)
- Is the use and effectiveness of any support and sanctions properly recorded and regularly reviewed?

### **Further sources of information**

Guidance on the use of alternative provision  
<https://www.gov.uk/government/publications/alternative-provision>

## **You should have a clear process in place for exclusion.**

### **Things to consider**

Are there clear processes and templates in place to:

- monitor the 45 day exclusion rule, including exclusions received from other schools?
- manage serious behavioural incidents when I am not available?
- avoid wherever possible the permanent exclusion of those with Education, Health and Care plans or Statements of Special Educational Need and looked after children.
- inform the parents, governing board and local authority (depending on length of exclusion), clearly setting out all reasons for the exclusion?  
give up-to-date links to sources of impartial advice for parents?
- reintegrate excluded pupils after a fixed period exclusion and support pupils' future behaviour?
- arrange, at short notice, suitable full-time alternative education for pupils receiving exclusions over five days?

## Further sources of information

Information on school discipline and exclusions issued by the Department for Education <https://www.gov.uk/school-discipline-exclusions/exclusions>

Coram Children's Legal Centre

[http://www.childrenslegalcentre.com/index.php?page=school\\_exclusions](http://www.childrenslegalcentre.com/index.php?page=school_exclusions)

ACE Education also run a limited advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time. Information can be found on their website: <http://www.ace-ed.org.uk/>

National Autistic Society (NAS) School Exclusion Service (England) can be contacted on 0808 800 4002 or via [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk)

Independent Parental Special Education Advice <http://www.ipsea.org.uk/>

## **You should ask the governing board whether it has a clear process in place for considering reinstatement following an exclusion.**

### Things to consider

- Do governors have an understanding of the exclusion process to enable a review within deadlines?
- Would governors benefit from additional training, including on the Equality Act 2010?
- Is there a clear and timely system in place to enable parents to make representations?
- Are there up-to-date templates for notifying parents of the decision and explaining next steps?

## **Taking the decision**

### **You must take the decision whether to exclude (you cannot delegate this).**

### Things to consider

- Have I investigated specific incidents with all parties in a sensitive and fair way?
- Did I consider factors that could have contributed to the pupil's behaviour (e.g. SEND or bereavement) and have I taken these factors sufficiently into account ?
- Is exclusion the most appropriate and reasonable sanction, and consistent with the school's behaviour policy?
- Are all the exclusion reasons clearly recorded, including the impact on others? Are they robust?
- Is relevant evidence properly recorded/retained/documented? (e.g. summaries of interviews, past behaviour, sanctions and support given.)

## **You must inform parents of the exclusion.**

### **Things to consider**

- Has the school spoken to the parents to ensure they fully understand the type/scale of the incident?
- Have I provided sufficient details in the exclusion notice letter on the reasons for the exclusion?
- Does the notice contain all the required information as set out in section 4 of the statutory exclusion guidance?
- Have I informed parents whether the pupil will be able to sit any national curriculum test(s) or public examination(s) occurring during the exclusion?
- When several fixed-period exclusions have been issued in a term, have I informed parents of their right of representation to the governing board?

### **Further sources of information**

Letter templates might be available from the local authority.

**If the exclusion is permanent or takes the pupil's total school days of exclusion over five in a term or prevents them from taking a public examination or national curriculum test, you must inform the governing board and local authority of the duration of the exclusion, or that it is permanent, and the reasons for it.**

### **Things to consider**

- Have I informed the governing board about whether they must consider reinstatement and, if so, to what timescale?
- Have I made clear to the governing board whether the need to consider reinstatement is dependent on receiving parental representations?
- If a permanently excluded pupil lives in a different local authority area, has that authority been informed?

**You should ask the chair of the governing board whether there are clear processes in place to comply with its legal duty to arrange suitable full-time educational provision for pupils of compulsory school age from the sixth consecutive school day of fixed-period exclusion.**

### **Things to consider**

- Is there a process in place for the governing board to assure itself that the education provided is suitable and full-time?
- Has the provision been quality assured and have previous placements been evaluated?
- Is the education supervised? (Pupils doing unsupervised school work at home is not acceptable.)

- Is there a process in place to monitor the pupil's attendance and behaviour at the provision?
- Is the correct attendance code being used?

### **Further sources of information**

Alternative provision guidance

<https://www.gov.uk/government/publications/alternative-provision>

School attendance guidance <https://www.gov.uk/government/publications/school-attendance>

## **Governing board consideration of an exclusion decision**

**You should ask the chair of the governing board whether there are clear processes in place for considering exclusions.**

### **Things to consider**

- Am I confident that the parents are aware of their right to a consideration by the governing board?
- Has the governing board been appropriately involved?
- Has the governing board taken steps to find a convenient date that the parent, the local authority representative (if relevant) and I can attend, within the legal time limits?
- Where practicable, has the governing board given thought as to how to involve the pupil in the consideration process?
- Have all the relevant documents been collected, anonymised if required, and provided to all parties?

**Where applicable, the governing board must consider whether the pupil should be reinstated and inform parents of the outcome of its consideration.**

### **Things to consider**

- Have I presented all of the details of the case and the full rationale for the exclusion?
- Does the governing board have all of the relevant information that I have?

## **Independent review panel**

**The local authority or academy trust must arrange an independent review panel if requested by the parents within the time limit.**

### **Things to consider**

- Do I need to make written representations and/or attend the meeting to make oral representations?

**When applicable, the governing board must reconsider the exclusion within ten school days of being given notice of the independent review panel decision.**

### **Things to consider**

- Is the governing board aware of any order made by the independent review panel following a direction (not a recommendation) to reconsider, and if this has been made, that unless within 10 school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil, the school will pay £4,000 to the local authority within 28 days?

**The governing board must inform the head teacher, parents and local authority of its reconsideration decision.**

### **Things to consider**

- If the pupil is reinstated, how should I ensure the pupil's effective reintegration?
- If relevant, is the governing board aware that it must place a note on the pupil's record?

## **Post-exclusion action**

**When removing a pupil from the school roll, you should remind the governing board that they must ensure this is done under the circumstances prescribed by the Education (Pupil Registration) (England) Regulations 2006, as amended. If applicable, you should check that the pupil's name has been removed from the school roll at the appropriate time.**

### **Things to consider**

- Have I ensured that the common transfer file is transferred within 15 school days of the pupil ceasing to be registered at the school?

### **Further sources of information**

Attendance Guidance and Education (Pupil Registration) (England) Regulations 2006 as amended <https://www.gov.uk/government/publications/school-attendance>

School to School service: how to transfer information  
<https://www.gov.uk/guidance/school-to-school-service-how-to-transfer-information>

Special educational needs and disability code of practice: 0-25 years  
[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398815/SEND Code of Practice January 2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf)

# Appendix 3: A guide for parents and carers

## Parent/Carer Guide on Exclusion

### Disclaimer

This non-statutory document is not replacing the statutory guidance on exclusion and is intended only to support parents' understanding of the exclusion process. The exclusion legislation applies to maintained schools; pupil referral units (PRUs); and academies/free schools – other than 16-19 academies. It applies to all pupils at these schools, including those who are above or below compulsory school age, for example where a school also has a nursery or a sixth form. It does not apply to fee-paying independent schools, stand-alone nurseries, stand-alone sixth form colleges and other post-16 provision, such as Further Education colleges. These have their own exclusion arrangements.

If you are unsure in which category your child's school fits, you can find this information in Edubase: <http://www.edubase.gov.uk/edubase/home.xhtml>.

### Glossary

The term '**must**' refers to what head teachers/governing boards/academy trusts/local authorities and parents are required to do by law. The term '**should**' refers to recommendations for good practice as mentioned in the exclusions guidance.

In this document and in the exclusion guidance, '**parents**' refers to parent(s)/legal guardian(s)/foster carer(s) of pupils under 18, as well as to pupils over 18, and the term '**governing board**' includes the governing board of a maintained school, the management committee of a PRU and the academy trust of an academy.

**Fixed-period Exclusion:** when a pupil is barred from the school for a fixed amount of time (including exclusions during lunchtime).

**Permanent Exclusion:** when a pupil is permanently barred from the school premises.

**Alternative provision:** This refers to the education arrangements made for excluded pupils to continue to have a suitable, full-time education whilst they are excluded from school or cannot attend school for another reason. In some circumstances, alternative provision can be used where a child has not been excluded, including alongside mainstream or special education, or for a placement to address poor behaviour.

## Reasons for exclusion

### For what reasons can a school exclude my child?

There is no list of set behaviours for which a pupil can and cannot be excluded, and the decision to exclude lies with the head teacher. Head teachers can only

exclude a pupil for a disciplinary reason (e.g. because their behaviour violates the school's behaviour policy). They cannot, for example, exclude a pupil for academic performance/ability, or simply because they have additional needs or a disability that the school feels it is unable to meet. A head teacher can exclude for behaviour outside of school, or for repeatedly disobeying academic instructions.

### **Can the school send my child to be educated elsewhere?**

Schools have the power to send a pupil to another education provider at a different location to improve their behaviour without the parents having to agree. A school can also transfer a pupil to another school – a process called a 'managed move' - if they have the agreement of everyone involved, including the parents and the admission authority for the new school.

Schools cannot force a parent to remove their child permanently from the school or to keep their child out of school for any period of time without formally excluding. The threat of exclusion must never be used to influence parents to remove their child from the school.

### **Can a school ask me to collect my child/send my child home early without following the formal exclusions process?**

'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off', are not allowed, even if they are with the agreement of parents. Any exclusion of a pupil, even for short periods of time, must follow the formal process including being formally recorded (see below). Any fixed-period exclusion must have a stated end date.

## **Exclusion process**

### **What happens when my child is excluded?**

Please go to the section entitled 'What happens when your child is excluded' on the gov.uk website: <https://www.gov.uk/school-discipline-exclusions>.

### **What are the legal obligations on a school when excluding a pupil?**

When a head teacher excludes a pupil, they must without delay let parents know the type of exclusion and the reason(s) for it. They must also, without delay, provide parents with the following information in writing:

- the reason(s) for the exclusion;
- the length of the exclusion;
- the parents' right to put forward their case about the exclusion to the governing board, how they should go about doing this and how the pupil can be involved;
- and
- when relevant, what alternative provision will be provided from the sixth day of a fixed-period exclusion.

### **Is there a limit to the number of times my child can be excluded?**

Yes. A pupil cannot be excluded for more than 45 school days in one school year. This means they cannot have one fixed-period exclusion of 46 school days or more; and also they cannot have lots of shorter fixed-period exclusions that add up to more than 45 school days. This is true even if these exclusions have been given in different schools. Lunchtime exclusions – where pupils are excluded from school over the lunch period because this is when their behaviour is a problem - are counted as half a day.

## **Scrutiny of the exclusion**

### **Can I question the decision to exclude my child?**

Parents have the right to make their case about the exclusion of their child to the governing board. For fixed-period exclusions, unless the exclusion takes a pupil's total number of school days of exclusion past five in that term, the governing board must consider any case made by parents, but it cannot make the school reinstate the pupil and is not required to meet the parents.

For all permanent exclusions, the governing board must consider, within 15 school days of being told about the exclusion, whether the excluded pupil should be reinstated. This is the same for fixed-period exclusions where the pupil will miss more than 15 days in one term, or will miss a public examination (e.g. a GCSE) or a national curriculum test (e.g. a key stage 2 test taken at the end of primary school). For a fixed-period exclusion that brings a pupil's total excluded days to more than five but under 15 the governing board must consider reinstatement within 50 school days if the parent asks it to do this.

If the governing board decides not to reinstate the pupil who has been permanently excluded, parents can request an independent review panel to review the governing board's decision.

Information on school discipline and exclusions issued by the Department for Education can be found here <https://www.gov.uk/school-discipline-exclusions/exclusions>

### **What can I do if I feel my child is being discriminated against in the exclusion process, for example because he/she has a disability?**

Schools have a duty under the Equality Act 2010 not to discriminate against pupils on the basis of protected characteristics, such as disability or race, including in all stages of the exclusion process.

Parents can raise this issue during the exclusion consideration meeting with the governing board.

If the governing board decides not to reinstate the pupil who has been permanently excluded, parents can request an independent review panel to review the governing board's decision. When making their request parents can ask for a Special Educational Needs (SEN) expert to attend the hearing to advise the panel on how SEN might be relevant to the exclusion. Parents can request this even if their child has not been officially recognised as having SEN.

If a parent believes that their child has been discriminated against in the exclusion process because of a disability, then they may also make a claim to the First-tier Tribunal (Special Educational Needs and Disability) within six months of the exclusion: [www.tribunals.gov.uk/Tribunals/Firsttier/firsttier.htm](http://www.tribunals.gov.uk/Tribunals/Firsttier/firsttier.htm) . The Tribunal can consider claims about permanent and fixed-period exclusions. For permanent exclusions, this can be done instead of, or in addition to, an independent review panel.

If the parent believes that a permanent or fixed period exclusion occurred as a result of discrimination other than in relation to disability (e.g. in relation to race) they can make a claim to the County Court.

### **Where can I get independent advice on my options regarding the exclusion?**

There are a number of organisations that provide free information, support and advice to parents on exclusion matters:

- Coram Children's Legal Centre can be contacted on 0345 345 4345 or through [http://www.childrenslegalcentre.com/index.php?page=education\\_legal\\_practice](http://www.childrenslegalcentre.com/index.php?page=education_legal_practice)
- ACE education runs a limited advice line service on 0300 0115 142 on Monday to Wednesday from 10 am to 1 pm during term time. Information can be found on the website: <http://www.ace-ed.org.uk/>
- The National Autistic Society (Schools Exclusion Service (England)) can be contacted on 0808 800 4002 or through: [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk)
- Independent Parental Special Education Advice <http://www.ipsea.org.uk/>

You may also wish to access the following sources of advice from the Department for Education:

- The Department's guidance to schools on exclusion <https://www.gov.uk/government/publications/school-exclusion>
- 'School discipline and exclusions' and 'Complaint about a school or childminder': <https://www.gov.uk/school-discipline-exclusions/exclusions> and <https://www.gov.uk/complain-about-school>

## **Arrangements for my child after exclusion**

### **Will my child still receive an education?**

Schools should take reasonable steps to set work for pupils during the first five days of a fixed-period exclusion.

From the sixth day of an exclusion, suitable full-time education must be arranged for pupils of compulsory school age (primary and secondary school age), except for Year 11 pupils (final year of secondary school) whose final exams have passed. In the case of a fixed-period exclusion of more than five school days, it is the duty of the school to arrange this education, unless the school is a PRU (in which case the local authority should make arrangements). If a parent wishes to raise a concern about lack of, or the quality of, education arranged during a fixed-period exclusion (and their child is still of compulsory school age), they may follow the school's official complaints procedure.

In the case of a permanent exclusion, arranging suitable full-time education is the duty of the local authority for the area where the pupil lives. If a parent wishes to raise a concern about lack of, or the quality of, education following a permanent exclusion (and their child is still of compulsory school age), parents should

complain to the local authority where they live. If parents are unsure about which local authority they need to speak to, they should ask the school for advice.

**Does my child still have a right to attend their exams or national curriculum tests when excluded?**

This is a decision for the school. Neither the school nor the local authority is legally required to arrange for an excluded pupil to take a public examination or national curriculum test that occurs during the exclusion, although some may choose to arrange for this, either on school premises or elsewhere. Where a parent has concerns about their child missing a public examination or national curriculum test, they should raise these with the school.

**What are my duties as a parent when my child has been excluded?**

For the first five school days of any exclusion, parents must ensure that their child of compulsory school age is not in a public place during school hours without very good reason. Parents must also ensure that their child attends any new full-time education provided from the sixth day of exclusion (unless they have arranged suitable alternative education themselves).

## Appendix 4: Removal of pupils from schools in exceptional circumstances

- a) *There may be exceptional circumstances in which head teachers need to remove pupils from the school site when exclusion would be inappropriate. An example is where a pupil is accused of committing a serious criminal offence which took place outside the head teacher's jurisdiction or where there may be insufficient evidence to warrant exclusion. See Part 12 which deals with incidents on the school site where the police are involved and the head teacher may be constrained from gathering evidence.*
- b) *A head teacher can authorise leave of absence for a fixed period, with the parents' agreement, or, exercising powers delegated by the governing board (or management committee for ESCs) under section 29(3) of the Education Act 2002, can arrange for the pupil to be educated elsewhere (without parental approval, although the parents should be notified). However, such education elsewhere must be arranged for the purposes of receiving any instruction or training included in the secular curriculum for the school and should not be continued for longer than is absolutely necessary. Whether the pupil has been granted leave of absence or is being educated elsewhere, the school must ensure that the pupil's full-time education continues while off site. Any such arrangements do not amount to an exclusion from school on disciplinary grounds and should be kept under periodic review involving the parents.*
- c) *Where there is sufficient evidence to enable a head teacher to consider exercise of the power to exclude, we would expect him/her to consider exercising that power rather than the power in section 29(3) or authorising leave of absence. It is important that, in the exceptional circumstances where the section 29(3) power or authorised leave of absence is used, the head teacher's actions and arrangements are documented to remove any possibility of this being construed as an illegal exclusion. If exclusion some time later remains a possibility, the head teacher should make the parents aware of this at the outset. The more time that passes the more likely it is that the exclusion will be regarded as an improper exercise of the power. The section 29(3) power should **not** be used to direct pupils off-site for educational provision / training to improve their behaviour.*

## Appendix 5: Removal of pupils on medical grounds

*Head teachers may send a pupil home, after consultation with that pupil's parents and a health professional (for example, a school nurse) as appropriate, where because of a diagnosed illness such as a notifiable disease he or she poses an immediate and serious risk to the health and safety of other pupils and staff. This is not an exclusion, but it is an authorised absence and should be recorded as such in the attendance register. It should be for the shortest possible time. If difficulties persist, the head teacher should seek medical advice. Health and safety considerations, including a risk assessment, can contribute to a school's case for exclusion, but cannot in themselves be grounds for exclusion, which can only lawfully be for disciplinary reasons. Similarly, pupils cannot be sent home on health and safety grounds for their own protection because they are being bullied. It is not appropriate to send home children with SEN, with conditions such as ADHD and autism, purely for that reason and schools should arrange a statutory annual or interim/emergency review if they feel they are no longer able to meet a child's needs. The child should not be sent home in anticipation of such a review.*

## Appendix 6: Parenting contracts and parenting orders

# Children's Services

### CODE OF PRACTICE FOR THE IMPLEMENTATION OF PARENTING CONTRACTS AND PARENTING ORDERS IN RELATION TO EXCLUSIONS

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## **ENCOURAGING ACCEPTABLE BEHAVIOUR IN SCHOOL**

### **INTRODUCTION**

Regular and punctual attendance at school is both a legal requirement (as specified in the Education Act 1996) and essential for the educational achievement of pupils of compulsory school age. Effective teaching and learning best takes place in an ordered and purposeful environment. Therefore, good standards of behaviour whilst in school benefit both individual pupils and the whole school community.

Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices (DfES/0234/2004) outlines the circumstances and times in which Parenting Contracts may effectively be used to engage a parent to support the education of their child; how and when Parenting Orders may be obtained and, in the case of non-attendance, the issue of Penalty Notices.

The LA and schools must apply their powers fairly and consistently having regard to the DfE Guidance and to this Code of Practice. They should therefore conform to all requirements of the Human Rights Act, Equal Opportunities legislation, Race Relations legislation, Disability Discrimination legislation.

#### **School-level action**

All schools are required by law to have a written behaviour policy. The governing board of a school is responsible for making sure that the behaviour policy is in place and the head teacher is responsible for ensuring the behaviour policy is implemented on a day-to-day basis.

A decision to exclude should only be taken in response to serious breaches of the school's behaviour policy and if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

#### **Local Authority (LA)-level action**

An effective LA should work with schools to encourage review of their behaviour policies and support practice across the whole school. It does this in a number of ways including through the work of Behaviour Support Services, which support both individual pupils and wider school practice. The emphasis of this work is on building good practice, early intervention, working with parents, and collaborating with specialist support services as appropriate.

In a number of areas, LAs also manage school-based multidisciplinary teams who support schools with high numbers of pupils with complex emotional and behavioural needs.

LAs also have statutory duties in the exclusion process. All exclusions should be reported to the LA. The LA does, wherever possible, attend the governors'

discipline committee meetings which are arranged as part of the permanent exclusion process. The Customer Focus Team in Hertfordshire is responsible for administering the independent appeal panel process. In the case of fixed period exclusions and up to and including the fifth school day following a permanent exclusion, the school continues to be responsible for the pupil's education.

From the sixth school day following a permanent exclusion and subsequently where a permanent exclusion from school is upheld the LA is responsible for making arrangements for the pupil to continue receiving a suitable full-time education.

### **Cross border working**

If a pupil who lives in a different LA to the school is permanently excluded, they become the responsibility of the LA in which they live and therefore the LA in which they live should take the lead in any action necessary to improve their behaviour.

### **The provisions**

The provisions are intended to help to ensure that parents take seriously their responsibilities in respect of their child's regular attendance at school and to behave well when they get there.

Parenting contracts and parenting orders are intended to add to the range of strategies available for tackling poor behaviour in school and to enable schools and LAs to engage with parents effectively.

The provisions are available where serious misbehaviour or exclusion has taken place. The provisions are not intended to replace any existing practice but to provide additional options for working with the parent and pupil to bring about an improvement in the pupil's behaviour. Parenting contracts and parenting orders could form part of the school's behaviour policy.

Useful guidance: How to source Parenting Provision, a guide to sourcing suitable parenting provision aimed in particular at local authority and school staff wishing to support parents in order to improve their child's behaviour or attendance at school.

You can download this publication or order copies on line at [:http://www.teachernet.gov.uk/publications](http://www.teachernet.gov.uk/publications) Search using ref: P-DfES-0094-2005

Copies can be obtained from:  
DfE Publications,  
PO Box5050,  
Sherwood Park,  
Annesley,  
Nottingham, NG15 0DJ

Quote ref: P-DfES-0094-2005

Schools may also wish to contact their local District Partnership Team.

## **PARENTING CONTRACTS IN CASES OF EXCLUSION FROM SCHOOL OR SERIOUS MISBEHAVIOUR THAT MAY LEAD TO EXCLUSION**

### **Overview**

A parenting contract is a formal written agreement between a parent and either the LA or the governing board of a school and should contain:

- a statement by the parent that they agree to comply for a specified period with whatever requirements are specified in the contract; and
- a statement by the LA or governing board agreeing to provide support to the parent for the purpose of complying with the contract.

Entry into a parenting contract is voluntary. The parent cannot be compelled to enter into a parenting contract if they do not wish to do so. Equally, there is no obligation on the LA or governing board to offer a parenting contract.

Parenting contracts will, however, often be a useful tool in identifying and focusing on the issues behind the misbehaviour and in developing a productive relationship with parents to address these issues.

Failure to keep to the terms of the parenting contract cannot lead to action for breach of contract or for civil damages.

There is no direct sanction for a parent's failure to comply with or refusal to sign a parenting contract. However, if the pupil's misbehaviour continues or escalates to such a level that the school or LA considers an application for a parenting order is appropriate, the court will be required to take this failure or refusal into account in deciding whether to make the order.

All those defined as a parent under section 576 of the Education Act 1996 are parents for the purposes of these provisions with the exception of local authorities who have parental responsibility as a result of being named in a care order ("corporate parents") who are not included here. Parenting contracts can apply to each and any parent coming within the definition.

A parenting contract can be used in conjunction with a Pastoral Support Plan and is not intended to replace the excellent practice that already exists in this area, but instead provides an additional mechanism which is more focused on the potential of the parent to improve their child's attendance.

### **Circumstances in which a parenting contract might be pursued**

A parenting contract may be offered to a parent where the child has been excluded from school, whether for a fixed period or permanently or when there is serious misbehaviour that may lead to exclusion.

The purpose of a parenting contract is to improve the pupil's behaviour at school and to address any underlying causes. It is not to be seen or used as a punitive measure against the parent.

### **Assessing when a parenting contract is appropriate**

In deciding whether a parenting contract might be appropriate, the LA or governing board should consider all the issues behind the misbehaviour or exclusion, in particular whether the pupil's behaviour may be improved through working with the parent and providing support to them and, if so, what form this support should take.

### **At what point should the contract be arranged**

The parenting contract should be arranged as soon as possible after the exclusion and completion of any exclusions review and appeal process.

In the case of **permanent exclusions** this would be:

- the date by which it is known that the parent does not wish to lodge an appeal against the head teacher's decision to exclude which has been upheld by the governors' discipline committee/ESC management committee
- the date upon which the Independent Appeal Panel upheld the decision to exclude.

In the case of **fixed period exclusions** the date on which the review process is complete would be:

- the date upon which the governors' discipline committee/ESC management committee upheld the head teacher's decision to exclude; or
- if the exclusion is not considered by the governors' discipline committee/ESC management committee the date on which the exclusion began.

### **Liaison between the head teacher, governing board/ESC management committee, Local Authority and other agencies involved**

Parenting contracts require the party entering into the contract to fund any cost of the supportive element of the contract. In the context of the school, this will be the governing board (which controls the school budget under the School Standards Framework Act 1998).

Therefore it is the governing board's name that must appear on the contract and the governing board that will have ultimate responsibility for the parenting contract.

The governing board may delegate responsibility for parenting contracts to the head teacher who may commit funds on behalf of the governing board where the governing board has chosen to delegate this power.

### **Parenting contracts following permanent exclusion**

In cases of permanent exclusion from school, it will usually be the LA that will consider arranging a parenting contract in relation to the pupil.

The governing board of any school which takes in an excluded pupil may also consider arranging a parenting contract if it wishes, but is under no obligation to do so. However, in accordance with the law on admissions, a school may not require a parent to sign a parenting contract as a condition of their child being accepted by the school.

## **PARENTING ORDERS IN CASES OF SERIOUS BEHAVIOUR OR EXCLUSION FROM SCHOOL**

### **Overview**

Where a pupil is permanently excluded from school or receives more than one fixed period exclusion within 12 months, the LA may apply to the court for a parenting order.

Parenting orders compel parents who have been unwilling or unable to engage on a voluntary basis to address their child's poor behaviour in school by providing support including parenting classes.

The parenting order consists of 2 elements:

- A requirement for the parent to attend counselling or guidance sessions (e.g. parenting education or parenting support classes). This element can last for up to 3 months
- A requirement for the parent to comply with such requirements as are specified in the order. This element can last up to 12 months.

The LA is responsible for making an application for a parenting order and for all costs associated with it including the costs of the parenting programme.

The court can impose a parenting order on any or all parents coming within the definition and their consent is not required.

All parenting orders must be supervised by a 'responsible officer'. This could be an officer of the LA, a head teacher or a person nominated by the head teacher.

If the parent fails to comply with an order, then breach proceedings must be considered. If proven guilty of breaching a parenting order, the parent is liable for a fine not exceeding level 3 (currently up to £1000).

### **Circumstances in which a parenting order might be pursued**

Application to a magistrates' court for a free-standing parenting order might be made when:

- a pupil has been excluded from school for a second fixed-period within a period of 12 months; or
- a pupil has been permanently excluded from school.

### **Assessing when a parenting order is appropriate**

A parenting order is appropriate only where the exclusion has been made in response to serious misbehaviour.

In deciding whether a parenting order might be appropriate, the LA must make a judgement about whether parenting is a significant factor in the pupil's misbehaviour, whether a parenting programme could remedy this and what other requirements might be useful in an order to address the pupil's behaviour. It may be appropriate to hold a multi-agency meeting involving agencies currently working with the family.

### **Timing of an application for a parenting order**

An application for a parenting order must be made after the date upon which the exclusion review and appeal process ends.

In the case of permanent exclusions, the date on which the appeal process is complete would be:

- the date by which it is known that the parent does not wish to lodge an appeal against the head teacher's decision to exclude which has been upheld by the governors' discipline committee/ESC management committee or
- the date upon which the Independent Appeal Panel upheld the decision to exclude.

In the case of fixed period exclusions, the date on which the review process is complete would be:

- the date upon which the governors' discipline committee/ESC management committee upheld the Head teacher's decision to exclude or
- if there is no consideration by the governors' discipline committee/ESC management committee the date on which the exclusion began.

If there is no parenting contract in place, the LA or school has 40 school days to carry out any necessary assessment, prepare their evidence and make the application to the court. Applications should be made as soon as possible within this time limit to allow for quick and effective intervention.

If the parent has already entered into a parenting contract (or is offered and accepts a parenting contract in respect of the exclusion in question which subsequently proves to be ineffective), the LA may make an application for a parenting order within 6 months of the date on which the contract was signed.

### **Liaison between the head teacher, governing board/ESC management committee, LA and other agencies involved**

Although only the LA can apply for a parenting order and the final decision as to whether the application is appropriate will rest with the LA, the head teacher may in the case of fixed period exclusions, where the child remains a registered pupil at the school, ask the LA to apply for a parenting order where he or she considers that this may have a positive impact on the pupil's behaviour, preventing further fixed period exclusions or permanent exclusion.

Making an application for a parenting order in cases of exclusion from school will require close collaborative working between the school and the LA. LAs should also make checks to find out what other agencies are involved with the family and should consult them to ascertain existing interventions, discuss any underlying issues and consider the types of requirements that might usefully be included in the parenting order.

### **Costs**

LAs are under no obligation to apply for a parenting order in cases of exclusion from school. Nor will it be appropriate in all circumstances.

Where an application for a parenting order is made, the LA will have to cover the costs of making the application and the costs associated with any order made including the costs of any counselling or guidance programme.

### **Making the application**

Applications must be made in accordance with the Magistrates' Courts (Parenting Order) Rules 2004 which specify the form of application that should be used. A copy of the specimen application form for a parenting order is included as Appendix B.

In addition, the LA will need to prepare evidence in support of their application. Evidence that the pupil has been excluded from school should take the form of a statement by the head teacher of the school, the minutes of the governors' discipline committee/ESC management committee (where applicable) and, in the case of permanent exclusions where the parent lodges an appeal, the decision letter of the independent appeal panel hearing.

The court has discretion to consider all the circumstances of the case in deciding whether it is desirable to make a parenting order including the evidence of parents and other witnesses in court. The assessments of the pupil and their parents by the LA and details of the LAs ability to deliver the parenting programme should be presented to support the application.

The LA should also provide evidence of any experience of trying to engage the parent through a parenting contract. Magistrates are obliged to take into account any parental refusal to enter into, or failure to comply with, a parenting contract

Parenting orders in cases of exclusion from school apply only to parents as individuals. Therefore this type of parenting order cannot be made against local authorities in respect of looked after children. It will apply to foster parents.

## **APPENDIX A**

### **SPECIMEN PARENTING CONTRACT**

#### **Personal details**

Pupil's Name: Sam Adams

Parents' Names: Mr John Adams and Ms Sue Thomas

Name of School: Parkmead High School

Sam's Year Head: Mr Phillips. Sam's form teacher: Mr Jones

LA Officer (if appropriate)

Form Teacher's contact details: 01888 888888

#### **Background to parenting contract**

Following a meeting on 6th March between Mr Jones (Sam's form teacher), Mr Adams and Ms Thomas (Sam's parents) and Sam, we have all agreed that we want to work together to help Sam to behave well in class.

Mr Jones, Sam, Mr Adams and Ms Thomas have also agreed a pastoral support plan for Sam and a copy is attached to this agreement.

#### **What has been agreed**

##### ***The School/LA's promise***

Mr Jones has agreed that to help Sam's parents help Sam behave in class he will:

Send Sam's parents a behaviour report at the end of every day so that they know if there have been any problems;

Make sure that a member of staff contacts Sam's parents immediately if Sam is not at school when the register is taken or if the school becomes aware that Sam is not on the premises;

Be available between 4 and 4.30 every school day if there is anything that Mr Adams or Ms Thomas want to discuss with him in person;

Put Mr Adams and Ms Thomas in touch with the local parent peer group;

Provide Sam with a learning mentor.

### ***Mr Adams' and Ms Thomas' promise***

Sam's parents have agreed that to help Sam behave well in class they will:

Sign the copy of the behaviour report and tell Mr Jones if they have any comments on it;

Discuss the behaviour reports with Sam at the end of every week;

Let Mr Jones know if there are any problems which might make Sam behave badly in class;

Set rules for Sam at home to make sure that he behaves properly at home, does his homework and is in bed by 10.30pm and back each other up in sticking to them. (A meeting has been arranged with Sally Pieterman, the local parent practitioner to discuss what types of rules might be appropriate and how to enforce them);

Regularly attend meetings with the local parent support network group

Get Sam up for school by 7.45 so that he has enough time to get ready for school and eat breakfast and so that he arrives at school on time every day;

Provide a doctor's note if Sam is off sick.

### **Review**

Mr Jones, Mr Adams, Ms Thomas and Sam will meet again at the end of term (31<sup>st</sup> March) to discuss how things are going and whether this agreement needs to be changed in any way.

Mr Jones, Mr Adams or Ms Thomas can ask for a meeting at any time to discuss the agreement further or to discuss any difficulties or problems.

### **Important dates**

We will next meet on **March 20<sup>th</sup>** at **4pm** at Parkmead High

Sam, his parents or Mr Jones can also request additional meetings.

Other important dates are:

**April 18<sup>th</sup>** when Sam returns to school after the holidays

**May 22<sup>nd</sup> to June 23<sup>rd</sup>** when Sam has his school tests

We will review this agreement on **April 4<sup>th</sup>** and **June 6<sup>th</sup>**

We will end this agreement at the end of the school year (July 25<sup>th</sup>) and have a meeting to discuss any issues on **July 21st**.

**Useful contact details**

Mr Jones: \_\_\_\_\_

Sally Pieteron, Parenting Support practitioner: \_\_\_\_\_

If Sally is unavailable contact: \_\_\_\_\_

Parentline Plus \_\_\_\_\_

Local Youth Project & Activity Centre \_\_\_\_\_

**Agreement**

**We will do what we have agreed in this parenting contract and will work together to help Sam behave well in class**

Signed: Mr Jones \_\_\_\_\_

Date:

Ms Thomas \_\_\_\_\_

Date:

Mr Adams \_\_\_\_\_

Date:

**Parents' consent to information sharing [If required]**

We also understand and agree that information about me/us has been and will continue to be collected so that Mr Jones, the school and the LA can assess and provide appropriate assistance and services. The school and LA may also use this information for service planning, monitoring and research purposes and may share the information with external agencies and providers of relevant services that they need to work with to ensure that we are provided with the most appropriate services.

We understand that this information will be stored either electronically or in the manual records by the school/LA for case management purposes until the end of the agreement on July 25th and for 6 months following, to monitor and evaluate the effectiveness of the plan. The school/LA will keep the information updated and notify anyone who is given the information of any changes to ensure corrections are made.

*[The above statements must be explained in full to the parents so that they understand them & the implications clearly]*

Signed: Mr Jones \_\_\_\_\_

Ms Thomas \_\_\_\_\_

Mr Adams \_\_\_\_\_

Date:

**Complaints procedure**

Mr Jones has provided Mr Adams and Ms Thomas with a copy of the school's complaints procedure and explained it to them so that both of them understand it.

Signed: Mr Jones\_\_\_\_\_

Ms Thomas\_\_\_\_\_

Mr Adams\_\_\_\_\_

Date:

# APPENDIX B

## SPECIMEN APPLICATION

### FORM FOR A PARENTING ORDER

**Application for Parenting Order  
(Anti-social Behaviour Act 2003, section 20)**

.....Magistrates' Court  
(Code)

Date:

.....

Child or young person's

address:.....

Child or young person's age:

.....

Parent:.....

Parent's

address:.....

which is in the area of Hertfordshire Local Authority

Parent:.....

Parent's

address:.....

which is in the area of Hertfordshire Local Authority

Applicant Local Authority:

.....

It is alleged that:

(a) the child or young person has been excluded from school or is at risk of being excluded on disciplinary grounds; and

(b) the prescribed conditions are satisfied in that [insert details].  
[The parent(s) entered into a parenting contract on [date].] [It is alleged that the parent(s) have failed to comply with the parenting contract, a copy of which is attached to this application form.]

Short description of alleged failure to comply with parenting contract:  
Evidence of this alleged failure to comply is attached.]  
[It is alleged that the parent(s) have refused to enter into a parenting contract.]  
[The child or young person is under 16. Information as to the family circumstances of the child or young person is attached.]

[It is alleged that:

- (a) the attendance of the parent at a residential course is likely to be more effective than their attendance at a non-residential course in improving the child's or young person's behaviour; and
- (b) any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

The court is requested to order that the counselling or guidance programme may include a residential element.]

Short description of the counselling/ guidance programme to be attended by the parent(s):

Further requirements to be included in the order:

## Appendix 7: Procedures to be followed in the application of a fixed penalty notice in relation to exclusions

**Hertfordshire County Council**

**Children's Services**

**Penalty Notices for Children Excluded  
from School**

## **Contents**

1. Overview
2. Amount and payment of the penalty
3. Circumstances in which a penalty notice might be issued
4. Responsibility of the Local Authority
5. Local Code of Conduct
6. Withdrawal of a penalty notice
7. Retention of receipts and revenue collection

## **Appendices**

Appendix A: Hertfordshire Code of Conduct (page 85)

Appendix B: Letter warning of possible breach to parent(s) from the school (page 88)

Appendix C: Penalty Notice Application Form (page 90)

Appendix D: Letter of formal warning of breach to parent(s) from the LA (page 92)

Appendix E: Penalty notice (page 93)

Appendix F: Record of process (page 96)

## **1. Overview**

Section 103 of the Education and Inspections Act 2006 places a duty on parents in relation to an excluded pupil. A parent has to ensure that their child is not present in a public place during school hours without reasonable justification during the first five days of each and every fixed period or permanent exclusion.

The days of exclusion when this duty on parents applies are known as the “specified days of exclusion” and will be detailed in a notice given to the parent under section 104 of the 2006 Act. The parent is responsible for the child during the specified days upon receipt of the notice.

Section 105 allows for a penalty notice to be given to a parent guilty of an offence under section 103 as described above. The penalty notice allows a parent to pay a penalty as a way of discharging any liability for the offence of failing to ensure their child is not present in a public place on the days specified in a notice given to them. The parent must have been notified by the school at the time of the exclusion of their duty and the days to which it relates. The HCC CS exclusions guidance at [www.hertsdirect.org](http://www.hertsdirect.org) contains model fixed period and permanent exclusion letters which include the necessary notification for parents.

## **2. Amount and payment of the penalty**

From 1<sup>st</sup> September 2012 the penalty is £60 if paid within 28 days of receipt of the notice, rising to £120 if paid after 28 days but within 42 days of receipt of the notice. If the penalty is not paid by the end of the 42 days period the Local Authority must either prosecute for the offence to which the notice applies or withdraw the notice.

Prosecution is for the offence to which the notice relates and not for non-payment of the penalty.

## **3. Circumstance in which a penalty notice may be issued**

When a child is excluded from school the parent will be responsible for ensuring that their child is not found in a public place during normal school hours on the first five days of each and every fixed period or permanent exclusion. (Section 103 Education and Inspections Act 2006). Where there is more than one person liable for the offence a separate notice may be issued to each person.

The excluding school must have issued notice in writing to the parent(s) informing them of their duty and warning that a penalty notice could be issued. The notice must specify the days when parents are subject to Section 103 (2).

HCC CS Guidance for fixed period or permanent exclusions is available on: [www.hertsdirect.org](http://www.hertsdirect.org) and includes model letters for use when excluding a pupil from school.

Consideration will be given to whether there is reasonable justification for the pupil to be in a public place during the specified period. This will depend on individual circumstances but there may be some circumstances where it is necessary for a child to be in a public place during school hours on a day when they are excluded. The usual response to a first offence would be a warning rather than a penalty.

A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's whereabouts but is not willing to take responsibility for doing so.

Key considerations may include:

- the number of occasions on which the child has been in a public place;
- the parent's actions (or inactions) which have led the child to be in a public place at a prescribed time;
- the parent's attitude to having failed to meet their statutory responsibility;
- the parent's justification, if any.

Justifiable reasons could be:

- the child having a pre-arranged medical appointment;
- a medical emergency which requires immediate attention;
- a pressing need for the parent to seek medical help and where they feel it inappropriate to leave their child alone at home and are unable to make alternative arrangements for the supervision of the child.

Reasons which are not justifiable would include:

- shopping;
- working;
- visits to places of leisure.

The parent should make suitable arrangements for their child to be supervised if they are unable to do so.

#### **4. Responsibility of the Local Authority**

The Local Authority is responsible for administering the scheme and for bringing prosecutions and has issued a local code of conduct; the purpose of the code of conduct is to ensure the smooth administration and operation of the scheme so that it operates consistently across the Local Authority area.

Application to issue a fixed penalty notice will be sent to the HCC CS Integration Team Manager who will issue the penalty notice if the regulations

have been followed and following approval by the Strategy and Policy Manager, Admissions and Transport.

The Local Authority will only issue penalty notices for offences where it is willing and able to prosecute. It is anticipated that penalty notices will only rarely be withdrawn.

**Where there is a prosecution for the offence for which the notice was issued the school where the excluded pupil is or was on roll will be required to provide a witness statement and may be required to appear as a witness in court.**

If a child has been permanently excluded from a school in Hertfordshire but lives outside the county it would be the responsibility of the Local Authority where the child resides to issue the penalty notice.

## **5. Local Code of Conduct**

The purpose of the local code of conduct is to ensure that the powers are applied consistently and fairly across the Local Authority area and that suitable arrangements are in place for the administration of the scheme.

Penalty notices must only be issued within the terms of the local code. The local code of conduct is key to the successful use of penalty notices. It ensures consistency, fairness and transparency in the way penalty notices are applied and allows a Local Authority to manage the system and tailor it to local needs and resources. The regulations specify that the following must be included in the local code:

- a) A means of avoiding the issue of duplicate notices
- b) The occasions when it will be appropriate to issue a penalty notice for an offence
- c) What is likely and what is unlikely to amount to be reasonable justification for an excluded pupil to be in a public place
- d) A maximum number of penalty notices that may be issued to one parent in any twelve month period

## **6. Withdrawal of a penalty notice**

A penalty notice may be withdrawn in the following circumstances:-

- a) it has not been issued in accordance with the Code of Conduct;
- b) it ought not to have been issued;
- c) it ought not to have been issued to the person named as the recipient;
- d) it contains a material error;
- e) the penalty notice has not been paid in full before the expiry date but it is not appropriate to prosecute the recipient for the offence in connection with which the notice was issued

## **7. Retention of receipts and revenue collection**

Regulations provide that the Local Authority can retain revenue from their penalty notice scheme to cover the costs of issuing or enforcing notices or the cost of prosecuting recipients who do not pay.

Revenue is payable to the Local Authority in respect of pupils registered at a school in their area or, in the case of an unregistered pupil, for whom they have arranged alternative provision.

## Appendix A

### Code of Conduct

#### Hertfordshire County Council Children's Services

#### Penalty Notice for Children Excluded from School EDUCATION AND INSPECTION ACT 2006 SECTIONS 103 TO 105

#### Code of conduct

### **1. Legislation**

Section 103 of the Education and Inspections Act 2006 places a duty on parents to ensure that their child is not present during school hours in a public place during the first 5 days of exclusion from school. Section 105 of the Act enables a penalty notice to be issued under Section 103.

### **2. Authorisation to issue Penalty Notices**

**To comply with Human Rights legislation it is essential that penalty notices be issued in a consistent manner. This code of conduct will govern the issuing of penalty notices for Hertfordshire County Council.**

Primary responsibility for the issuing of penalty notices rests with the Local Authority. The penalty notices will be issued by the Integration Team Manager when requested to do so by authorised personnel who are positively able to identify the child and where the appropriate criteria are met. The request will be made using the appropriate form (see Appendix C).

Authorised staff are:

- Designated members of school staff approved by the Head Teacher
- Police Officers and Community Police Support Officers
- Designated officers of the Local Authority

### **3. Circumstances in which a penalty notice may be issued**

When a child is excluded from school the parent will be responsible for ensuring that their child is not found in a public place during normal school hours on the first five days of each and every fixed period or permanent exclusion. (Section 103 Education and Inspections Act 2006). Where there is more than one person liable for the offence a separate notice may be issued to each person.

Consideration will be given to whether there is reasonable justification for the pupil to be in a public place during the specified period. This will depend on

individual circumstances but there may be some circumstances where it is necessary for a child to be in a public place during school hours on a day when they are excluded. The usual response to a first offence would be a warning rather than a penalty.

Justifiable reasons could be:

- the child having a pre-arranged medical appointment;
- a medical emergency which required immediate attention;
- a pressing need for the parent to seek medical help and where they feel it inappropriate to leave their child alone at home and are unable to make alternative arrangements for the supervision of the child.

Reasons which are not justifiable would include:

- shopping;
- working;
- visits to places of leisure.

The parents should make suitable arrangements for their child to be supervised if they are unable to do so.

A penalty notice is a suitable intervention in circumstances where the parent is judged capable of securing their child's whereabouts but is not willing to take responsibility for doing so.

Key considerations may include:

- the number of occasions on which the child has been in a public place;
- the parent's actions (or inactions) which have led the child to be in a public place at a prescribed time;
- the parent's attitude to having failed to meet their statutory responsibility;
- the parent's justification, if any.

#### **4. Number of penalty notices issued**

A parent or carer will receive no more than 3 Penalty Notices in any twelve-month period. There will be no restrictions on the number of times a parent or carer may receive a formal warning of the possible issue of a Penalty Notice.

#### **5. Payment of penalty**

The amount of the penalty to be paid is £60 where this is paid within 28 days of receipt of the notice or £120 if paid after 28 days but within 42 days of receipt of the notice.

**The Local Authority will retain any revenue from penalty notices to cover the administration of the scheme and any legal action arising from it.**

If the penalty is not paid in full by the end of the 42 day period and does not meet the criteria for withdrawal the Local Authority will take a prosecution for the offence of allowing an excluded pupil to be found in a public place in the first five days of a specified period of exclusion from school, (Section 103 of the Education and Inspection Act, 2006). Prosecution will relate to the offence and not to non-payment of the penalty.

## **6. Withdrawal of penalty notice**

A penalty notice may be withdrawn in the following circumstances:

- a) it has not been issued in accordance with the Code of Conduct;
- b) it ought not to have been issued;
- c) it ought not to have been issued to the person named as the recipient;
- d) it contains a material error;
- e) the penalty notice has not been paid in full before the expiry date but it is not appropriate to prosecute the recipient for the offence in connection with which the notice was issued.

**Where there is a prosecution for the offence for which the notice was issued the school where the excluded pupil was or is on roll will be required to provide a witness statement and may be required to appear as a witness in court.**

## **Appendix B**

### **Letter of warning of possible breach to parent(s) from the school**

Dear

#### **The Education and Inspection Act 2006 – Section 103**

This is a formal warning that you may be in breach of the above regulations.

[**Name of child**], is/has been excluded from [**name of school**]. The letter of notification about the exclusion explained to you that you must ensure your child is not present in a public place in school hours during the exclusion without reasonable justification. The Local Authority can issue a penalty notice in these circumstances.

It has been reported that [**name of child**] has been seen in the circumstances described below:-

Please complete the attached response form and return it to [**name of member of school staff**] within 10 days.

The Local Authority will then decide whether you are to be issued with a penalty notice.

If you are issued with a penalty notice this enables you to discharge your potential liability for an offence under Section 103 of the Education and Inspection Act 2006 of failure to ensure your child is not present in a public place during the dates and times specified. If you do not pay the penalty you will be liable for prosecution for this offence.

If you wish to discuss the matter further please contact me urgently.

Yours sincerely

cc: Enc

**Circumstances proforma**

**Response by parent/carer**

Please give the date you were told that your child had been seen in a public place whilst excluded

Do you agree that your child was in a public place as reported whilst excluded?

Please tick the relevant box:

Yes  No

Please give reasons for your response.

**Name (please print)** \_\_\_\_\_ **parent/carer**

**Signed:** \_\_\_\_\_ **parent/carer**

**Date:** \_\_\_\_\_

**Please return to:**

## Appendix C

### Hertfordshire County Council

#### Children's Services

#### Application for a penalty notice to be issued (whereabouts of excluded pupil)

Name of person requesting issue of penalty notice:	
Post:	
School/Agency	
Contact details:	
e-mail:	

Pupil's name:	
Date of birth:	
School:	
Date(s) of exclusion:	
Fixed period or permanent:	
Parent(s) full name(s):	
Address:	
Telephone:	

Date of exclusion letter sent to parent(s) ( <b>please attach copy</b> )	
Date of letter warning parents that penalty notice could be issued ( <b>please attach copy</b> )	

#### Information on when the pupil was seen

The pupil was seen by:	
Date pupil was seen:	
Time pupil was seen:	
Where pupil was seen:	

**Reason given by pupil for being in a public place:**


<b>Date and time parent(s) informed child seen in public place:</b>	
---	--

**Reason given by parent(s) for pupil being in a public place:**


**Any further information:**


**I approve this application for a penalty notice to be issued.**

**Signed ..... Head Teacher**

**It is important that accurate and detailed information is provided. If the penalty notice is not paid legal action may be taken against the parent(s).**

**Please send to the Integration Manager at: The Registry Office Block,  
CHR103, County Hall, Pegs Lane, Hertford, SG13 8DF**

**For CS Staff:**

**Signed:  
Integration Manager  
Children's Services**

**Date:**

**I approve this application:**

**Signed:**

**Strategy & Policy Manager  
Admissions & Transport  
Children's Services**

## **Appendix D**

### **Letter of formal warning of breach to parent(s) from the Local Authority**

**Address**

**Tel:**

**Fax:**

**My ref:**

**Your ref:**

**Date:**

Dear

#### **The Education & Inspection Act 2006 – Section 103**

This is a formal warning that you are in breach of the above regulations.

According to information provided by [**name of school**] your child [**name**] has been present in a public place in school hours during an exclusion without reasonable justification and this empowers the Local Authority to issue a penalty notice.

The penalty notice requires you to pay a fine of £60 within 28 days. If this fine is not paid within the time limit the penalty rises to £120 which must be paid within 42 days.

If you are issued with a penalty notice this enables you to discharge your potential liability for an offence under Section 103 of the Education and Inspection Act 1996 of failure to ensure your child is not present in a public place during the dates and times specified. If you do not pay the fine you will be liable for prosecution for this offence.

You will not receive another warning before the fine is imposed.

If you wish to discuss the matter further please contact me urgently.

Yours sincerely,

**Appendix E**

**PENALTY NOTICE**

**S.103 EDUCATION & INSPECTION ACT 1996**

Please read the notes overleaf carefully.

PART 1

If a child of compulsory school age who is a registered pupil at a school is present in a public place during school hours without reasonable justification during the first 5 days of each and every fixed period or permanent exclusion his parent is guilty of an offence under S.103 of the Education and Inspection Act 1996.

[Title] .....

[Forenames] .....

[Surname] .....

Of: [Address] .....

[Postcode] .....

You are a parent of **[name and address of child]** (called in this notice “the pupil”) who is a registered pupil at **[name of school]**.

On **[date]**/between **[date]** and **[date]** the pupil was present in a public place during school hours without reasonable justification during the first 5 days of a fixed period or permanent exclusion.

This notice gives you the opportunity to pay a penalty fine instead of being prosecuted for the offence given above. The amount of the penalty is £60/£120 in accordance with the notes below. If you pay this penalty within the time limits set out below, no further action will be taken against you in connection with the offence set out in this notice.

Payment should be made within 28 days. If paid after 28 days but within 42 days the penalty is doubled to £120. A cheque or postal order made out to Hertfordshire County Council should be sent to The Integration Manager, CHR103, Hertfordshire County Council, County Hall, Hertford SG13 8DF or payment can be made in person by prior arrangement at that address. If you wish to pay in person please telephone 0300 123 4043 to make an appointment.

**No reminders will be sent. If payment is not received by [insert date 42 days from the date of issue], you may be prosecuted for the offence and could be subject to a fine of up to £1,000.**

This notice is issued by Strategy & Policy Manager  
Admissions & Transport, of County Hall, Hertford within Hertfordshire  
Education Authority.

Date of issue .....

## PART 2

Please complete the following and return this notice with your payment to  
Hertfordshire County Council, County Hall, Hertford SG13 8DF.

Name: .....

Address: .....

I attach payment of the sum of £ .....

Signed: .....

Date: .....

## NOTES

### 1. Contact details

If you have any queries about this notice, please contact:

Hertfordshire County Council  
Strategy & Policy Manager, Admissions & Transport  
County Hall, Hertford SG13 8DF  
Telephone 0300 123 4043

### 2. Amount of penalty

The amount of the penalty is as follows:

<b>When paid</b>	
Within 28 days	£60
Within 42 days	£120

### 3. Code of conduct

This notice is issued in accordance with a local code of conduct drawn up by  
Hertfordshire County Council. Any questions or correspondence about the  
code should be addressed to:

Strategy & Policy Manager, Admissions & Transport, County Hall, Hertford  
SG13 8DF.

#### **4. Withdrawal**

This notice may be withdrawn by Hertfordshire County Council if it is shown that it should not have been issued to you or has not been issued to you in accordance with the local code of conduct. If you believe that the notice was wrongly issued you should contact the County Council to ask for it to be withdrawn as soon as possible, stating why you believe the notice to have been incorrectly issued. The County Council will consider your request and contact you to let you know whether the notice is withdrawn. If the notice is not withdrawn and you do not pay, you will be liable for prosecution for the offence that your child was present in a public place during school hours without reasonable justification during the first 5 days of an exclusion.

#### **5. Payment**

You should complete the notice above and send or deliver it to Hertfordshire County Council at the address given. If you wish to pay in person you must make an appointment or it **will not** be possible to receive your payment.

#### **6. Prosecution**

If you do not pay the penalty, and the notice is not withdrawn, you will be liable for prosecution for the offence of failing to ensure that your child was not present in a public place during the dates and times specified. You will receive a separate summons for this which will give you notice of the time and date of the court hearing. You will be able to defend yourself and you will be advised to seek legal advice/representation; in some cases you may be entitled to legal aid.

**Appendix F**

**INTEGRATION TEAM  
PENALTY NOTICE FOR CHILDREN EXCLUDED FROM SCHOOL  
RECORD OF PROCESS**

**Area action:**

Name of pupil ..... DOB .....

School .....

Date(s) of fixed period/permanent exclusion .....

Name and agency of applicant (School/Police/CSF)  
.....

Date application received by Integration Manager .....

Application complies with Code of Conduct Yes/No

If no, action taken  
.....  
.....

Date exclusion letter sent to parents/carers .....  
Copy sent with application – Yes/No

Date letter sent to parents/carers warning FPN could be issued .....  
Copy attached – Yes/No

Date of any previous penalty notice issued (no parent to receive more than 3  
penalty notices for an individual child in 12 month period) .....

Date application sent to Strategy & Policy Manager, Admissions & Transport  
(attach all information including copy of warning letter)  
.....

**Strategy and Policy Manager, Admissions and Transport action:**

Date returned to Integration Manager for further information .....  
Or  
Date returned to Integration Manager for issue .....

**Integration Manager action:**

Date penalty notice issued: .....

£60 payment due by (within 28 days) ..... Date received .....

£120 payment due by (within 42 days) ..... Date received .....

**Date penalty notice withdrawn ..... Date parents notified .....**

**Reasons for withdrawal**

.....

**Penalty notice not paid or withdrawn. Action to be taken .....**

.....

.....

**Date legal department informed .....**

# Appendix 8: Model protocol for the management of children who have been excluded from secondary schools for longer than five days or otherwise removed

## 1. Introduction

- 1.1 *The Education and Inspections Act 2006 places a duty on schools to ensure that all children who have fixed period exclusions of longer than five days have access to suitable full time education from and including the sixth day of exclusion. The duty, which came into force on 1<sup>st</sup> September 2007, applies to individual exclusions and to aggregations of separate consecutive exclusion events. The duty does not apply to pupils of non compulsory school age. Nor does it apply to pupils in the final year of compulsory education who have already taken (or missed) their public examinations.*
- 1.2 *Suitable full time education means education that is appropriate to the excluded child's age, ability, aptitude and any special educational needs the child may have. The recommended minimum hours per week of taught time is 24 hours at Key Stage 3 and Key Stage 4 up to the end of Year 10, and 25 hours at Key stage 4 from the beginning of Year 11. For a pupil with a statement of special educational needs, suitable full time provision must be appropriate to their SEN as set out in the statement.*
- 1.3 *The requirement for schools to set and mark work appropriate to the child's age and ability during the first five days of a fixed period exclusion remained unchanged.*
- 1.4. *Where a pupil is excluded such that the duty to provide suitable full time educational provision applies, the provision should normally be off-site but a school may make on-site provision where arrangements for shared on-site provision have been made jointly with the governing board of at least one other school and is available to excluded pupils from that or those schools. Provision can also be made by having reciprocal arrangements between schools. Pupil Referral Units, other external providers and e-learning may also be used to provide full time education. Where stand-alone on-line learning is provided there will be a need to supervise the pupil. Some on-line learning packages involve on-line supervision. Where there are reliable measures in place to monitor this type of provision, schools may use this as part of their package of provision. There is an expectation that parents would not*

be required to “supervise” their child when the school is providing full time education through ICT from day six of a fixed period exclusion.

## **2. Preventing exclusions and cooperative working**

- 2.1 *The Children’s Services Exclusions Guidance Supplement, September 2012 stresses the importance of promoting positive behaviour and early intervention. In paragraph 1 of this guidance it is stated that individual fixed period exclusions should be for the shortest time necessary, bearing in mind that exclusions of more than a day or two make it more difficult for the pupil to reintegrate into school afterwards. OFSTED inspection evidence suggests that one to three days are often long enough to secure the benefits of exclusion without adverse educational consequences. Where it is clear that fixed period exclusions are not being effective in deterring poor behaviour, for example if they are being repeatedly imposed on a pupil in response to the same behaviour, head teachers should consider alternative strategies for addressing that behaviour.*
- 2.2 *Head teachers are encouraged in the DfE guidance to consider alternative strategies before resorting to exclusion. Suggested strategies are restorative justice, mediation, internal exclusion and a managed move to another school where the child may be at risk of permanent exclusion.*
- 2.3 *However, there may be rare occasions where, in the head teacher’s judgement, it is appropriate to impose a fixed term exclusion for longer than five days*
- 2.4 *There may also be exceptional circumstances in which a head teacher may need to remove a pupil from the school site where exclusion would be inappropriate. An example is where a pupil is accused of committing a serious criminal offence which took place outside the head teacher’s jurisdiction or where there is insufficient evidence to warrant exclusion. Where there is police involvement and parallel criminal proceedings are taking place, a head teacher’s freedom to conduct an appropriate investigation may be compromised. It may not, for example, be appropriate to take relevant witness statements. Under such circumstances a head teacher can authorise a leave of absence for a fixed period with the parents’ agreement or, exercising powers delegated by the governing board under section 29(3) of the Education Act 2002, can arrange for the pupil to be educated elsewhere (without parental approval, although the parents should be notified). However, such education elsewhere must be arranged for the purposes of receiving instruction or training included in the secular curriculum for the school and should not be continued for longer than is absolutely necessary. Whether the pupil has been granted a leave of absence or is being educated elsewhere under the provisions of Section 29(3) of the Education Act 2002, the school must ensure that the pupil’s full time education continues whilst off site.*

2.5 *It is a central tenet of this protocol that the secondary schools in [insert name of local area] will, when required and whenever possible, assist each other in providing a venue and certain other facilities to cater for the educational needs of children*

- *excluded from other [insert name of local area] secondary schools from and including the sixth day of any such exclusion.*
- *granted a leave of absence where in other circumstances a fixed period exclusion may have otherwise been applied*
- *removed from the school site under the provisions of Section 29(3) of the Education Act 2002.*

2.6 *It is anticipated and expected that schools will only rarely, and in only exceptional circumstances, call upon other schools to provide for children for the reasons specified in paragraph 2.5.*

### **3. The operation of this protocol**

3.1 *The school from which the child is coming is referred to as the home school in this protocol. The school to which the child is going is referred to as the host school. Both home and host schools assume responsibilities under the terms of this protocol as defined in Sections 4 and 5 respectively.*

3.2 *Arrangements to provide for a pupil's on-going education under the terms of this protocol may be made directly between partner schools or the home school may ask the Local Authority's Integration Officer to act as a "go-between"*

3.3 *Where a placement is agreed under the terms of this protocol a specific member of staff will be designated in both the home school and the host school to liaise over the arrangements for the child during the period they are catered for at the host school*

3.4 *A pupil catered for under the provisions of this protocol will attend the host school in the uniform of his/her home school. The reasons for this is that it will then not undermine the host school's requirements to wear a uniform and it will make it less likely that the child will wish to venture beyond the accommodation made available by the host school.*

3.5 *Where the period that a place required at a host school under the terms of this protocol cannot be specified, the placement will be reviewed on a weekly basis between the members of staff designated to liaise regarding the arrangement,*

3.6 *Whilst it is anticipated that all the secondary schools in [insert name of local area] will assist other schools whenever possible, there is no absolute obligation upon them to do so.*

- 3.7 *A host school may withdraw the use of its facilities at any time if the pupil's behaviour becomes unacceptable.*
- 3.8 *Whilst any costs associated with a placement arranged under the this protocol will fall to the home school, the Integration Manager, may, at his/her discretion, assist with these costs within the limits of available resources. Funding may also be available from the ESC if a budget remains available for this purpose.*

#### **4. The responsibilities of the home school**

##### *4.1 The home school will*

- fully complete a request for information form pertaining to the pupil in question and submit this to the host school, either directly or via the Integration Officer, appending a detailed account of why the placement is required, the circumstances of the case and recommendations as to how the child is best dealt with;*
- set work appropriate to the child's age, ability, aptitude and any special educational needs he/she may have including those specified in any statement of SEN that may apply and ensure this work is delivered to the host school in good time;*
- where the child has an entitlement to free school meals, pay for any meals that might be provided by the host school or otherwise make arrangements for a meal to be delivered to the child;*
- fund and arrange, if requested by the host school, TA support and/or other professional assistance which may be required to cater for the child's educational and other needs;*
- support in carrying out and implementing a Risk Assessment Management Profile (RAMP) where necessary;*
- fund the cost of transport to the host school, if necessary;*
- bear any other incidental costs that might arise as a result of an arrangement under the terms of this protocol;*
- make arrangements for the pupil to return at the earliest opportunity.*

#### **5. The responsibilities of the host school**

##### *5.1 The host school will*

- provide a place where the excluded pupil may work which may or may not be shared with pupils of the host school;*
- liaise with the parent(s)/carer(s) to arrange for the excluded child to arrive and leave the school site at times either before or after the main student body is entering or leaving the building;*
- provide suitable meet and greet facilities when the excluded child arrives;*
- not allow the excluded pupil to be unsupervised at any time;*
- where possible, provide supervision and learning support;*

- *make such arrangements as are necessary to cater for the needs of any staff sent by the home school to support the excluded child;*
- *not allow the excluded child to interact with other children except where they may be accommodated in the same room. This may result in the need to make special arrangements for lunch and breaks subject to the times of attendance;*
- *implement such risk mitigation measures as are identified in any RAMP that may be carried out;*
- *supply the home school with attendance data on a weekly basis (the home school should record attendance in the register as a "B" code).*

# Appendix 9: Guidance on illegal and informal exclusions

## The law on exclusions

Schools are able to exclude pupils by reason of their behaviour, provided the school acts within the law. The relevant law is explained to schools through the DfE's statutory guidance, "*Exclusion from Maintained Schools, Academies and Pupil Referral Units*". This guidance specifies the steps which the school **must** take in excluding the child:

- Only the head teacher of a school can exclude a pupil and this must be on disciplinary grounds.
- Any decision of a school, including exclusion, must be made in line with the principles of administrative law (i.e. that it is: 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).
- Head teachers must take account of their legal duty of care when sending a pupil home following an exclusion (i.e. they must ensure that the child is safe when (s)he leaves the school).
- Schools must ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion.
- Head teachers and governing bodies must take account of their statutory duties in relation to SEN when administering the exclusion process. This includes having regard to the SEN Code of Practice.
- Head teachers should, as far as possible, avoid permanently excluding any pupil with a statement of SEN or a looked after child.
- It is unlawful to exclude or to increase the severity of an exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment/ ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated.
- Informal or unofficial exclusions, such as sending pupils home to cool off are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.
- Whenever a head teacher excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reasons for it.
- They must also, without delay, provide parents with the following information in writing:
  - the reasons for the exclusion;

- the period of a fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent;
- parents' right to make representations about the exclusion to the governing board and how the pupil may be involved in this;
- how any representations should be made;
- where there is a legal requirement for the governing board to consider the exclusion, that parents have a right to attend a meeting, be represented at this meeting (at their own expense) and to bring a friend.

If a school does not abide with all of the steps set out above, they are acting unlawfully.

*Where the Department for Education receives evidence that a school had acted unlawfully in excluding a pupil this would be reported to Ofsted. Ofsted has indicated that evidence of unlawful exclusion would be taken very seriously and would inform the judgements made about a school.*

HCC advice regarding illegal/unofficial exclusions:

- If exclusion is completely informal and therefore illegal this is challengeable by way of judicial review. The most useful case which relates to this is *A v The Head Teacher and Governors of Lord Grey School* [2004] EWCA Civ. 382. This case highlighted that an unlawful exclusion from school may give rise to a claim for damages under Section 8 of the Human Rights Act 1998 (HRA) for a breach of Article 2 of Protocol 1 to the Convention. Further, head teachers and school governing bodies are public authorities for the purposes of Section 6 of the HRA and are capable of being liable in such claims, notwithstanding the existence of the so-called 'fall-back' duty on Local Authorities under Section 19 of the Education Act 1996 (the 1996 Act) to make provision for excluded pupils.
- Schools have a legal responsibility for the care of children on the school's roll whilst the school is in session. The school is said to be "*in loco parentis*", i.e. in place of the parent. This duty of care may be deemed not be divested if the child is removed from the school site illegally. The school could potentially be held liable for any injury, death or safeguarding concern that might befall the child when the child should have been in the care and control of the school.
- Parents may have redress under The Equalities Act (2010) if a child with a disability or other protected characteristic is illegally excluded from a school.
- If a school and/or the governing board are held to have acted unlawfully, there may be a claim for damages. This may not be covered by a school's liability insurance policy if illegality is established.

# Appendix 10: Guidance on part time timetables

## Who is this guidance for?

All schools and services providing education to children of compulsory school age, regardless of their arrangements for governance including:

- Local authority maintained community and foundation schools
- Sponsored and converter academies
- Free schools
- University Technology Colleges
- Studio Schools
- ESCs and PSBs

## What is this guidance about?

The guidance sets out the legal position with regard to the use of part-time timetables for pupils of compulsory school age, clarifies the respective responsibilities of the local authority, schools and parents/carers and provides guidance on best practice, including procedures for ensuring robust monitoring of the arrangements.

## Responsible officers:

Mary Bainton, County Lead for Attendance and Performance (01442 453871)  
Martin Smith, County Lead for Behaviour and Alternative Provision (01707 281558)

## Background and context

It is recognised that there may be occasions when a child is unable to attend school full-time, due to, for example, recovery from illness, exceptional family circumstances, pregnancy, or returning home from a period in custody. Also, there may be instances when a child is experiencing severe behavioural difficulties at school and is finding it increasingly difficult to cope with full-time attendance. In such circumstances the law permits the temporary use of a part-time/reduced timetable. This guidance explains the legal position with regard to such timetables, clarifies responsibilities and identifies best practice.

## The DfE perspective

In the FAQ section of its guidance document *Advice on School Attendance* (DfE, September 2014) the DfE poses the question whether a school can place a pupil on a part-time timetable? The answer given is as follows:

*As a rule, no. All pupils of compulsory school age are entitled to a full-time education. In very exceptional circumstances there may be a need for a temporary part-time timetable to meet a pupil's individual needs. For example where a medical condition prevents a pupil from attending full-time education and a part-time timetable is considered as part of a re-integration package. A part-time timetable must not be treated as a long-term solution. Any pastoral support programme or other agreement must have a time limit by which point the pupil is expected to attend full-time or be provided with alternative provision.*

*In agreeing to a part-time timetable a school has agreed to a pupil being absent from school for part of the week or day and therefore must record it as authorised absence.*

### **The Ofsted perspective**

In a report entitled *Pupils missing out on education* (Ofsted. November 2013) Ofsted highlighted concerns that children not accessing full-time education tend to have lower aspirations, limited levels of achievement and, most seriously, face potential safeguarding risks (such as child sexual exploitation and trafficking). As a consequence of the report's findings, Ofsted has strengthened its approach to monitoring local authorities' and schools' arrangements for managing attendance. Local authorities are now required to obtain from all schools, regardless of their arrangements for governance, up-to-date and accurate data on all children not accessing full-time education. Schools are similarly required to maintain data on pupils on their roll but not attending full-time.

### **The legal position**

All children of compulsory school age are legally entitled to receive a suitable full-time education and local authorities have a statutory duty to ensure that all such children in their area receive such an education. The Local Government Ombudsman has established (in its report *Out of school...out of mind* (LGO. 2011)) that the number of hours of teaching per week considered to represent full-time education is as follows:

Reception and Key Stage 1 (R, Y1 and Y2)	21 hours
Key Stage 2 (Y3 to Y6)	23.5 hours
Key Stage 3 (Y7 to Y9) and Y10	24 hours
Y11	25 hours

As a rule schools are only permitted to provide less than full-time education, including placing a pupil on a part-time timetable, in very exceptional circumstances.

A part-time timetable must not be treated as a long-term plan. The arrangement should always specify an end-date by when it is expected that the child will return to full-time education (or when an alternative will be provided) and be reviewed regularly in the light of any changes to the child's

circumstances. A temporary part-time timetable should provide a means of achieving re-integration to full-time education. It should never be used as a form of exclusion from school for part of the school day or as permanent provision.

If a child is unable to access full-time education due to a diagnosed health need, schools and local authorities must follow the DfE guidance *Ensuring a good education for children who cannot attend school because of health needs* (DfE. 2014).

## **Responsibilities**

The local authority is responsible for:

- ensuring that all children of compulsory school age who are not receiving a suitable full-time education, receive this unless they are deemed to be medically unfit to do so, or it is otherwise considered to be in the best interests of the child's mental or physical health not to.
- collecting and monitoring data about all children not accessing full-time education, from all schools and services in the local area regardless of their individual governance arrangements (ref. Ofsted November 2013).

Schools (including academies, free schools, UTCs, studio schools, ESCs and PSBs) are responsible for:

- providing full-time education to all children on roll and appropriate support to enable pupils to participate in education full-time;
- informing the local authority of any instance of a child being placed on a part-time timetable, so that the local authority may monitor the arrangements (ref. Ofsted November 2013);
- providing information to governors about any children placed on part-time timetables, so that governors can fulfil their responsibilities to monitor the school's provision.

## **Best practice**

When a school considers that full-time education would not be in the best interests of a child's physical or mental health, and is considering placing him/her on a temporary part-time timetable, it should proceed as follows:

1. Consult with relevant agencies to determine the education and support provision that would best meet the child's individual needs, for a fixed term.
2. Complete a detailed action plan which shows a clear path to planned reintegration from part-time provision to full-time attendance, with a date for review. Where appropriate, the child should be actively involved in this planning. The plan should be reviewed if there is a change to his/her circumstances or needs.

3. If the child has a Statement of SEN, or an Education, Health and Care Plan, consult with the local authority's SEND team to ensure that the Statement/EHCP is implemented fully under a reduced timetable. The school should also consider whether it is appropriate to arrange an interim statement review, if for example the child's needs have changed and it is considered that this could impact on the ability for the provision to meet his/her needs.
4. Confirm, in writing, which adults will be responsible for the duty of care for the child during school sessions when he/she is not attending; (schools retain full duty of care for all children who are on the school roll if they are receiving education off-site).
5. Obtain written consent to the arrangements from the child's parents/carers. Should parents/carers not agree to the part-time timetable, it cannot be implemented, as without parental agreement a part-time timetable would be considered to be an unlawful exclusion.
6. Keep a central record of the arrangement and reviews and notify the local authority, using the form provided for this purpose (copy attached as an annex to this guidance).
7. Record the child's absence from school for sessions when he/she is not in attendance as authorised absence (register code C).
8. Inform the local authority when the child returns to full-time education.

### **Further information and advice**

Schools and parents can seek further information and advice from their Integrated Services for Learning (ISL) area teams.

**Pupils on Temporary Part-time Timetables: form for schools to use to notify the local authority**

All pupils of compulsory school age are entitled to a full-time education. In very exceptional circumstances there may be a need for a temporary part-time timetable to meet a pupil's individual needs. Advice from the Department for Education (November 2014) states that any part-time timetable must be time limited and the decision to implement it must have the agreement of the pupil's parents. Pupils on part-time timetables should be recorded using register code C (authorised absence) for the sessions they are not in school. As part of the new Ofsted *Framework for the inspection of services for children in need of help and protection, children looked after and care leavers* (Ofsted. June 2015), local authorities are required to provide detailed data on school-age children in their area who are not in full-time education.

Academy/School:	LA number:
-----------------	------------

Pupil Name:	UPN:
-------------	------

Date of Birth:	Year Group:	Ethnicity:
----------------	-------------	------------

SEND: Yes/No (please detail)  
.....

PSP in place: Yes/No

When did the pupil go onto a part-timetable and for what reasons?
---

Details of part-time timetable (including number of hours attending school each week):
--

When is the part-time timetable due to be reviewed?
---

School contact: .....  
Date:.....

**Please return this form via Anycomms Plus; an electronic copy of the form together with instructions on how to submit it can be found on the Herts Grid**

Local authority office use only:

Date passed to AIO: ..... AIO Name:  
.....

Confirmation of end date of part-time timetable:  
.....

# Appendix 11: Model exclusion letters

- Model letter 1 *From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of a fixed period exclusion of 5 days or fewer in one term, or which brings the child's total number of days or fixed period exclusion to no more than 5 days in one term, and where a public examination or national curriculum test is not missed*  
**Page 133**
- Model letter 2 *From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of a fixed period exclusion of more than 5 days and up to/equal to 15 days in one term, or which brings the child's total number of days or fixed period exclusion to more than 5 days and up/equal to 15 days in one term, and where a public examination or national curriculum test is not missed.*  
**Page 136**
- Model letter 3 *From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of a fixed period exclusion of more than 15 days in one term, or which brings the child's total number of days or fixed period exclusion to more than 15 days in one term, or where a public examination or national curriculum test would be missed.*  
**Page 140**
- Model letter 4 *From the Clerk of the Governors' Disciplinary Committee/ESC Management Committee inviting parents to a meeting of the Governors' Disciplinary Committee/ESC Management Committee in respect of a fixed period exclusion.*  
**Page 145**
- Model letter 5 *From the Clerk of the Governors' Disciplinary Committee/Management Committee informing parents of the committee's decision in respect of a fixed period exclusion.*  
**Page 149**
- Model letter 6 *From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of lunchtime exclusion of up to 5 days in one term, a lunchtime exclusion counting as 0.5 days of exclusion towards this total.*  
**Page 152**

- Model letter 7      *From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of a permanent exclusion.*  
**Page 155**
- Model letter 8      *From the Clerk of the Governors' Disciplinary Committee/Management Committee inviting parents to a meeting of the Governors' Disciplinary Committee/Management Committee in respect of a permanent exclusion.*  
**Page 159**
- Model letter 9      *From the Clerk of the Governors' Disciplinary Committee/ESC Management Committee informing parents of the committee's decision in respect of a permanent exclusion.*  
**Page 163**
- Model letter 10     *From the Head Teacher/Principal/Teacher In Charge of an ESC notifying the withdrawal of a fixed period or permanent exclusion*  
**Page 167**

## MODEL LETTER 1

*From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of a fixed period exclusion of 5 days or fewer in one term, or which brings the child's total number of days or fixed period exclusion to no more than 5 days in one term, and where a public examination or national curriculum test is not missed.*

Dear **[parent's name]**

I am writing to inform you of my decision to exclude **[child's name]** for a fixed period between the dates **[specify period]** inclusive. This means that **[child's name]** will not be allowed in school during this period. The exclusion begins/began on **[date]** and ends on **[date]**. **[child's name]** should return to school on **[first school day following the end of the fixed period exclusion]**.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[child's name]** has not been taken lightly. **[Child's name]** has been excluded for this fixed period because **[specify full reason(s) for exclusion]**.

*[The following two paragraphs apply only to pupils of compulsory school age]*

You have a duty to ensure that **[child's name]** is not present in a public place in school hours during the period of this exclusion between **[specify period]** inclusive unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the Local Authority or be prosecuted if **[child's name]** is present in a public place during school hours without reasonable justification on the specified dates. If so, it will be for you to demonstrate reasonable justification.

We will set work for **[child's name]** to complete on the days specified in the previous paragraph, i.e. the school days during the period of the exclusion

when you must ensure that he/she is not present in a public place without reasonable justification. **[Detail the arrangements for this]**. Please ensure that the work set is completed and returned promptly to us for marking.

You have the right to make representations about this exclusion to the Governors' Disciplinary Committee/Management Committee. If you wish to make representations please contact **[name of contact]** at **[contact details – to include address, telephone number, e-mail]**, as soon as possible.

Whilst the Governors' Discipline Committee/Management Committee has no power to direct reinstatement, they must consider any representations you make and they may place a copy of their findings on **[child's name]**'s school record.

You should also be aware that if you think that discrimination has occurred under the Equalities Act 2010 in relation to this exclusion, you have the right to make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination). The address to which claims for disability discrimination should be sent is The First Tier Tribunal, Mowden Hall, Staindrop Road, Darlington, DL3 9BG (telephone number 01325 392760). Guidance on making a claim of discrimination to the First-tier Tribunal can be found at <http://www.justice.gov.uk/tribunals/send/appeals>

*[The following paragraph applies to all fixed period exclusions of primary-aged pupils and may be used for fixed period exclusions of up to 5 days for secondary aged pupils if the head teacher/teacher in charge chooses to hold a reintegration interview].*

You are requested to attend a reintegration interview with **[child's name]** at the school on **[date]** at **[time]**. If that is not convenient, please contact **[enter name of person to be contacted]** as soon as possible to arrange a suitable alternative date and time. The reintegration interview will be conducted by **[enter "me" or the name and position of the person who will conduct the reintegration interview]**. The purpose of the reintegration interview is to discuss how best your child's return to school can be managed. Please note

that failure to attend a reintegration interview may be a factor taken into account by a magistrates' court if, on future application, they consider whether to impose a parenting order on you.

You also have the right to see a copy of **[child's name]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of this. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may wish to contact **[name of area Integration Officer]**, Integration Officer, Children's Services at **[contact details – address, telephone number, e-mail]**, who can provide advice. You may also find it useful to contact The Coram Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 01206 714 650 or on <http://www.childrenslegalcentre.com>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January.

You may also wish to refer to relevant sources of information about exclusions. The guidance from the Department for Education, entitled "Exclusion from Maintained Schools, Academies and Pupil Referral Units in England" is available at

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion>.

Further guidance from the Local Authority is available at

<http://www.thegrid.org.uk/info/welfare/exclusions.shtml>.

**[Child's name]**'s exclusion expires on **[date]** and we expect **[him/her]** to return to school on **[date]** at **[time]**.

Yours sincerely,

**[Name]**

Head Teacher/Principal

## MODEL LETTER 2

*From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of a fixed period exclusion of more than 5 days and up to/equal to 15 days in one term, or which brings the child's total number of days or fixed period exclusion to more than 5 days and up/equal to 15 days in one term, and where a public examination or national curriculum test is not missed.*

Dear **[parent's name]**

I am writing to inform you of my decision to exclude **[child's name]** for a fixed period between the dates **[specify period]** inclusive. This means that **[child's name]** will not be allowed in school during this period. The exclusion begins/began on **[date]** and ends on **[date]**. **[child's name]** should return to school on **[first school day following the end of the fixed period exclusion]**.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[child's name]** has not been taken lightly. **[Child's name]** has been excluded for this fixed period because **[specify full reason(s) for exclusion]**.

*[The following three paragraphs apply only to pupils of compulsory school age]*

You have a duty to ensure that **[child's name]** is not present in a public place in school hours during the first five days of a fixed period exclusion, in this case between **[specify period]** inclusive unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the Local Authority or be prosecuted if **[child's name]** is present in a public place during school hours without reasonable justification on the specified dates. If so, it will be for you to demonstrate reasonable justification.

We will set work for **[child's name]** during the **[first 5, or specify other number as appropriate]** days of this exclusion. **[Detail the arrangements for this]**. Please ensure that the work set is completed and returned promptly to us for marking.

*[If the individual exclusion to which this letter applies is for more than 5 days include the following paragraph]*

From the **[6<sup>th</sup> school day of the pupil's exclusion - specify date]** until the expiry of this exclusion we will arrange suitable alternative full-time education for **[child's name]**. Between the dates of **[dates between which suitable alternative full-time education has been arranged]** **[child's name]** should attend **[name and address of the alternative provider if not the home school]** between the hours of **[specify the start and finish times of the alternative provision, including the times for morning and afternoon sessions where relevant (this may not be identical to the start time of the home school)]** and report to **[staff member's name]**. **[If applicable, include information about transport arrangements from home to the alternative provider. If arrangements for provision from the sixth school day cannot not finalised by the time this letter is sent then say that the arrangements for suitable full time education will be notified shortly in a further letter.]**

You have the right to make representations about this exclusion to the Governors' Disciplinary Committee/Management Committee. If you wish you have the right to request a meeting of the Governors' Disciplinary Committee/Management Committee to review my decision to exclude **[child's name]** and make representations at that meeting as the period of this exclusion brings **[child's name]**'s total number of days of fixed period exclusion to more than 5 but fewer than or equal to 15 days in a term. If you request a meeting the latest date by which the Governors' Disciplinary Committee/Management Committee must meet is **[specify date, which must be no later than the 50<sup>th</sup> school day after the date on which the Governors' Disciplinary Committee/Management Committee was**

**notified of the exclusion to which this letter relates].** If you wish to make representations to the Governors' Disciplinary Committee/Management Committee please contact **[name of contact]** at **[contact details – address, telephone number, e-mail]**, as soon as possible and within the deadline specified. You may be accompanied by a friend or representative, including a legal representative, if you wish. Please advise if you have a disability or any special needs which would affect your ability to attend a meeting at the school. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

You should also be aware that if you think that discrimination has occurred under the Equalities Act 2010 in relation to this exclusion, you have the right to make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination). The address to which claims for disability discrimination should be sent is The First Tier Tribunal, Mowden Hall, Staindrop Road, Darlington, DL3 9BG (telephone number 01325 392760). Making a claim would not affect your right to make representations to the Governors' Disciplinary Committee/Management Committee. Guidance on making a claim of discrimination to the First-tier Tribunal can be found at <http://www.justice.gov.uk/tribunals/send/appeals>

*[The following paragraph applies to all fixed period exclusions of primary-aged pupils and may be used for fixed period exclusions of up to 5 days for secondary aged pupils if the head teacher/teacher in charge chooses to hold a reintegration interview. The paragraph also applies to secondary age pupils where the exclusion to which this letter relates is for more than 5 days].*

You are requested to attend a reintegration interview with **[child's name]** at the school on **[date]** at **[time]**. If that is not convenient, please contact **[enter name of person to be contacted]** as soon as possible to arrange a suitable alternative date and time. The reintegration interview will be conducted by **[enter "me" or the name and position of the person who will conduct the reintegration interview]**. The purpose of the reintegration interview is to discuss how best your child's return to school can be managed. Please note

that failure to attend a reintegration interview may be a factor taken into account by a magistrates' court if, on future application, they consider whether to impose a parenting order on you.

You also have the right to see a copy of **[child's name]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of this. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may wish to contact **[name of area Integration Officer]**, Integration Officer, Children's Services at **[contact details – address, telephone number, e-mail]**, who can provide advice. You may also find it useful to contact The Coram Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 01206 714 650 or on <http://www.childrenslegalcentre.com>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January.

You may also wish to refer to relevant sources of information about exclusions. The guidance from the Department for Education, entitled "Exclusion from Maintained Schools, Academies and Pupil Referral Units in England" is available at

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion>.

Further guidance from the Local Authority is available at

<http://www.thegrid.org.uk/info/welfare/exclusions.shtml>.

**[Child's name]**'s exclusion expires on **[date]** and we expect **[him/her]** to return to school on **[date]** at **[time]**.

Yours sincerely,

**[Name]**

Head Teacher/Principal

### MODEL LETTER 3

*From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of a fixed period exclusion of more than 15 days in one term, or which brings the child's total number of days or fixed period exclusion to more than 15 days in one term, or where a public examination or national curriculum test would be missed\*.*

*Please note that where an exclusion would result in a pupil missing a public examination or national curriculum test there is a further requirement for a governing board, so far as is reasonably practicable, to consider the exclusion before the date of the examination or test. If this is not practicable, the chair of governors may consider the exclusion independently and decide whether or not to reinstate the pupil<sup>16</sup>. These are the only circumstances in which the chair can review an exclusion decision alone. In such cases parents still have the right to make representations to the governing board and must be made aware of this right.*

Dear **[parent's name]**

I am writing to inform you of my decision to exclude **[child's name]** for a fixed period between the dates **[specify period]** inclusive. This means that **[child's name]** will not be allowed in school during this period. The exclusion begins/began on **[date]** and ends on **[date]**. **[child's name]** should return to school on **[first school day following the end of the fixed period exclusion]**.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[child's name]** has not been taken lightly. **[Child's name]** has been excluded for this fixed period because **[specify full reason(s) for exclusion]**.

*[The following three paragraphs apply only to pupils of compulsory school age]*

You have a duty to ensure that **[child's name]** is not present in a public place in school hours during the first five days of a fixed period exclusion, in this case between **[specify period]** inclusive unless there is reasonable

justification for this. I must advise you that you may receive a penalty notice from the Local Authority or be prosecuted if **[child's name]** is present in a public place during school hours without reasonable justification on the specified dates. If so, it will be for you to demonstrate reasonable justification.

We will set work for **[child's name]** during the **[first 5, or specify other number as appropriate]** days of this exclusion. **[Detail the arrangements for this]**. Please ensure that the work set is completed and returned promptly to us for marking.

*[If the individual exclusion to which this letter applies is for more than 5 days include the following paragraph]*

From the **[6<sup>th</sup> school day of the pupil's exclusion - specify date]** until the expiry of this exclusion we will arrange suitable alternative full-time education for **[child's name]**. Between the dates of **[dates between which suitable alternative full-time education has been arranged]** **[child's name]** should attend **[name and address of the alternative provider if not the home school]** between the hours of **[specify the start and finish times of the alternative provision, including the times for morning and afternoon sessions where relevant (this may not be identical to the start time of the home school)]** and report to **[staff member's name]**. **[If applicable, include information about transport arrangements from home to the alternative provider. If arrangements for provision from the sixth school day cannot not finalised by the time this letter is sent then say that the arrangements for suitable full time education will be notified shortly in a further letter.]**

As this exclusion brings **[child's name]**'s total number of days of fixed period exclusion to more than 15 days in total in one term the Governors' Disciplinary Committee/Management Committee must meet to review my decision to exclude **[child's name]**. You may attend the review meeting and make representations to the Governors' Disciplinary Committee/Management Committee if you wish. The latest date by which the Governors' Disciplinary

Committee/Management Committee must meet is **[specify date, which must be no later than 15 school days after the date on which the Governors' Disciplinary Committee/Management Committee was notified of the exclusion to which this letter relates]**. You will be notified by the Clerk to the Governors' Disciplinary Committee/Management Committee of the time, date and location of the meeting whether you choose to make representations or not. If you wish to make representations to the Governors' Disciplinary Committee/Management Committee please contact **[name of contact]** at **[contact details – address, telephone number, e-mail]**, as soon as possible after being notified of the date of the meeting. You may be accompanied by a friend or representative, including a legal representative, if you wish. Please advise if you have a disability or any special needs which would affect your ability to attend a meeting at the school. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

You should also be aware that if you think that discrimination has occurred under the Equalities Act 2010 in relation to this exclusion, you have the right to make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination). The address to which claims for disability discrimination should be sent is The First Tier Tribunal, Mowden Hall, Staindrop Road, Darlington, DL3 9BG (telephone number 01325 392760). Making a claim would not affect your right to make representations to the Governors' Disciplinary Committee/Management Committee. Guidance on making a claim of discrimination to the First-tier Tribunal can be found at <http://www.justice.gov.uk/tribunals/send/appeals>.

*[The following paragraph applies to all fixed period exclusions of primary-aged pupils and may be used for fixed period exclusions of up to 5 days for secondary aged pupils if the head teacher/teacher in charge chooses to hold a reintegration interview. The paragraph also applies to secondary age pupils where the exclusion to which this letter relates is for more than 5 days].*

You are requested to attend a reintegration interview with **[child's name]** at the school on **[date]** at **[time]**. If that is not convenient, please contact **[enter name of person to be contacted]** as soon as possible to arrange a suitable alternative date and time. The reintegration interview will be conducted by **[enter "me" or the name and position of the person who will conduct the reintegration interview]**. The purpose of the reintegration interview is to discuss how best your child's return to school can be managed. Please note that failure to attend a reintegration interview may be a factor taken into account by a magistrates' court if, on future application, they consider whether to impose a parenting order on you.

You also have the right to see a copy of **[child's name]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of this. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may wish to contact **[name of area Integration Officer]**, Integration Officer, Children's Services at **[contact details – address, telephone number, e-mail]**, who can provide advice. You may also find it useful to contact The Coram Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 01206 714 650 or on <http://www.childrenslegalcentre.com>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January.

You may also wish to refer to relevant sources of information about exclusions. The guidance from the Department for Education, entitled "Exclusion from Maintained Schools, Academies and Pupil Referral Units in England" is available at

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion>.

Further guidance from the Local Authority is available at

<http://www.thegrid.org.uk/info/welfare/exclusions.shtml>.

**[Child's name]**'s exclusion expires on **[date]** and we expect **[him/her]** to return to school on **[date]** at **[time]**.

Yours sincerely,

**[Name]**

Head Teacher/Principal

#### **MODEL LETTER 4**

*From the Clerk of the Governors' Disciplinary Committee/ESC Management Committee inviting parents to a meeting of the Governors' Disciplinary Committee/ESC Management Committee in respect of a fixed period exclusion*

Dear **[parent's name]**

I am writing to advise you that the meeting of the Governors' Disciplinary Committee/ESC Management Committee to review the Head Teacher's decision to exclude **[child's name]** from school during the period **[start date and end date of the period of exclusion]** will take place at **[place]** on **[date]** at **[time]**.

If you would like to attend the meeting of the Governors' Disciplinary Committee/Management Committee, please contact **[enter "me" or the name of contact]** at **[contact details – address, telephone number, e-mail]** as soon as possible. You will have the opportunity to make representations to the panel. **[Child's name]** may attend the hearing with you. You may also be accompanied by a friend or representative, including a legal representative, if you wish. If you intend to be accompanied please let **[enter "me" or the name of contact]** know. Please advise if you have a disability or any special needs which would affect your ability to attend a meeting at the school. Also, please inform **[enter "me" or the name of contact]** if it would be helpful for you to have an interpreter present.

At the meeting the Chair will explain the order of proceedings and a copy is enclosed with this letter for your information.

If you wish to make a written representation this should be forwarded to me at the above address at least five school days before the meeting, i.e. by **[insert date]** so that it may be circulated in advance to the members of the Committee and to all parties including the Head Teacher.

The committee will consider the representations made by all parties and decide whether to uphold the exclusion or to direct **[child's name]**'s reinstatement, either immediately or by a particular date.

If the Governors' Disciplinary Committee/Management Committee cannot direct reinstatement due to the period of exclusion having expired and your child having already returned to school they will place a copy of their findings on the child's school record.

As stated above, I would be grateful if you would let me know if you will be attending the meeting and if so, whether you will be accompanied.

Yours sincerely,

**[Name]**

Clerk to the Governors' Discipline Committee/Management Committee

Enc.

## **Formal exclusion hearing – order of proceedings**

Exclusion hearings follow a formal procedure as follows:

1. The Head Teacher, the parent(s)/carer(s) and the excluded pupil and/or their representatives (if present), the excluded child (if present) and a representative of the Local Authority (if present) and are invited into the meeting room by the Clerk and enter the room together.
2. Introduction and brief explanation of procedures by the Chair of the Governors' Disciplinary Committee/Management Committee.
3. The Head Teacher presents his/her reasons for the exclusion and calls such witnesses as he/she considers appropriate\*.
4. The Head Teacher and his/her witnesses are questioned by the parent(s)/carer(s), or the excluded pupil if over 18 years of age, or their representatives, and also by the Committee.
5. A representative of the Local Authority (if present) may make oral representations.
6. The parent(s)/carer(s), or the excluded pupil if 18 years of age or over, and/or their representatives, may make representations to the Governors' Disciplinary Committee/Management Committee. Unless there are strong reasons to refuse, the Chair of the Governors' Disciplinary Committee/Management Committee should allow the excluded pupil to make a statement if he/she wishes. The excluded pupil should not be questioned unless he/she is over 18 years of age. Any witnesses who are pupils at the school may only appear voluntarily and with their parents' consent.
7. The parent(s)/carer(s), or the excluded pupil if 18 years of age or over, and/or their representatives and/or any witnesses may be questioned by the Governors and the Head Teacher.
8. Summing up by the Head Teacher.
9. Summing up by the parent(s)/carer(s), or the excluded pupil if over 18 years of age.

At the end of the hearing all parties, except the members of the Governors' Disciplinary Committee/Management Committee and the clerk, withdraw before the committee considers its decision.

The Clerk will notify the parent(s)/carer(s), or the excluded pupil if 18 years of age or over, of the committee's decision in writing within one school day and send copies to the Head Teacher and the Integration Manager of the Local Authority.

\*Witnesses may remain in the room after giving their evidence or leave after any questions have been asked of him/her, but should not be present before giving their evidence.

## MODEL LETTER 5

*From the Clerk of the Governors' Disciplinary Committee/Management Committee informing parents of the committee's decision in respect of a fixed period exclusion*

Dear **[parent's name]**

I am writing to confirm the decision reached by the Governors' Disciplinary Committee/Management Committee at their meeting on **[date of Governors' Disciplinary Committee/ESC Management Committee meeting]** to review the Head Teacher's decision to exclude **[child's name]** from school during the period **[start date and end date of the period of exclusion]**.

After careful consideration of all the evidence available and the representations made to the Governors' Disciplinary Committee/Management Committee, the committee has decided to

*EITHER*

uphold the Head Teacher's decision to exclude for the following reason(s) **[inset reasons in as much detail as possible explaining how they were arrived at]**

*OR*

direct reinstatement from **[specify date]** for the following reason(s) **[insert reasons in as much detail as possible explaining how they were arrived at]**

*[Where reinstatement cannot be directed because the period of exclusion has expired, add the following sentence]*

As the period of **[child's name]**'s exclusion has expired the committee's findings will be placed on your child's school record.

*[Where the Head teacher's decision to exclude **has been upheld**, add the following three paragraphs]*

If you believe that discrimination has occurred as a result of this exclusion then you 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. 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, for example the day on which the pupil was excluded. Guidance on making a claim of discrimination to the First-tier Tribunal can be found at <http://www.justice.gov.uk/tribunals/send/appeals>

You may wish to contact **[name of area Integration Officer]**, Integration Officer, Children's Services at **[contact details – address, telephone number, e-mail]**, who can provide advice. You may also find it useful to contact The Coram Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 01206 714 650 or on <http://www.childrenslegalcentre.com>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January.

You may also wish to refer to relevant sources of information about exclusions. The guidance from the Department for Education, entitled "Exclusion from Maintained Schools, Academies and Pupil Referral Units in England" is available at

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion>.

Further guidance from the Local Authority is available at

<http://www.thegrid.org.uk/info/welfare/exclusions.shtml>.

Yours sincerely

**[Name]**

Clerk to the Governors' Disciplinary Committee/Management Committee

## MODEL LETTER 6

*From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of lunchtime exclusion of up to 5 days in one term, a lunchtime exclusion counting as 0.5 days of exclusion towards this total*

Dear **[parent's name]**

I am writing to inform you of my decision to exclude **[child's name]** during lunchtimes for a fixed period of **[specify period]**. This means that **[child's name]** will not be allowed in school at lunchtimes for this period. The exclusion begins on **[date]** and ends on **[date]**.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[child's name]** has not been taken lightly. **[Child's name]** has been excluded because **[specify full reason(s) for exclusion]**.

This exclusion covers the lunchtime period only from **[time]** to **[time]** and you should ensure that arrangements are in place for **[child's name]**'s supervision away from school during this period. You should also ensure **[child's name]** returns to school in time for the start of the afternoon session at **[time]**.

*[The following paragraph should be inserted if applicable]*

As **[child's name]** is eligible to receive a free school meal, I have made arrangements for a packed lunch to be provided for the period of the lunchtime exclusion.

*[The following paragraph apply only to pupils of compulsory school age]*

You have a duty to ensure that **[child's name]** is not present in a public place in during the period of this exclusion between **[specify period]** inclusive unless there is reasonable justification for this. I must advise you that you

may receive a penalty notice from the Local Authority or be prosecuted if **[child's name]** is present in a public place during school hours without reasonable justification on the specified dates. If so, it will be for you to demonstrate reasonable justification.

You have the right to make representations about this exclusion to the Governors' Disciplinary Committee/Management Committee. If you wish to make representations please contact **[name of contact]** at **[contact details – to include address, telephone number, e-mail]**, as soon as possible. Whilst the Governors' Discipline Committee/Management Committee has no power to direct reinstatement, they must consider any representations you make and they may place a copy of their findings on **[child's name]**'s school record.

You should also be aware that if you think that discrimination has occurred under the Equalities Act 2010 in relation to this exclusion, you have the right to make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination). The address to which claims for disability discrimination should be sent is The First Tier Tribunal, Mowden Hall, Staindrop Road, Darlington, DL3 9BG (telephone number 01325 392760).

You also have the right to see a copy of **[child's name]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of this. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may wish to contact **[name of area Integration Officer]**, Integration Officer, Children's Services at **[contact details – address, telephone number, e-mail]**, who can provide advice. You may also find it useful to contact The Coram Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 01206 714 650 or on <http://www.childrenslegalcentre.com>. The

advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January.

You may also wish to refer to relevant sources of information about exclusions. The guidance from the Department for Education, entitled “Exclusion from Maintained Schools, Academies and Pupil Referral Units in England” is available at

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion>.

Further guidance from the Local Authority is available at

<http://www.thegrid.org.uk/info/welfare/exclusions.shtml>.

**[Child’s name]’s lunchtime exclusion expires on [date of last day of lunchtime exclusion] and [child’s name] can return for lunchtime in school as from [date of first school day following the last day of lunchtime exclusion].**

Yours sincerely

**[Name]**

Head Teacher/Principal

## MODEL LETTER 7

*From the Head Teacher/Principal/Teacher In Charge of an ESC notifying parents of a permanent exclusion.*

Dear **[name(s) of parent(s)]**

I am writing to inform you of my decision to permanently exclude **[child's name]** with effect from **[date]**. This means that **[child's name]** will not be allowed in this school/ESC unless **[he/she]** is reinstated by the Governors' Disciplinary Committee/Management Committee.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[child's name]** has not been taken lightly. **[Child's name]** has been permanently excluded because **[specify full reason(s) for exclusion]**.

*[The following three paragraphs apply only to pupils of compulsory school age]*

You have a duty to ensure that **[child's name]** is not present in a public place in school hours during the first five days of this exclusion, in this case between **[specify period]** inclusive unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the Local Authority or be prosecuted if **[child's name]** is present in a public place during school hours without reasonable justification on the specified dates. If so, it will be for you to demonstrate reasonable justification.

Alternative arrangements for **[child's name]**'s education to continue will be made. We will set work for **[child's name]** during the first 5 days of this exclusion. **[Detail the arrangements for this]**. Please ensure that the work set is completed and returned promptly to us for marking.

From the sixth school day of the exclusion onwards, i.e. from **[specify the date]** the Local Authority will provide suitable full-time education. **[Where pupil lives in Hertfordshire, enter the name of the local Integration Officer]**, Integration Officer will contact you to let you know the arrangements for this. **[Where pupil lives beyond Hertfordshire]** I have informed **[name of officer]** at **[name of XXX Local Authority]** of your child's exclusion and **[he/she]** will be in touch with you about arrangements for **[child's name]**'s education from the sixth school day of exclusion. You can contact **[him/her]** at **[give contact details]**.

As this is a permanent exclusion the Governors' Disciplinary Committee/Management Committee must meet to review my decision to exclude **[child's name]**. You may attend the review meeting and make representations to the Governors' Disciplinary Committee/Management Committee and ask the panel to reinstate your child if you wish. The Governors' Disciplinary Committee/Management Committee has the power to reinstate your child immediately or from a specified date, or, alternatively, they may decide to uphold the exclusion in which case you may ask for the Governors' Disciplinary Committee/Management Committee's decision to be reviewed by an Independent Review Panel. The latest date by which the Governors' Disciplinary Committee/Management Committee must meet is **[specify date, which must be no later than 15 school days after the date on which the Governors' Disciplinary Committee/Management Committee was notified of the exclusion to which this letter relates]**.

You will be notified by the Clerk to the Governors' Disciplinary Committee/Management Committee of the time, date and location of the meeting whether you choose to make representations or not. If you wish to make representations to the Governors' Disciplinary Committee/Management Committee please contact **[name of contact]** at **[contact details – address, telephone number, e-mail]**, as soon as possible after being notified of the date of the meeting. You may be accompanied by a friend or representative, including a legal representative, if you wish. Please advise if you have a disability or any special needs which would affect your ability to attend a

meeting at the school. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

You should also be aware that if you think that discrimination has occurred under the Equalities Act 2010 in relation to this exclusion, you have the right to make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination). The address to which claims for disability discrimination should be sent is The First Tier Tribunal, Mowden Hall, Staindrop Road, Darlington, DL3 9BG (telephone number 01325 392760). Making a claim would not affect your right to make representations to the Governors' Disciplinary Committee/Management Committee. Guidance on making a claim of discrimination to the First-tier Tribunal can be found at <http://www.justice.gov.uk/tribunals/send/appeals>

You also have the right to see a copy of **[child's name]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of this. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may wish to contact **[name of area Integration Officer]**, Integration Officer, Children's Services at **[contact details – address, telephone number, e-mail]**, who can provide advice. You may also find it useful to contact The Coram Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 01206 714 650 or on <http://www.childrenslegalcentre.com>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January.

You may also wish to refer to relevant sources of information about exclusions. The guidance from the Department for Education, entitled "Exclusion from Maintained Schools, Academies and Pupil Referral Units in England" is available at <http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion>.

Further guidance from the Local Authority is available at  
<http://www.thegrid.org.uk/info/welfare/exclusions.shtml>.

Yours sincerely,

**[Name]**

Head Teacher/Principal

## MODEL LETTER 8

*From the Clerk of the Governors' Disciplinary Committee/Management Committee inviting parents to a meeting of the Governors' Disciplinary Committee/Management Committee in respect of a permanent exclusion*

Dear **[Name(s) of parent(s)]**

I am writing to advise you that the meeting of the Governors' Disciplinary Committee/ESC Management Committee to review the Head Teacher's decision to permanently exclude **[child's name]** will take place at **[place]** on **[date]** at **[time]**.

If you would like to attend the meeting of the Governors' Disciplinary Committee/ESC Management Committee, please contact **[enter "me" or the name of contact]** at **[contact details – address, telephone number, e-mail]** as soon as possible. You will have the opportunity to make representations to the panel. **[Child's name]** may attend the hearing with you. You may also be accompanied by a friend or representative, including a legal representative, if you wish. If you intend to be accompanied please let **[enter "me" or the name of contact]** know. Please advise if you have a disability or any special needs which would affect your ability to attend a meeting at the school. Also, please inform **[enter "me" or the name of contact]** if it would be helpful for you to have an interpreter present.

If your child's school is not an Academy a representative of the Local Authority will be present at the hearing. If your child's school is an Academy you have the right to request that a representative of the Local Authority be present at the hearing, in which case you should let **[enter "me" or the name of contact]** know. The Local Authority's position will be one of neutrality where the representative in attendance would not give his/her view on the merits of the particular exclusion as they would see it but rather, if asked by any party, to make a statement to the panel in general terms, for example as

to how other schools in the area may have acted in similar circumstances. Additionally, the LA will where appropriate draw the attention of panel to issues where there is a lack of clarity or where more information may be needed or where guidance appears not to have been adhered to. In essence, the LA representative will aim to act as an impartial third party, providing objective and dispassionate representations to assist the process.

At the meeting the Chair will explain the order of proceedings and a copy is enclosed with this letter for your information.

If you wish to make a written representation this should be forwarded to me at the above address at least five school days before the meeting, i.e. by **[insert date]** so that it may be circulated in advance to the members of the Committee and to all parties including the Head Teacher.

The committee will consider the representations made by all parties and decide whether to uphold the exclusion or to direct **[child's name]**'s reinstatement, either immediately or by a particular date.

As stated above, I would be grateful if you would let me know if you will be attending the meeting and if so, whether you will be accompanied and if you would like a representative of the Local Authority to be present at the hearing.

Yours sincerely,

**[Name]**

Clerk to the Governors' Discipline Committee/ESC Management Committee  
Enc.

## **Formal exclusion hearing – order of proceedings**

Exclusion hearings follow a formal procedure as follows:

1. The Head Teacher, the parent(s)/carer(s) and the excluded pupil and/or their representatives (if present), the excluded child (if present) and a representative of the Local Authority (if present) and are invited into the meeting room by the Clerk and enter the room together.
2. Introduction and brief explanation of procedures by the Chair of the Governors' Disciplinary Committee/Management Committee.
3. The Head Teacher presents his/her reasons for the exclusion and calls such witnesses as he/she considers appropriate\*.
4. The Head Teacher and his/her witnesses are questioned by the parent(s)/carer(s), or the excluded pupil if over 18 years of age, or their representatives, and also by the Committee.
5. A representative of the Local Authority (if present) may make oral representations.
6. The parent(s)/carer(s), or the excluded pupil if 18 years of age or over, and/or their representatives, may make representations to the Governors' Disciplinary Committee/Management Committee. Unless there are strong reasons to refuse, the Chair of the Governors' Disciplinary Committee/Management Committee should allow the excluded pupil to make a statement if he/she wishes. The excluded pupil should not be questioned unless he/she is over 18 years of age. Any witnesses who are pupils at the school may only appear voluntarily and with their parents' consent.
7. The parent(s)/carer(s), or the excluded pupil if 18 years of age or over, and/or their representatives and/or any witnesses may be questioned by the Governors and the Head Teacher.
8. Summing up by the Head Teacher.
9. Summing up by the parent(s)/carer(s), or the excluded pupil if over 18 years of age.

At the end of the hearing all parties, except the members of the Governors' Disciplinary Committee/Management Committee and the clerk, withdraw before the committee considers its decision.

The Clerk will notify the parent(s)/carer(s), or the excluded pupil if 18 years of age or over, of the committee's decision in writing within one school day and send copies to the Head Teacher and the Integration Manager of the Local Authority.

\*Witnesses may remain in the room after giving their evidence or leave after any questions have been asked of him/her, but should not be present before giving their evidence.

## MODEL LETTER 9

*From the Clerk of the Governors' Disciplinary Committee/ESC Management Committee informing parents of the committee's decision in respect of a permanent exclusion*

Dear **[parent's name]**

I am writing to confirm the decision reached by the Governors' Disciplinary Committee/ESC Management Committee at their meeting on **[date of Governors' Disciplinary Committee/ESC Management Committee meeting]** to review the Head Teacher's decision to permanently exclude **[child's name]** from **[name of school]** School.

After careful consideration of all the evidence available and the representations made to the Governors' Disciplinary Committee/ESC Management Committee, the committee has decided to

*EITHER*

uphold the Head Teacher's decision to permanently exclude for the following reason(s) **[inset reasons in as much detail as possible explaining how they were arrived at]**

*OR*

direct reinstatement from **[specify date]** for the following reason(s) **[insert reasons in as much detail as possible explaining how they were arrived at]**

*[Where a permanent exclusion has not been upheld and reinstatement has been directed insert the next paragraph, omit the subsequent paragraphs and go to "Yours sincerely,"]*

The Head Teacher or a senior member of staff will contact you shortly to discuss the arrangements to be made for **[child's name]** to return to school

*[Where a permanent exclusion **has been upheld** insert the following paragraphs]*

You have the right to ask for this decision to be reviewed by an Independent Review Panel. If you wish the decision to be reviewed by the Independent Review Panel please notify the Customer Focus Team on 01992 – 588548 **[or other board if Independent Review Panel hearings are not arranged for the school/ESC by the Local Authority]** in the first instance. You should then set out the reasons for requesting a review in writing and send this to the Customer Focus Team, County Hall, Pegs Lane, Hertford, SG13 8DF 588548 **[or other board if Independent Review Panel hearings are not arranged for the school/ESC by the Local Authority]** no later than **[specify the latest date by which a review may be requested, i.e. 15 school days from the date on which notice in writing of the Governing Board's/ESC Management Committee's decision to uphold the permanent exclusion was sent to the parents (notice is deemed to have been given on the same day if it is delivered directly, or the second working day after posting if it is sent by first class mail)]**. If you feel that your child has special educational needs relevant to this exclusion you should refer to this in your written statement. If you have not requested that a review is held by **[repeat latest date]** you will lose your right to have the decision of the Governors' Disciplinary Committee/ESC Management Committee reviewed.

An Independent Review Panel comprises one serving, or recently retired (within the last 5 years) Head Teacher, one serving, or recently serving, experienced governor and one lay member who will be the Chairman. The appeal panel will rehear all the facts of the case. If any party has fresh evidence to present to the panel they may do so.

If you ask for Governors' Disciplinary Committee/ESC Management Committee to be reviewed by the Independent Review Board you have the right to require that an expert in Special Educational Needs (SEN) attends the review at no cost to you. You may require that an SEN expert attends the hearing irrespective of whether the school believes your child has special

educational needs or not. The SEN expert's role is analogous to an expert witness, providing impartial advice to the panel on how special educational needs may have been relevant to the exclusion. Should you request a review of the Governors' Disciplinary Committee's/ESC Management Committee's decision and you wish an SEN expert to be appointed please let the Customer Focus Team **[or other board if Independent Review Panel hearings are not arranged for the school/ESC by the Local Authority]** know.

I should also inform you that if you request a review of the Governors' Disciplinary Committee's/ESC Management Committee's decision you may, at your own expense, appoint a representative, including a legal representative, to make written and/or oral representations to the Independent Review Panel and that you may also bring a friend or supporter to the review. If you intend to be accompanied please let the Customer Focus Team **[or other board if Independent Review Panel hearings are not arranged for the school/ESC by the Local Authority]** know. Please also advise if you have a disability or any special needs which would affect your ability to attend the meeting and if it would be helpful for you to have an interpreter present.

Where a representative of the LA attended the Governors' Disciplinary Committee/ESC Management Committee meeting he/she or another representative will also **[in the case of an Academy, add "at your request"]** attend the review and submit a statement in advance.

In determining the outcome of a review the panel can make one of three decisions: they may uphold your child's exclusion; they may recommend that the Governors' Disciplinary Committee/ESC Management Committee reconsider's its decision; or they may quash the decision and direct that the Governors' Disciplinary Committee/ESC Management Committee considers the exclusion again. A panel should only quash a decision where it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review.

In addition to your right to apply to have the Governors' Disciplinary Committee's/ESC Management Committee's decision to be reviewed by the Independent Review Panel, if you believe that discrimination has occurred as a result of this exclusion, then you 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. 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, for example the day on which the pupil was excluded. Guidance on making a claim of discrimination to the First-tier Tribunal can be found at <http://www.justice.gov.uk/tribunals/send/appeals>

You may wish to contact **[name of area Integration Officer]**, Integration Officer, Children's Services at **[contact details – address, telephone number, e-mail]**, who can provide advice. You may also find it useful to contact The Coram Children's Legal Centre. They aim to provide free legal advice and information to parents on state education matters. They can be contacted on 01206 714 650 or on <http://www.childrenslegalcentre.com>. The advice line is open from 8am to 8pm Monday to Friday, except Bank Holidays and 24<sup>th</sup> December to the 1<sup>st</sup> January.

You may also wish to refer to relevant sources of information about exclusions. The guidance from the Department for Education, entitled "Exclusion from Maintained Schools, Academies and Pupil Referral Units in England" is available at <http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion>. Further guidance from the Local Authority is available at <http://www.thegrid.org.uk/info/welfare/exclusions.shtml>.

Yours sincerely,

**[Name]**

Clerk to the Governors' Discipline Committee/ESC Management Committee

## MODEL LETTER 10

*From the Head Teacher/Principal/Teacher In Charge of an ESC  
notifying the withdrawal of a fixed period or permanent exclusion*

Dear **[parent's name]**

Further to my letter of **[date of letter giving notification of exclusion]** I am writing to advise you that I am, on this occasion, withdrawing my earlier decision to

*EITHER*

exclude **[child's name]** for a fixed period between **[insert dates of start and end of exclusion]**

*OR*

permanently exclude **[child's name]** from the school

I have decided to withdraw the exclusion on this occasion for the following reasons.

**[insert reasons]**

Yours sincerely,

**[Name]**

Head Teacher/Principal