



# Exclusion & Suspension Policy with Statutory Guidance

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## 1. Aims

Our school aims to ensure that:

- The **suspension** process is applied fairly and consistently
- The **suspension** process is understood by governors, staff, parents and pupils
- Pupils in school are safe and happy
- Pupils do not become NEET (not in education, employment or training)

## 2. Legislation and statutory guidance

This policy is based on statutory guidance from the Department for Education: [Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](#). It must be read in conjunction with this guidance.

It is based on the following legislation, which outline schools' powers to **suspend** pupils:

- Section 52 of the Education Act 2002, as amended by the Education Act 2011
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012
- Sections 64-68 of the School Standards and Framework Act 1998

In addition, the policy is based on:

- Part 7, chapter 2 of the [Education and Inspections Act 2006](#), which looks at parental responsibility for excluded pupils
- Section 579 of the [Education Act 1996](#), which defines 'school day'
- The [Education \(Provision of Full-Time Education for Excluded Pupils\) \(England\) Regulations 2007](#), as amended by [The Education \(Provision of Full-Time Education for Excluded Pupils\) \(England\) \(Amendment\) Regulations 2014](#)

## 3. The decision to **suspend**

Only the headteacher, or acting headteacher, can **suspend** a pupil from school. A permanent exclusion will be taken as a last resort.

A decision to **suspend** a pupil will be taken only:

- In response to serious or persistent breaches of the school's behaviour policy, **and**
- If allowing the pupil to remain in school would seriously harm the education or welfare of others

Before deciding whether to **suspend/exclude** a pupil, either permanently or for a fixed period, the headteacher will:

- Consider all the relevant facts and evidence

For the purposes of **suspensions**, school day is defined as any day on which there is a school session. Therefore, INSET or staff training days do not count as a school day.

#### 4. Suspension Protocols

The school will ensure that it adheres to the statutory guidance from the Department of Education: : [Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](#) at all times.



Department  
for Education

# **Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement**

## **Guidance for maintained schools, academies, and pupil referral units in England**

**January 2022**

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# Part one: About this guidance

## Aim

Good behaviour in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. Therefore, the government recognises that school exclusions, managed moves and off-site direction are essential behaviour management tools for headteachers and can be used to establish high standards of behaviour in schools and maintain the safety of school communities.

For the vast majority of pupils, suspensions and permanent exclusions may not be necessary, and their behaviour can be managed by other strategies. However, if approaches towards behaviour management have been exhausted, then suspensions and permanent exclusions will sometimes be necessary as a last resort. This is to ensure that pupils are protected from disruption and can learn in safe, calm, and supportive environments.

Schools and local authorities should not adopt a 'no exclusion' policy as an end in itself. This can lead to perverse incentives to schools not to exclude even when exclusion is the only real way to make sure an excluded pupil can get the support they need, while remaining engaged in education. In some cases, a 'no exclusion' policy can even present safeguarding issues and expose staff and pupils to unreasonable risks. Instead, schools and local authorities should work to create environments where school exclusions are not necessary because pupil behaviour does not require it.

It is important to note that this guidance has been updated to be a companion piece to the [Behaviour in Schools](#) guidance, which provides advice to headteachers, trust leaders and school staff on implementing a behaviour policy which creates a school culture with high expectations of behaviour. Therefore, this guidance should only be necessary when strategies, practices and interventions set out within the Behaviour in Schools Guidance have not been successful in improving a pupil's behaviour or the use of more significant interventions or sanctions are required.

It is important to note that this document from the Department for Education provides a guide to the legislation that governs the suspension and permanent exclusion of pupils<sup>1</sup> from all maintained schools (including special schools), pupil referral units (PRUs), academy schools (including free schools, special schools, studio schools and university technology colleges) and alternative provision academies (including alternative provision

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<sup>1</sup> A pupil is a person for whom education is provided at a school (section 3 of the Education Act 1996). There are three exceptions: A) if the person is aged 19+ and the education being provided for them at the school is further education. B) If the education being provided for the person is part-time education suitable to the requirements of people who are over compulsory school age. C) If the school is a maintained school and the education being provided for the person is being provided under section 27 of the Education Act 2002.

free schools) in England. It also includes the use of behaviour strategies such as managed moves and directing pupils off-site to improve behaviour to help prevent a suspension or permanent exclusion.

The document also provides statutory guidance to which headteachers, governing boards, local authorities, academy trusts, independent review panel members and special educational needs (SEN) experts must have regard when carrying out their functions in relation to suspension and permanent exclusions. Clerks to independent review panels must also be well-versed in this guidance.

Where relevant, this document refers to other guidance in areas such as behaviour, safeguarding, SEN and equality, but is not intended to provide detailed guidance on these issues.

This document replaces the version published in 2017 for schools in England.

## Review date

This guidance will be kept under review and updated as necessary.

## Terminology

- The term *must* refers to what headteachers/governing boards/academy trusts/local authorities/parents and others are required to do by law. The term *should* refers to recommendations for good practice as mentioned in the suspensions and permanent exclusions guidance.
- The definition of *suspend* in this guidance is what is described in the legislation as an exclusion for a fixed period.
- The term *headteacher* in this document means the headteacher of a maintained school, the teacher in charge at a PRU and the principal of an academy.
- The term *governing board* means the governing body of a maintained school, the management committee of a PRU and academy trust.
- The definition of a *parent* can be found in the Education Act 1996, and this applies to all the legislation to which this guidance relates. In addition to the child's birth parents, references to parents in this guidance include any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person (for example, a foster carer) who has care of the child. To reflect this, this guidance uses 'parent' to refer to both parents and carers. Where practical, all those with parental responsibility should be involved in the suspensions and permanent exclusions process.



- Obligations are to the *relevant person* – a parent or the pupil, aged 18 or over. Legislation on suspension and permanent exclusion gives clarity and certainty to schools, local authorities, academy trusts and review panels on how to discharge their obligations to parents or pupils if they are aged 18 or over.
- *Alternative Provision (AP)* refers to suitable full-time education that is arranged for a pupil from the sixth school day (or earlier) of a suspension or from the sixth school day (or earlier) after the first day of a permanent exclusion. In other circumstances, AP may refer to education arranged for pupils who are unable to attend mainstream or special school and who are not educated at home, whether for behavioural, health, or other reasons. AP includes Pupil Referral Units (PRUs), AP academies and free schools, and hospital schools, as well as a variety of independent, registered, unregistered and further education settings.
- *Academic year* means a school's academic year beginning with the first day of school after 31 July and ending with the first day of school after the following 31 July.
- Where a school's academic year consists of three terms or fewer, a reference to a 'term' in this guidance means one of those terms. Where a school's academic year consists of more than three terms, then a reference to 'term' means the periods from 31 December to Easter Monday, from Easter Monday to 31 July and from 31 July to 31 December.

## Who is this guidance for?

This guidance is for:

- Headteachers, governing boards, local authorities, academy trusts, independent review panel members, independent review panel clerks, social workers, Virtual School Heads (VSHs) and individuals appointed as SEN experts. **[Placeholder: to note separate guidance for parents and carers]**
- Except where specifically stated, this guide applies to all maintained schools, academy schools (including free schools but not 16-19 academies or 16-19 free schools), alternative provision academies (including alternative provision free schools), and PRUs. 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 guidance and the law described within it applies to all pupils, including those who may be below or above compulsory school age, and those attending nursery classes or sixth forms, except where the age of the pupil is specifically referred to.
- This guide does not apply to independent schools (other than the academies listed above), city technology colleges, city colleges for the technology of the arts, sixth form colleges or 16-19 academies or 16-19 free schools, all of which have separate suspension and permanent exclusion procedures.
- Any pupil who was suspended or permanently excluded before September 2022, and whose exclusion is still subject to review at until September 2022 should be considered on the basis of the September 2017 guidance.

## Further information

This advice should not be read in isolation. It is important for schools to consider the following guidance: [Behaviour and Discipline in Schools](#); [Keeping Children Safe in Education](#); [Understanding Your Data: a guide for school governors and academy trustees](#); and other relevant advice and guidance as part of their approach to using school suspensions and permanent exclusions well. Links to relevant supplementary guidance can be found at *Annex A: Further information*.

## What legislation relates to this guidance?

The principal legislation to which this guidance relates is:

- the Education Act 2002, as amended by the Education Act 2011;
- the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- the Education and Inspections Act 2006;
- the Education Act 1996; and
- the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, as amended by the Education (Provision of Full-Time Education for Excluded Pupils) (England) (Amendment) Regulations 2014.
- **[Placeholder: for new regulations if agreed withdrawn exclusions and notifying the social worker and virtual school head]**

## Part two: What has changed in this edition?

This guidance has been updated to reflect the government's ambition to create high standards of behaviour in schools so that children and young people are protected from disruption and can learn and thrive in a calm, orderly, safe, and supportive environment. Suspensions and permanent exclusions will sometimes be necessary as a last resort to maintain this environment and this guidance provides schools and other bodies involved in this process with information so that they can continue to use exclusions well. In addition, specific changes to the legislation governing the disciplinary school suspension and permanent exclusion process have been made:

- Headteachers cannot end a suspension or permanent exclusion that has already begun (that is, where the pupil is no longer attending school). This practice is sometimes known as withdrawing/rescinding a suspension or permanent exclusion.
- When headteachers suspend or permanently exclude a pupil they must, without delay, and no later than three days after their decision, notify parents. If a pupil has a social worker, or if a pupil is looked-after, the head teacher must, also without delay, and no later than three days after their decision, notify the social worker and/or Virtual School Head (VSH), as applicable.
- Guidance on the role of a social worker and Virtual School Head (VSH), during governing board meetings and independent review panel meetings, **[placeholder: including an explanation of relevant changes to the law]**.
- **[Placeholder: dependent on consultation responses, we will ensure we provide an explanation of relevant changes to the law regarding virtual remote meetings for governing boards and Independent Review Panels in any circumstance]**.
- Guidance on managed moves as an initial intervention measure, what they are and how they should be used.
- Clarified guidance on the use of off-site direction<sup>2</sup> as a short-term measure that can be used as part of a school's behaviour management strategy.
- Further clarification on the practice of involving pupils so that any excluded pupil is enabled and encouraged to participate at all stages of the suspension or

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<sup>2</sup> Section 29A 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>

permanent exclusion process, considering their age and ability to understand.

- Guidance that governing boards should carefully consider the level of pupil moves and the characteristics of pupils who have been permanently excluded to ensure the sanction is only used when necessary as a last resort.<sup>3</sup>

## **Duties under the Education and Inspections Act 2006**

Under the Education and Inspections Act 2006, headteachers of maintained schools and pupil referral units must determine measures to be taken with a view to:

- promoting, among pupils, self-discipline, and proper regard for authority,
- encouraging good behaviour and respect for others on the part of pupils and, in particular, preventing all forms of bullying among pupils,
- securing that the standard of behaviour of pupils is acceptable,
- securing that pupils complete any tasks reasonably assigned to them in connection with their education, and
- otherwise regulating the conduct of pupils.

Suspensions and exclusions can be used to help achieve these aims when they are absolutely necessary.

## **Duties under the Equality Act 2010 and Children and Families Act 2014**

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 gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to any provision, criterion or practice which puts them at a substantial disadvantage and the provision of auxiliary aids and services. In carrying out their functions, the public sector equality duty means schools must also have due regard to the need to:

- eliminate discrimination, harassment, victimisation, and other conduct that is prohibited by the Equality Act;
- advance equality of opportunity between people who share a relevant protected characteristic and people who do not; and

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<sup>3</sup> [Understanding your data: a guide for school governors and academy trustees - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

- foster good relations between people who share a relevant protected characteristic and people who do not share it.

The 'relevant protected characteristics' in this context are the characteristics mentioned above. Age is also a relevant protected characteristic, but not when carrying out a function to do with providing education, benefits, facilities, or services to pupils.

These duties need to be complied with when deciding whether to exclude a pupil. Schools must also ensure that any provision, criterion, or practice does not discriminate against pupils by unfairly increasing their risk of exclusion. For example, if reasonable adjustments have not been made for a pupil with a disability that can manifest itself in breaches of school rules if needs are not met, a decision to exclude may be discriminatory.

The governing board must also comply with their statutory duties in relation to SEN when administering the exclusion process, including (in the case of the governing board of relevant settings<sup>4</sup>) using their 'best endeavours' to ensure the appropriate special educational provision is made for pupils with SEN and having regard to the SEND Code of Practice<sup>5</sup>.

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<sup>4</sup> The duty under [section 66 of the Children and Families Act 2014](#) applies to certain settings, including mainstream schools, maintained nursery schools, academies, alternative provision academies and pupil referral units.

<sup>5</sup> [SEND code of practice: 0 to 25 years - GOV.UK \(www.gov.uk\)](#)

## Part three: The headteacher's power to suspend or permanently exclude for headteachers, academy principals and teachers in charge of pupil referral units

This government supports headteachers in using suspension and permanent exclusion as a sanction when warranted as part of creating a calm, orderly, safe, and supportive environment in which pupils can learn and thrive. To achieve this, suspensions and permanent exclusion are sometimes a necessary part of a functioning system, where it is accepted that not all pupil behaviour can be amended or remedied by pastoral processes.

### The headteacher's powers to use exclusion<sup>6</sup>

1. Only the headteacher<sup>7</sup> of a school can suspend or permanently exclude a pupil on disciplinary grounds. A pupil may be suspended for one or more fixed periods (up to a maximum of 45 school days in a single academic year), or permanently excluded.
2. A pupil's behaviour outside school can be considered grounds for a suspension or permanent exclusion. Any decision of a school, including suspension or permanent 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 suspensions and permanent exclusions and a school's wider legal duties, including the Human Rights Act 1998, the Children and Families Act 2014 and the Equality Act 2010); reasonable; fair; and proportionate.
3. When establishing the facts in relation to a suspension or permanent 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 headteacher should accept that something happened if it is more likely that it happened than that it did not happen. The headteacher must take account of their legal duty of care when sending a pupil home following an exclusion.

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<sup>6</sup> Paragraphs 1 to 3 gives guidance about section 51A Education Act 2002.

<sup>7</sup> In a maintained school, 'headteacher' includes an acting headteacher by virtue of section 579(1) of the Education Act 1996. An acting headteacher is someone appointed to carry out the functions of the headteacher in the headteacher's absence or pending the appointment of a headteacher. This will not necessarily be the deputy headteacher: it will depend on who is appointed to the role of acting headteacher. In an academy, 'principal' includes acting principal by virtue of regulation 21 of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.

## Suspensions<sup>8</sup>

4. A suspension, where a pupil is temporarily removed from the school, is an essential behaviour management tool that should be set out within a school's behaviour policy.
5. A pupil may be suspended for one or more fixed periods<sup>9</sup> (up to a maximum of 45 school days in a single academic year). A suspension does not have to be for a continuous period.
6. A suspension may be used to provide a clear signal of what is unacceptable behaviour as part of the school's behaviour policy and show a pupil that their current behaviour is putting them at risk of permanent exclusion. Where suspensions are becoming a regular occurrence for a pupil, headteachers and schools should consider whether suspension alone is an effective sanction for the pupil and whether appropriate strategies need to be put in place to address behaviour.
7. It is important that during a suspension, a continuation of education occurs. Headteachers should take steps to ensure that work is set and marked for pupils during the first five school days of a suspension. This can include utilising any online pathways such as Google Classroom or Oak Academy. The school's legal duties to pupils with disabilities or special educational needs remain in force, for example to make reasonable adjustments in how they support disabled pupils during this period. Any time a pupil is sent home due to disciplinary reasons and asked to log on and utilise online pathways should always be recorded as a suspension.
8. A suspension can also be for parts of the school day. For example, if a pupil's behaviour at lunchtime is disruptive, they may be suspended from the school premises for the duration of the lunchtime period. The legal requirements relating to the suspension, such as the headteacher's duty to notify parents, apply in all cases. Lunchtime suspensions are counted as half a school day in determining whether a governing board meeting is triggered.
9. The law does not allow for extending a suspension or 'converting' a suspension into a permanent exclusion. In exceptional cases, usually where further evidence has come to light, a suspension 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 suspension.

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<sup>8</sup> Paragraphs 5, 8 and 9 give guidance about section 51A Education Act 2002.

<sup>9</sup> A 'fixed period' means that a suspension on disciplinary grounds can't be open-ended but must have a defined end date that is fixed at the time when the suspension is first imposed.

## Permanent exclusions

10. A permanent exclusion is when a pupil is no longer allowed to attend a school (unless the pupil is reinstated). The 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 pupils or staff in the school.
11. For any permanent exclusion, headteachers should take reasonable steps to ensure that work is set and marked for pupils during the first five school days where the pupil will not be attending alternative provision. Any appropriate referrals to support services or notifying key workers (such as a pupil's social worker) should also be considered. Paragraph 7 provides further guidance on utilising online pathways and the potential significance of SEND law.

## Withdrawn exclusions

12. Once a suspension has begun (that is, when the pupil is no longer attending school), the headteacher may not bring it to an end earlier than the end-date that was originally fixed, and a headteacher may not bring a permanent exclusion to an end after it has begun.

## Setting a clear process for exclusions

13. Headteachers should consider the following, when setting a clear process for exclusions:
- adopting a reliable method for monitoring the 45-day suspension rule, including suspensions received from other schools
  - ensuring there is a formal process for informing the parents, social worker (where relevant), governing board and local authority (depending on length of the suspension or if it is a permanent exclusion for any pupil), clearly setting out all reasons for the exclusion
  - providing up-to-date links to sources of impartial advice for parents
  - reintegrating suspended or permanently excluded pupils and support pupils' future behaviour
  - ensuring a formal process for arranging, at short notice, suitable full-time alternative education for pupils receiving suspensions over five school days



## Reasons and recording exclusions

14. We are clear that we trust headteachers to use their own professional judgement based on individual circumstances when considering whether to exclude a pupil. The reasons below may warrant a suspension or permanent exclusion and can act as a guide to understanding possible examples that headteachers can use to determine how to issue exclusion as a sanction:

- Physical assault against a pupil
- Physical assault against an adult
- Verbal abuse or threatening behaviour against a pupil
- Verbal abuse or threatening behaviour against an adult
- Use or threat of use of an offensive weapon or prohibited item that has been prohibited by a school's behaviour policy
- Bullying
- Racist abuse
- Abuse against sexual orientation and gender reassignment
- Abuse relating to disability

15. This list is non-exhaustive and is intended to offer examples rather than be complete or definitive. The Department collects data on suspensions and permanent exclusions from all state-funded schools via the termly school census. Schools must provide information via the school census on pupils subject to any type of suspension or permanent exclusion in the previous two terms<sup>10</sup>. Up to three reasons can be recorded<sup>11</sup> for each suspension or permanent exclusion (where applicable).

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<sup>10</sup> The submission of the school census returns, including a set of named pupil records, is a statutory requirement on schools under section 537A of the Education Act 1996.

<sup>11</sup> [Complete the school census - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/complete-the-school-census)

## ***R (CHF & CHM) v Newick CE Primary School & East Sussex***

Recently, a High Court case considered the legal position for mandatory off-site education for the purpose of keeping pupils apart for safeguarding reasons. This case involved allegations of child-on-child sexualized behaviour by young pupils in a primary school setting.

We need to consider, following the court's decision, whether it is right to suspend or permanently exclude based on safeguarding reasons rather than just disciplinary reasons. We would like to know how this will affect practice in schools and whether there is any further need to clarify or change the law or guidance in this area.

A question within the consultation, linked to this judgment, is:

a) Do you think it is positive or negative that the Court has made it clear that pupils can be temporarily excluded for safeguarding reasons as described in the judgement? Please explain your answer.

## **Off-rolling and unlawful exclusions**

16. Telling or forcing a pupil to leave school, or not allowing them to attend school, is a suspension (if temporary) or permanent exclusion (if permanent). Whenever a pupil is made to leave school, or forbidden from attending school, on disciplinary grounds, this must be done in accordance with the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 and with regard to relevant parts of this guidance.
17. Suspending a pupil for a short period of time, such as half a day, is permissible, however, the formal suspension process must be followed. Each disciplinary suspension and permanent exclusion must be confirmed to the parents in writing with notice of the reasons for the suspension or permanent exclusion.
18. An informal or unofficial exclusion, such as sending a pupil home 'to cool off', is unlawful when it does not follow the formal school exclusion process and regardless of whether it occurs with the agreement of parents. Any exclusion of a pupil, even for short periods of time, must be formally recorded. It would also 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; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting<sup>12</sup>. However, a pupil who repeatedly disobeys their teachers' academic instructions could be subject to exclusion. If any of these unlawful

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<sup>12</sup> Paragraph 18 gives guidance about section 51A Education Act 2002.

exclusions are carried out and lead to the deletion of a pupil's name from the register, this is known as 'off-rolling'.

19. A further example of off-rolling would be putting pressure on a parent to remove their child from the school under the threat of a permanent exclusion and encouraging them to choose Elective Home Education or to find another school place.

20. If a parent<sup>13</sup> feels pressured into electively home educating their child or that the suspension or permanent exclusion procedures have not been followed, they can follow the school's complaints procedure with the governing board and in the case of a maintained school, the local authority. Ofsted considers any evidence of off-rolling and is likely to judge a school as inadequate if there is evidence that pupils have been removed from the school roll without a formal permanent exclusion or by the school encouraging a parent to remove their child from the school, and leaders have taken insufficient action to address this.

## **Safeguarding, including guidance concerning pupils who have abused another pupil (commonly known as child-on-child abuse)**

21. Schools have a statutory duty to make arrangements for safeguarding and promoting the welfare of their pupils<sup>14</sup>. As part of this duty, schools are required to have regard to guidance issued by the Secretary of State. All schools must have regard to [Keeping Children Safe in Education 2021](#).

22. Furthermore, schools have a statutory duty to co-operate with safeguarding partners once designated as relevant agencies. Equally, safeguarding partners are expected to name schools as relevant agencies and engage with them in a meaningful way. Ultimately, any decisions are for the school to make on a case-by-case basis, with the designated safeguarding lead (or a deputy) taking a leading role and using their professional judgement, supported by other agencies, such as children's social care and the police as required.

23. If there is an ongoing safeguarding investigation (whether that includes a criminal investigation or not) that may result in the permanent exclusion of a pupil or if a pupil has been reinstated following a governing board review, it is likely that there will be complex and difficult decisions that need to be made. It is important that these decisions are made alongside a school's duty to safeguard and support children and their duty to provide an education.

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<sup>13</sup> Parents cannot agree to waive the requirements of the Regulations and relevant regulations must always be followed when a pupil is made to leave or is forbidden from attending on disciplinary grounds.

<sup>14</sup> In maintained schools this duty only applies to pupils who are under 18.

24. Section 5 of Keeping Children Safe in Education sets out the safeguarding process for cases of reports that relate to rape or assault by penetration and those that lead to a conviction or caution: “When there has been a report of sexual violence, the designated safeguarding lead (or a deputy) should make an immediate risk and needs assessment. Where there has been a report of sexual harassment, the need for a risk assessment should be considered on a case-by-case basis.” As always when concerned about the welfare of a child, the best interests of the child should come first. In all cases, schools should follow general safeguarding principles as found in [Keeping Children Safe in Education](#).

## **Re-integration after reinstatement or off-site direction**

25. Schools should have a strategy for reintegrating a pupil who returns to school following a suspension or after a period of being educated off-site and for managing their future behaviour. This is so pupils can be supported to successfully readjust back into a normal routine. This should include ensuring a re-integration meeting takes place between e.g., senior staff members, pastoral staff, mentors, teachers, pupils, parents, or where relevant, other multi-agency organisations such as the safer schools team or the pupil’s social worker, if they have one, to ensure a successful return into mainstream school or other suitable provision.
26. During this meeting, it may be appropriate to discuss with the pupil the reasons that led up to the sanction being used and setting targets they can report back on with relevant staff, e.g., form teacher/tutor/pastoral mentor. As far as possible, the school should work with the pupil, so they can understand the impact of their behaviour on their own learning and that of others, and how to improve their behaviour in the future. The school should communicate to the pupil that they are valued, and their previous behaviour should not be seen as an obstacle to future success. It is important to note that a pupil should not be prevented from returning to a mainstream classroom if parents are unable or unwilling to attend a re-integration meeting.

## Part four: Factors to consider before making a decision to exclude

The very best AP can be important co-experts in managing behaviour and providing alternatives to exclusion. This could include outreach support for pupils in mainstream schools and offering short-term places to pupils who need a time-limited intervention away from their mainstream school. Schools should work with high quality AP schools to ensure a continuum of support is available for pupils for whom good behaviour cultures and policies are not working.

### Preventative measures to school exclusion

27. In addition to the strategies set out in initial intervention, page 30 of the [Behaviour in Schools](#) guidance, headteachers should also consider the following: a) an off-site direction (temporary measure that maintained schools and academies for similar purposes can use) or b) managed moves (permanent measure) as preventative measures to exclusion.
28. Any use of AP should be based on an understanding of the support a child or young person needs in order to improve their behaviour, as well as any SEND. Off-site direction should only be used where in-school interventions and/or outreach have been unsuccessful or are deemed inappropriate, and should only be used to arrange a temporary stay in AP. Off-site direction may only be used as a way to improve future behaviour and not as a sanction or punishment for past misconduct.
29. The following individuals must have regard to the [Alternative Provision: Statutory guidance for local authorities, headteachers and governing bodies](#)
  - a local authority arranging suitable education under section 19 of the Education Act 1996;
  - the governing body of a maintained school making or reviewing an off-site direction under section 29A;
  - and the governing body or academy trust of a maintained school, academy school or AP academy arranging suitable education for a suspended pupil under section 100 of the Education Inspection Act 2006.
30. The nature of the intervention, its objectives, and the timeline to achieve these objectives should be clearly defined and agreed with the provider upfront. The plan should then be frequently monitored and reviewed. Pupils must continue to receive a broad and balanced education, and this will support re-integration back into mainstream schooling.

## Off-site direction

31. Off-site direction is when a governing board of a maintained school requires a pupil to attend somewhere off-site to receive education that is intended to improve their behaviour<sup>15</sup>. Whilst the legislation does not apply to academies, they can arrange off-site provision for such purposes under their general powers. Where interventions or outreach support have not been successful in improving a child or young person's behaviour, off-site direction should be used to arrange short-term temporary support in another mainstream school or AP. During the off-site direction, pupils must be dual registered.
32. When possible, in-school interventions, such as those set out in the [Behaviour in Schools guidance](#), or outreach support from AP schools should be used to meet a child or young person's individual needs and circumstances – whether behavioural or special educational.
33. Depending on the individual needs and circumstances of the pupil, off-site direction into AP can be full-time or a combination of part-time support in AP and continued mainstream education.
34. The governing board must comply with the Education (Educational Provision for Improving Behaviour) Regulations 2010 and must have regard to the [Alternative Provision: Statutory guidance for local authorities, headteachers and governing bodies](#). Whilst the alternative provision guidance does section legally applies to maintained schools, academy trusts are also encouraged to follow this guidance.
35. The statutory guidance covers objectives and timeframes with appropriate monitoring of progress. For maintained schools, the governing board must ensure that parents (or the pupil if 18 or older) (and the local authority where the pupil has an Education, Health and Care (EHC) plan are notified in writing and provided with information about the placement<sup>16</sup>. The governing board must invite the parents (or the pupil if 18 or older) (and the local authority if the pupil has an EHC plan) when a review meeting takes place<sup>17</sup>.
36. The governing board should involve parents within review meetings and set these out at the time a direction is made and include arrangements for reviews – including how often the placement will be reviewed, when the first review will be and who should be involved in the reviews. Once a pupil is directed off-site, information about reviews should be provided to the pupil's parents (or the pupil if 18 or older) and to

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<sup>15</sup> Section 29A of the Education Act 2002.

<sup>16</sup> Regulation 3 of the Education (Educational Provision for Improving Behaviour) Regulations 2010 as amended.

<sup>17</sup> Regulation 5 of the Education (Educational Provision for Improving Behaviour) Regulations 2010 as amended.

the local authority where the pupil has an EHC plan. This should include outcomes of the reviews<sup>18</sup> and of the placement.

37. For example, review meetings should take place between the school, parents, the pupil, and other agencies e.g., a pupil's social worker, CAMHS, Multi-Agency Safeguarding Hubs (MASH) and Youth Offending Teams (YOTs), the local authority (if a pupil has an EHC plan) to establish agreed monitoring points to discuss the pupil's ongoing behaviour. These reviews should be recorded and frequent enough to provide assurance that the off-site direction is achieving its objectives via monitoring points.
38. Parents (or pupils aged 18 or over) and, where the pupil has an EHC plan, the local authority can request, in writing, that the governing board hold a review meeting<sup>19</sup> When this happens, governing boards must comply with the request as soon as reasonably practicable, unless there has already been a review meeting in the previous 10 weeks.
39. To support a pupil with re-integration into their referring school, the focus of intervention whilst off-site should remain on ensuring that a pupil continues to receive a broad and balanced curriculum whilst any inappropriate behaviours which require intervention are being addressed. If a pupil with disability or SEN has been moved off-site, the duties under the Equality Act 2010 and the Children and Families Act 2014 continue to apply (for example, to make reasonable adjustments or to put support in place to meet SEN).
40. The length of time a pupil spends in another mainstream school or AP will depend on what best supports the pupil's needs and potential improvement in behaviour. The length of time a pupil spends in another mainstream school or AP and the re-integration plan should be kept under review.

## Managed moves

41. A managed move should only be offered as a permanent transfer, and only when the pupil has been attending the proposed new school under an off-site direction and a review of the direction has established that the pupil has settled well into the school and should remain there on a permanent basis. Under exceptional circumstances, such as a safeguarding concern, it may be appropriate for a pupil at any mainstream school to transfer to another mainstream school as a managed move, but this should

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<sup>18</sup> Regulation 6 of the Education (Educational Provision for Improving Behaviour) Regulations 2010.

<sup>19</sup> Regulation 4A of the Education (Educational Provision for Improving Behaviour) Regulations 2010.

only happen when it is in the pupil's best interest.

42. Managed moves should be a permanent move, voluntary and agreed with all parties involved, including the parents and the admission authority of the new school. Where a pupil has an EHC plan, the relevant statutory duties on the new school and local authority will apply. If the current school is contemplating a managed move, it should contact the authority at an early stage. If the local authority, both schools and parents are in agreement that there should indeed be a managed move, the local authority will need to follow the statutory procedures for amending a plan<sup>20</sup>.
43. If a parent believes that they are being pressured into a managed move or is unhappy with a managed move, they can take up the issue through the official school complaint procedure with the governing board and the local authority. Within the school inspections framework<sup>21</sup>, under leadership and management, Ofsted will consider any evidence found of a parent being pressured into a managed move as off-rolling and is likely to judge a school as inadequate.

## Variation in exclusion rates

44. There are longstanding national trends which show that particular groups of children are more likely to be excluded from school, both for a suspension or permanent exclusion. All of these factors will differ for each child, and the influence of out-of-school factors will vary according to local context, so it is important that schools, local authorities and local partners work together to understand what lies behind local trends. Using this understanding, local leaders will be best placed to effectively plan and put in place additional and targeted action based on their own context. If they identify any gaps, they are also in the position to act to ensure those who work with children have the training, services and support they need to address these<sup>22</sup>.

## Pupils with disabilities and Special Educational Needs (SEN) including those with Education, Health and Care plans (EHC plans)

45. The Equality Act 2010 requires schools to make reasonable adjustments for disabled pupils. This duty can in principle apply both to the suspensions and permanent exclusions process and to the disciplinary sanctions imposed. Under the Children and

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<sup>20</sup> The processes for amending a plan are set out in sections 37 and 44 of the Children and Families Act 2014 and regulations 22 and 28 of the Special Educational Needs and Disability Regulations 2014.

<sup>21</sup> [School inspection handbook - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>22</sup> [Timpson Review of School Exclusion \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)



Families Act 2014, governing boards of relevant settings<sup>23</sup> must use their 'best endeavours' to ensure the appropriate special educational provision is made for pupils with SEN, which will include any support in relation to behaviour management that they need because of their SEN.

46. Schools should engage proactively with parents in supporting the behaviour of pupils with additional needs.
47. Where a school has concerns about the behaviour, or risk of suspension and permanent exclusion, of a pupil with additional needs, a disability or an EHC plan it should, in partnership with others (and where relevant, the local authority), consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN or disability.
48. Where a pupil has an EHC plan, schools should contact the local authority about any behavioural concerns at an early stage and consider requesting an early annual review prior to making the decision to suspend or permanently exclude. For those without an EHC plan, the school should review, with external specialists as appropriate, whether the current support arrangements are appropriate and what changes may be required. This may provide a point for schools to request an EHC assessment or a review of the pupil's current package of support, which may then be increased.

## **Pupils who have a social worker, including looked-after children, and previously looked-after children**

49. For the majority of children who have a social worker, this is due to known safeguarding risks at home or in the community: over half are in need due to abuse or neglect.<sup>24</sup> For children with a social worker, education is an important protective factor, providing a safe space for children to access support, be visible to professionals and realise their potential. Where children are not in school, they miss the protection and opportunities it can provide, and become more vulnerable to harm. However, headteachers should balance this important reality with the need to ensure calm and safe environments for all pupils and staff, so should attempt to devise strategies that take both of these aspects into account.
50. Where a pupil has a social worker, e.g., because they are the subject of a Child in Need Plan or a Child Protection Plan, and they are at risk of suspension or permanent

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<sup>23</sup> The duty under [section 66 of the Children and Families Act 2014](#) applies to certain settings, including mainstream schools, maintained nursery schools, academies, alternative provision academies and pupil referral units.

<sup>24</sup> [Characteristics of children in need, Reporting Year 2021 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](#)

exclusion, the headteacher should inform their social worker, the Designated Safeguarding Lead (DSL) and the pupil's parents to involve them all as early as possible in relevant conversations.

51. Where a looked-after child (LAC) is likely to be subject to a suspension or permanent exclusion, the Designated Teacher (DT) should contact the local authority's Virtual School Head (VSH) as soon as possible. The VSH, working with the DT and others, should consider what additional assessment and support need to be put in place to help the school address the factors affecting the child's behaviour and reduce the need for suspension or permanent exclusion. Where relevant, the school should also engage with a child's social worker, foster carers, or children's home workers.

52. All looked-after children should have a Personal Education Plan (PEP) which is part of the child's care plan or detention placement plan<sup>25</sup>. This should be reviewed every term and any concerns about the pupil's behaviour should be recorded, as well as how the pupil is being supported to improve their behaviour and reduce the likelihood of exclusion being necessary. Monitoring of Personal Education Plans can be an effective way for VSHs to check on this.

53. For previously looked-after children who are on the path to being suspended or permanently excluded, the school should engage with the child's parents and the school's DT. The school may also seek the advice of the VSH on strategies to support the pupil. Further information can be found in the [guidance for the designated teacher for looked-after and previously looked-after children](#).

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<sup>25</sup> [Promoting the education of looked-after children and previously looked-after children \(publishing.service.gov.uk\)](#)

## Part five: The headteacher's duty to inform parties about an exclusion

To ensure that a child receives the correct support and safeguarding during a suspension or permanent exclusion, it is important that those responsible for their care are promptly informed when such exclusions occur or there is a risk of them occurring. This section sets out how and when schools should share information with parents, social workers, Virtual School Heads, local authorities, and governing boards.

### Duty to inform parents about an exclusion<sup>26</sup>

54. Whenever a headteacher suspends or permanently excludes a pupil they must, without delay, and no later than three days after their decision, notify parents of the period of the suspension or permanent exclusion and the reason(s) for it.
55. They must also, no later than three days, after their decision, provide parents with the following information in writing:
- the reason(s) for the suspension or permanent exclusion;
  - the period of a suspension or, for a permanent exclusion, the fact that it is permanent;
  - parents' right to make representations about the suspension or permanent exclusion to the governing board (in line with the requirements set out in paragraphs 86 to 95) 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 suspension or permanent exclusion, that parents or a pupil if they are 18 years old have a right to attend a meeting, to be represented at that meeting (at their own expense) and to bring a friend.
56. Written notification of the information mentioned in the above paragraph 55 can be provided by delivering it directly to the parents, leaving it at their usual or last known home address, or 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>27</sup>.

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<sup>26</sup> Paragraphs 54 to 63 gives guidance about section 51A Education Act 2002.

<sup>27</sup> Section 572 Education Act 1996.

57. Where a suspended or permanently excluded pupil is of compulsory school age the headteacher 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.
58. These days would be the first five school days of a suspension or permanent exclusion (or until the start date of any full-time alternative provision or the end of the suspension 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 headteacher 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 on the first day of the suspension or permanent exclusion<sup>28</sup>.
59. 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 child during the suspension or permanent 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 they should report to on the first day.
60. Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session on the first day of the suspension or permanent exclusion, 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 a suspension or permanent exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.
61. The information in paragraphs 57 to 60 must be provided in writing but can be provided by any effective method (paragraph 66 provides guidance on this issue).
62. The failure of a headteacher to give notice of the information in paragraphs 57 and 60 by the required time does not relieve the headteacher of the duty to serve the notice. A notice is not made invalid solely because it has not been given by the required time.
63. If a child is suspended again following their original suspension, or is subsequently permanently excluded, the headteacher must inform parents and where relevant, the

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<sup>28</sup> Sections 103 to 105 Education and Inspections Act 2006 and regulations made under these sections.

pupil's social worker or local authority if the pupil has an EHCP, without delay and issue a new exclusion notice to parents and the social worker.

## **Informing parents about an exclusion**

64. For notifications under paragraph 54, although this must not delay notification, 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 headteacher. Things to consider:

- Has the school spoken to the parents (and when appropriate, the child's social worker) to ensure they fully understand the type/scale of the incident?
- Has the school considered how to communicate accessibly and clearly, including whether parents may have particular communication needs relating to a disability or having English as an additional language (EAL)?
- Has the school we provided sufficient details in the suspension or permanent exclusion notice letter on the reasons for the suspension or permanent exclusion?
- Does the notice contain all the required information as set out in part six of the statutory suspension and permanent exclusion guidance?
- Have we informed parents (and when appropriate, the pupil's social worker or the local authority if a pupil has an EHCP) whether their pupil will be able to sit any national curriculum test(s) or public examination(s) occurring during the suspension or permanent exclusion?
- When several suspensions have been issued in a term, have I informed parents of their right of representation to the governing board?
- Letter templates might be available from the local authority.

65. When notifying parents about a suspension or permanent exclusion, the headteacher 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 part six.

66. For notifications under paragraphs 57 to 59, 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 suspended or permanently excluded pupil. Where information is sent home with the pupil, the headteacher should consider sending a duplicate copy by an alternative method or confirming that the information has been received.

67. When notifying parents about a suspension or permanent exclusion, the headteacher should draw attention to relevant sources of free and impartial information. This information should include:

- **[To be updated]** A link to this statutory guidance on exclusions (<https://www.gov.uk/government/publications/school-exclusion>).
- Coram’s Child Law Advice service can be accessed through their website <https://childlawadvice.org.uk/information-pages/school-exclusion/> or contacted on 0300 330 5485 from Monday to Friday, 8am – 6pm.
- ACE education run a limited service and can be reached on 0300 0115 142 on Monday to Wednesday from 10am to 1pm during term time. Information can be found on the website: <http://www.ace-ed.org.uk/>.
- Independent Provider of Special Education Advice (known as IPSEA – [www.ipsea.org.uk](http://www.ipsea.org.uk)) is a registered charity. It offers free and independent information, advice and support to help get the right education for children and young people with all kinds of special educational needs (SEN) and disabilities.
- Autism Education Trust (AET), via the National Autistic Society (NAS) operates a helpline and advice service for parents whose child is at risk or has been excluded. They also provide guidance and advice for education professionals on good practice and the law with regard to autistic children/young people and exclusion. Contact 0207 903 3660. Website: [autismeducationtrust.org.uk](http://autismeducationtrust.org.uk).
- SEN Information Advice & Support Services Network (formerly known as the local parent partnership)

## Informing social workers and Virtual School Heads about an exclusion

68. Information sharing is vital in safeguarding children and promoting their welfare, including their educational outcomes. Schools should be proactive in sharing information as early as possible to help identify, assess, and respond to risks or concerns about the safety and welfare of children. [Keeping children safe in education](#) and Working Together to Safeguard Children set out the requirements for schools and colleges with regard to information sharing in more detail.

69. Whenever a headteacher suspends or permanently excludes a pupil they must, without delay, and no later than three days after their decision, also notify the social

worker, if a pupil has one, and the VSH, if the pupil is a LAC<sup>29</sup>, of the period of the suspension or permanent exclusion and the reason(s) for it. The information in paragraphs 57 to 60 must be provided in writing to the local authority.

70. Both the social worker and VSH should, as far as possible, attend the governing board meeting if there is one, in order to share information. Further guidance to social workers and Virtual School Heads on attending a governing board meeting can be found in paragraphs 115 to 117.

## **Informing the governing board and the local authority about an exclusion<sup>30</sup>**

71. The headteacher must, without delay, notify the governing board and the local authority of:

- any permanent exclusion (including where a suspension is followed by a decision to permanently exclude the pupil);
- any suspension or permanent exclusion which would result in the pupil being suspended or permanently excluded for a total of more than five school days (or more than ten lunchtimes) in a term; and
- any suspension or permanent exclusion which would result in the pupil missing a public examination or national curriculum test.

72. 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 permanent exclusion and the reason(s) for it without delay. The headteacher must also inform the local authority and governing board once per term of any other suspensions of which they have not previously been notified.

73. Notifications must include the reason(s) for the suspension or permanent exclusion and the duration of any suspension or, in the case of a permanent exclusion the fact that it is permanent.

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

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<sup>29</sup> If the pupil is previously looked-after (PLAC) the VSH should provide advice and information, upon request from relevant parties (DT, parents, etc) but does not have a corporate parent role that they have for LAC.

<sup>30</sup> Paragraphs 71 to 74 gives guidance about section 51A Education Act 2002.

## Guidance to the head teacher on informing the governing board about an exclusion

75. The head teacher should ask the chair of the governing board whether there are clear processes in place for considering suspensions and permanent exclusions, such as:

- Ensuring parents and pupil are aware of their right to a consideration by the governing board
- Asking whether the governing board have taken steps to find a convenient date that the parent, other relevant parties, the local authority representative (if relevant) and the head teacher can attend, within the legal time limits
- Asking the governing board whether they have considered how to involve the pupil in the consideration process
- Collecting all relevant documents, anonymising them, if required, and providing them to all parties

76. The head teacher should ensure that they have informed the governing board about reinstatement and specify the correct timescale. They should also make clear to the governing board whether the need to consider reinstatement is dependent on receiving parental representations.

77. A head teacher should ensure a process is in place for a governing board when considering reinstatement following a permanent exclusion:

- Do governors understand the suspension and permanent exclusion process to enable a review within deadlines?
- Would governors benefit from additional training, including on behaviour management, routines, norms and consequences, disability awareness, the Equality Act 2010, the Children and Families Act 2014 and SEN provision?
- 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?



## Part six: The governing board and local authority's duties to arrange education for excluded pupils

Governing boards and local authorities play an important role in ensuring that children who have been excluded from school receive a suitable education that facilitates their successful reintegration or meets their long-term needs.

### The education of pupils from the sixth day of an exclusion<sup>31</sup>

78. For a suspension of more than five school days, the governing board (or local authority in relation to a pupil suspended 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 suspension. Where a child receives consecutive suspensions, these are regarded as a cumulative period of suspension for the purposes of this duty. This means that if a child has more than five consecutive school days of suspension, then education must be arranged for the sixth school day of suspension, regardless of whether this is as a result of one decision to suspend the pupil for the full period or multiple decisions to suspend the pupil for several periods in a row.

79. For permanent exclusions, the local authority must arrange suitable full-time education for the pupil to begin from the sixth school day after the first day the permanent exclusion took place<sup>32</sup>. This will be the pupil's 'home authority' in cases where the school is located in a different local authority area.

80. In addition, where a pupil has an EHCP, 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>33</sup>.

81. The local authority must have regard to the relevant statutory guidance when carrying out its duties in relation to the education of looked-after children, which can be found here: [Promoting the education of looked-after children and previously looked-after children \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444444/promoting-the-education-of-looked-after-children-and-previously-looked-after-children.pdf). Where a looked-after child is excluded, the school should document the provision of immediate suitable education in the child's PEP.

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<sup>31</sup> Section 100 of the Education and Inspections Act 2006, section 19 of the Education Act 1996 and regulations made under those sections apply to paragraphs 78 to 82.

<sup>32</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>33</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.

82. 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.

## The education of pupils prior to the sixth day of an exclusion

83. It is important for schools to help minimise the disruption that suspension or permanent exclusion can cause to a pupil's education. Whilst the statutory duty on governing boards or local authorities is to arrange full-time education from the sixth day of a suspension or permanent exclusion, there is an obvious benefit in starting this provision as soon as possible. In particular, in the case of a looked-after child or child with a social worker, the school and the local authority should work together to arrange alternative provision from the first day following the suspension or permanent exclusion.

84. Where it is not possible, or not appropriate, to arrange alternative provision during the first five school days of a suspension or permanent exclusion, the school should take reasonable steps to set and mark work for the pupil. Online pathways such as Google Classroom or Oak Academy can be used but schools should ensure that the work set is accessible and achievable by the pupil outside school,

85. The chair of the governing board should ensure that 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 a suspension. This includes:

- Checking that there is a process in place for the governing board to assure itself that the education provided is suitable and full-time
- Quality assuring provision, and ensuring that any previous placements been evaluated, including in relation to support for any SEND the pupil may have
- Checking whether there is a process in place to monitor the pupil's attendance and behaviour at the provision
- Checking whether the correct attendance code is being used
- Checking whether the pupil's child protection file and any other information relevant to the pupil's safeguarding and welfare been securely transferred to their new setting as early as possible, in line with [Keeping children safe in education 2021 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/91221/keeping-children-safe-in-education-2021.pdf)

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

Governing boards have a key responsibility in relation to considering whether excluded pupils should be reinstated. This forms part of their wider role to hold executive leaders to account for the lawful use of exclusion, in line with the duties set out in law, including equalities duties.<sup>34</sup>

### Guidance for governing boards on considering an excluded pupil's reinstatement<sup>35</sup>

86. The governing board has a duty to consider parents' representations about a suspension or permanent exclusion. The requirements on a governing board to consider the reinstatement of a suspended or permanently excluded pupil depend upon a number of factors (these requirements are illustrated by the diagram on page 35, *A summary of the governing board's duties to review the head teacher's exclusion decision*).
87. In the case of a maintained school, the governing board may delegate its functions with respect to the consideration of a suspension or permanent exclusion to a designated sub-committee consisting of at least three governors.
88. 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.
89. The governing board must consider and decide on the reinstatement of a suspended or permanently excluded pupil within 15 school days of receiving notice of a suspension or permanent exclusion from the head teacher if:
- it is a permanent exclusion;
  - it is a suspension which would bring the pupil's total number of school days out of school to more than 15 in a term; or
  - it would result in the pupil missing a public examination or national curriculum test.
90. The requirements are different for suspensions where a pupil would be suspended for more than five but less than 16 school days in a term. In this case, if the parents make representations, the governing board must consider and decide within 50

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<sup>34</sup> [Governance Handbook 2019 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/414142/governance-handbook-2019.pdf)

<sup>35</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 applies to paragraphs 86 to 95.

school days of receiving the notice of suspension whether the suspended pupil should be reinstated. In the absence of any representations from the parents, the governing board can consider reinstatement on their own.

91. Where a suspension or permanent 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 and decide on the suspension or permanent exclusion before the date of the examination or test. If it is not practical for sufficient governors to consider the reinstatement before the examination or test, the chair of governors, in the case of a maintained school, may consider the suspension or permanent exclusion alone and decide whether or not to reinstate the pupil<sup>36</sup>.

92. In the case of an academy the pupil's reinstatement may be considered by a smaller sub-committee if the trust's articles of association allow them to do so.

93. The following parties must be invited to a meeting of the governing board and allowed to make representations or share information:

- parents (and, where requested, a representative or friend);
- the pupil if they are 18 years or over;
- the headteacher;
- a representative of the local authority (in the case of a maintained school or PRU);<sup>37</sup>
- the child's social worker if the pupil has one; and
- the VSH if the child is LAC.

94. The governing board must make reasonable endeavours to arrange the meeting within the statutory time limits set out above and must try to have it at a time that suits all relevant parties. However, its decision will not be invalid simply on the grounds that it was not made within these time limits.

95. In the case of a suspension which does not bring the pupil's total number of days of suspension or permanent exclusion to more than five in a term, the governing board must consider any representations made by parents. There is also no deadline for this

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<sup>36</sup> Where the chair is unable to make this consideration, then the vice-chair may do so instead.

<sup>37</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.

meeting to be arranged, however, if this does occur then it should happen within a reasonable amount of time. In the absence of any representations from the parents, the governing board can consider reinstatement on their own.

## **Guidance for governing boards on using data on suspensions and permanent exclusions**

96. Governing boards should already be challenging and evaluating what their school's data is telling them about their school or academy trust. Boards should carefully consider the level of pupil moves and the characteristics of pupils who are moving on any permanent exclusions to ensure the sanction is only used when necessary as a last resort.
97. Governing boards should review suspensions and permanent exclusions, those taken off roll and those on roll but attending education off site. It is important to consider both the cost implications of directing children to be educated off site in AP and whether there are any patterns to the reasons or timing of moves. For example, if high numbers of children with SEND are moving, the school, academy or trust may wish to consider reviewing its SEN support.
98. Multi-academy trusts (MATs) may also choose to work with their academies to consider this information, and whether or not there are patterns across academies within a MAT, recognising that numbers in any one academy are often too low to allow for meaningful statistical analysis.
99. Governing boards should consider:
  - effectiveness and consistency in implementing the school's behaviour policy
  - the school register and absence codes
  - instances where pupils receive repeat suspensions
  - interventions in place to support pupils at risk of suspension or permanent exclusion
  - any variations in the rolling average of permanent exclusions to understand why this is happening, and to ensure they are only used when necessary
  - timing of moves and permanent exclusions, and whether there are any patterns, including any indications which may highlight where policies or support are not working

- understanding the characteristics of excluded pupils, and why this is taking place
- whether the placements of pupils directed off site into AP are reviewed at sufficient intervals to provide assurance that the education is achieving its objectives and that pupils are benefiting from it
- Further information can be found here: [Understanding your data: a guide for school governors and academy trustees - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/understanding-your-data-a-guide-for-school-governors-and-academy-trustees)

## A summary of the governing board's duties to review the headteacher's exclusion decision

Conditions of exclusion

Governing board duties

Does the exclusion meet any of the following conditions?

- It is a permanent exclusion
- It is a suspension that alone, or in conjunction with previous suspensions, will take the pupil's total number of days out of school above 15 for a term
- Will the suspension or permanent exclusion result in the pupil missing a

Yes

No

The governing board must convene a meeting to consider reinstatement **within 15 school days** of receiving notice of the suspension or permanent exclusion.<sup>38</sup>

\*If the pupil will miss a public exam or national curriculum test, the governing board must take reasonable steps to meet **before** the date of the examination. If this is not practical, the chair of governors may consider pupil's reinstatement alone.<sup>39</sup>

Will the suspension(s) take the pupil's total number of school days out of school above five but less than 16 for the term?

No

Yes

The governing board must consider any representations made by parents and has the power to consider the reinstatement of the pupil.

Have the pupil's parents requested a governing board meeting?

Yes

No

The governing board must convene a meeting to consider reinstatement within 50 school days of receiving notice of the suspension.

The governing board is not required to consider the suspension but does have the power to consider the reinstatement of the pupil.

<sup>38</sup> The governing board may delegate its functions to consider a suspension or permanent exclusion to a designated committee.

<sup>39</sup> The ability for a chair to review in the case of public exams refers only to maintained schools.



## Preparing for the consideration of a suspension or permanent exclusion

100. Where the governing board is legally required to consider the reinstatement of a suspended or permanently excluded pupil they should:

- not discuss the suspension or permanent exclusion with any party outside the meeting;
- ask for any written evidence in advance of the meeting, including witness statements<sup>40</sup> and other relevant information held by the school such as those relating to a pupil's SEN and the pupil's school record;
- 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 the pupil to be accompanied by a friend, representative (where a pupil under 18 is to be invited as a witness, the governing board should first seek parental consent);
- invite the pupil's social worker, if they have one, and if the pupil is LAC, the VSH to attend;
- 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 suspended or permanently 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 suspended or permanently excluded pupil may feed in their views by other means if attending the meeting is not possible.

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<sup>40</sup> Witness statements can be gathered from the headteacher, the pupil's teachers, the designated safeguarding lead, the pupil themselves, the pupil's parent(s) and if applicable, the designated teacher for looked-after children. Where possible, written statements should also be gathered from the pupil's social worker, and for looked-after children the area's Virtual School Head.

## **Pupils who may miss a public examination or national curriculum test if they are suspended or permanently excluded**

101. Whilst there is no automatic right for a suspended or permanently excluded pupil to take a public examination or national curriculum test on the school's premises, the governing board should consider whether it would be appropriate to exercise its discretion to allow a suspended or permanently excluded pupil onto the premises for the sole purpose of taking the examination or test or whether this could be facilitated in another way.

## **Considering the reinstatement of a suspended or permanently excluded pupil<sup>41</sup>**

102. Where the governing board is legally required to consider reinstating a suspended or permanently excluded pupil, they must consider both the interests and circumstances of the suspended or permanently excluded pupil, and that of other pupils, staff, and school community as a whole.

103. The governing board must also consider any representations made by or on behalf of:

- parents or the pupil if they are over 18 years old;
- the head teacher;
- the pupil's social worker if the pupil has one;
- if the pupil is looked after<sup>42</sup>, the VSH;
- and the local authority (in the case of a maintained school or PRU).

104. When establishing the facts in relation to a suspension or permanent exclusion 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'.

105. In the light of its consideration, the governing board can either:

- decline to reinstate the pupil; or

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<sup>41</sup> Paragraphs 102 to 107 gives guidance about section 51A Education Act 2002.

<sup>42</sup> If the pupil is previously looked-after (PLAC) the VSH should provide advice and information, upon request from relevant parties (DT, parents, etc) but does not have a corporate parent role that they have for LAC.

- direct reinstatement of the pupil immediately or on a particular date.

106. Where a reinstatement meeting would make no practical difference because, for example, the pupil has already returned to school following the expiry of a suspension or the parents make clear they do not want their child reinstated, the governing board must still meet to consider whether the pupil should or would have been officially allowed back into the school. Ideally, a reinstatement meeting should happen as soon as possible and should ideally be held before the pupil is back in school.

107. If it decides against the reinstatement of a pupil who has been permanently excluded the parents can request an independent review.

### **Guidance on considering the reinstatement of a suspended or permanently excluded pupil**

108. The governing board should agree amongst themselves 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 aged under 18 are speaking about their own suspension or permanent exclusion or giving evidence to the governing board.

109. 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 and the record of discussion should state clearly how the decisions have been reached.

110. The governing board should ask all parties to withdraw from the meeting 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.

111. In reaching a decision on whether or not a pupil should be reinstated, the governing board should consider whether the decision to suspend or permanently exclude the pupil was lawful, reasonable, and procedurally fair. This should take into account the welfare and safeguarding of the pupil and their peers, the headteacher's legal duties and any evidence that was presented to the governing board in relation to the decision to exclude.

112. The governing board should note the outcome of its consideration on the pupil's educational record, and copies of relevant papers should be kept with the educational record.

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

114. Claims of discrimination to the First-tier Tribunal<sup>43</sup> (Special Educational Needs and Disability), in relation to disability, or County Court<sup>44</sup>, for all other forms of discrimination, can be made up to six months after the discrimination is alleged to have occurred. Schools should retain records and evidence relating to an exclusion for at least six months in case such a claim is made.

## **Guidance to social workers and Virtual School Heads on attending the governing board meeting**

### **Social workers**

115. It is likely that pupils with a social worker have experienced or are experiencing adversity or difficulties. Social workers can provide important information that helps the governing board understand the experiences of a pupil and their welfare.

116. Social workers should, as far as possible, attend the governing board meeting to share information. This should include helping to identify how the pupil's circumstances may have influenced the circumstances of the pupil's suspension or permanent exclusion and ensuring that safeguarding needs and risks and the child's welfare are taken into account.

### **Virtual School Heads**

117. The VSH should, as far as possible, attend the governing board meeting to share information, where the pupil is a looked-after child. This should include helping the governing board to understand the pupil's background and circumstances. They should also be able to advise the board on the possible contribution that the pupil's circumstances could have made to the suspension or permanent exclusion.

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<sup>43</sup> As with the county court for other types of discrimination, claims have to be brought within 6 months of the act to which the claim relates, and the tribunal has the power to consider claims after that time has passed if it considers it just and equitable to do so.

<sup>44</sup> Proceedings must be brought within 6 months of the date of the act to which the claim relates, although the county court has power to extend this period if it considers it just and equitable to do so.

## The governing board's duty to notify people after its consideration of reinstatement<sup>45</sup>

118. Where legally required<sup>46</sup> to consider reinstating a suspended or permanently excluded pupil, the governing board must notify parents or the pupil if they are 18 years or over, the headteacher, and where relevant, the pupil's social worker and or the VSH of its decision, and the reasons for it, in writing and without delay. Where the pupil resides in a different local authority area from the one in which the school is located, the governing board must also inform the pupil's 'home authority'.

119. In the case of a permanent exclusion where the governing board decides not to reinstate the pupil, the governing board's notification must state that the exclusion is permanent and provide notice of parents' right to ask for the decision to be reviewed by an independent review panel and the following information:

- 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 123);
- where and to whom an application for a review (and any written evidence) should be submitted;
- 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 permanent exclusion;
- that, regardless of whether the permanently excluded pupil has recognised SEN, parents have a right to require the local authority/academy trust to appoint a SEN expert to advise the review panel;
- details of the role of the SEN expert; and
- that parents may, at their own expense, appoint someone to make written and/or oral representations to the panel.

120. 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 permanent 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

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<sup>45</sup> Paragraphs 118 to 123 gives guidance about section 51A Education Act 2002.

<sup>46</sup> In the case of a suspension which does not leave the pupil's total number of days of suspension or permanent exclusion above five in a term, or a suspension which leaves the total at or above five but below 15 and where the parent or adult pupil does not make representations, the governing board are not required to inform parents about reinstatement.

discrimination, or the County Court, in the case of other forms of discrimination.

121. That a claim of discrimination under the Equality 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 permanently excluded).

122. The governing board may provide the information in paragraphs 118 and 119 by delivering it directly to parents in person or to their last known address or posting it first class to that address.

123. 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.

### **Providing information to parents following its decision on reinstatement**

124. 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.

125. Where relevant, it will be for the governing board 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.

126. 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 218 to 221. 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 a SEN expert to be appointed in any application for a review.

127. Where the governing board declines to reinstate the pupil, it 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 not to reinstate a permanently excluded pupil, which should also include the information set out in paragraph 67.

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

The correct removal of pupils from the school admission register is critical to ensuring that permanent exclusions are carried out lawfully and that such pupil movements can be effectively monitored. By carrying this role out properly, governing boards can reduce opportunities for the illegal off-rolling of children and make this issue easier to identify and tackle.

### Guidance for governing boards on removing an excluded pupil's name from the school register<sup>47</sup>

128. The governing board must ensure that a pupil's name is removed from the school admission register if:

- 15 school days have passed since the parents were notified of the governing board's decision to not 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 panel.

129. The school cannot backdate the deletion of the pupil's name to the date the pupil's exclusion began.

130. 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.

131. The return must include:

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<sup>47</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. Paragraphs 128 to 132 gives guidance about section 51A Education Act 2002.

- the pupil's full name;
- the full name and address of any parent with whom the pupil normally resides;
- at least one telephone number at which any parent with whom the pupil normally resides can be contacted in an emergency;
- and the grounds upon which their name is to be deleted from the admissions register (i.e., permanent exclusion);
- if the pupil's parent or parents have told the school that the pupil is going to live with one or more of them at a new address, the return must also include the new address, the name of the parent(s) the pupil is going to live there with, and the date when the pupil is going to start living there;
- if the pupil's parent or parents have told the school that the pupil is already registered at another school or is going to go to another school, the return must also give the name of that school and the first date when the pupil attended or is due to attend there; and
- this return must be made as soon as the grounds for deletion is met and no later than the deletion of the pupil's name.

132. 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 on providing exclusion data

133. In addition, within 14 days of a request, a governing board must provide to the Secretary of State and (in the case of maintained schools and PRUs) the local authority, certain information about any pupils suspended or permanently excluded within the last 12 months<sup>48</sup>.

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

134. Whilst a permanently excluded pupil's name remains on a school's admission register, the pupil should be marked using the appropriate attendance code. Where alternative provision has been made and the pupil attends it, an appropriate

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<sup>48</sup> As set out in the Education (Information About Individual Pupils) (England) Regulations 2013.



attendance code, such as Code D (Dual Registered - at another educational establishment) or Code B (Off-site educational activity, 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>49</sup>.

## **Guidance on common transfer files**

135. The common transfer file should be transferred within 15 school days of the pupil ceasing to be registered at the school.

## **Guidance to schools on sharing child protection information when a child is permanently excluded**

136. Where pupils leave the school (including in year transfers) the designated safeguarding lead should ensure their child protection file is transferred to the new school or college as soon as possible, and within 5 days for an in-year transfer or within the first 5 days of the start of a new term. This should be transferred separately from the main pupil file, ensuring secure transit, and confirmation of receipt should be obtained. Receiving schools and colleges should ensure key staff such as designated safeguarding leads and SENCOs or the named person with oversight for SEN in colleges, are aware as required.

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<sup>49</sup> Departmental advice on attendance codes can be found at the following link:  
<https://www.gov.uk/government/publications/school-attendance>.

## Part nine: The local authority/academy trust's duty to arrange an independent review panel

Independent review panels contribute to a robust process of scrutiny to ensure that exclusions are lawful, reasonable, and procedurally fair. This section sets out how and when local authorities and academy trusts should organise such reviews when requested.

### Arranging a date and venue<sup>50</sup>

137. 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.

138. 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 summarised in paragraph 118); 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 permanent exclusion<sup>51</sup>.

139. Any application made outside of the legal time frame must be rejected by the local authority/academy trust.

140. 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 permanent exclusion to the First-tier Tribunal (Special Educational Needs and Disability) or the County Court<sup>52</sup>.

141. 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.

142. 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

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<sup>50</sup> Paragraphs 137 to 145 gives guidance about section 51A Education Act 2002.

<sup>51</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>52</sup> In such circumstances, the Tribunal or Court may decide to delay its consideration until after the independent review panel process has been completed.

able to attend<sup>53</sup>. 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).

143. The venue must be reasonably accessible to all parties<sup>54</sup>.

144. 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.

145. 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.

### **Guidance to the local authority and academy trust on arranging a date and venue for a review**

146. 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.

147. 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.

### **Appointing panel members<sup>55</sup>**

148. 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 headteachers<sup>56</sup>. These must be:

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<sup>53</sup> Where it is not possible to have in person representation by social workers or VSH, written statements should be provided as far as possible.

<sup>54</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>55</sup> Paragraphs 148 to 151 gives guidance about section 51A Education Act 2002.

<sup>56</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 a permanent exclusion from any type of school covered by this guidance.

- 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 (of a maintained school, members of a 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 headteachers during that time.
- Headteachers or individuals who have been a headteacher within the last five years.

149. A person may not serve as a member of a review panel if they:

- are a member of the local authority, if the excluding school is a maintained school or pupil referral unit;
- are a director of the academy trust of the school, if the excluding school is an academy;
- are the headteacher of the school who has permanently excluded the pupil 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 school who has permanently excluded the pupil (unless they are employed as a headteacher 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 permanent 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 headteacher at another school); or
- have not had the required training within the last two years (see paragraph 175).

150. In relation to panel members appointed by the local authority, sections 173(4) and 174(1) of the Local Government Act 1972 apply when determining allowances for financial loss, travel, or subsistence. It is for the academy trust to determine its own payment arrangements for panel members.

151. 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.

## Guidance to the local authority/academy trust on appointing independent review panel members

152. 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.
153. 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 permanently excluded, for example: special school; boarding school; PRU; academy or maintained school.
154. 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.
155. To meet their duties within the statutory time frame, the local authority/academy trust 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.

## Appointing a clerk and the clerk's role<sup>57</sup>

156. 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 suspensions and permanent exclusions.
157. 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 the hearing and make oral representations to the panel; and be represented:
    - a. the parents or pupil if they are 18 years old;
    - b. the headteacher;
    - 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 before the review. These papers must include:

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<sup>57</sup> Paragraphs 156 to 158 gives guidance about section 51A Education Act 2002.

- 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.

158. Where a clerk is not appointed, the functions in paragraph 157 become the responsibility of the local authority/academy trust.

### **Guidance to the local authority/academy trust on appointing an independent review panel clerk**

159. The clerk should not have served as clerk to the governing board in the meeting at which the decision was made by the governing board not to reinstate the pupil.

160. 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 suspension and permanent exclusion.

161. 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.

### **Guidance to local authority/academy trust regarding the clerk's role on preparing for an independent review**

162. The local authority/academy trust should ensure the clerk follows the advice below (paragraphs 163 to 174).

163. The clerk should identify in advance of the meeting whether the pupil will be attending. Where a permanently 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 permanently 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.

164. The clerk should inform the parents of their right to bring a friend to the hearing.

165. 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 permanent 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.

166. 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.

167. Where character witnesses<sup>58</sup> are proposed, the clerk should seek the agreement of the panel; but this should be allowed unless there is good reason to refuse.

168. 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.

169. The general principle remains that permanently excluded pupils are entitled to know the substance behind the reason for their permanent exclusion and the school should communicate this effectively with the pupil. Whilst carrying this out it is important to ensure that any reasonable adjustments are made and recognising that the pupil may have additional needs (e.g., speech, language and communication needs, cognition difficulties or EAL).

170. Parties (who are parents, the pupil if they are 18 years or over, the headteacher of the school, the responsible body, and the arranging authority) 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. All parents may attend, if they wish to do so, and each can make representations and be represented.

171. In addition to written witness statements, the clerk should request written evidence from the school 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.

172. 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.

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<sup>58</sup> A character witness is someone who provides information not about the specifics of the incident(s) for which the pupil was permanently excluded but about the pupil's character and behaviour in general.

173. Where the head-teacher who permanently excluded the pupil has left the school, the panel may use its discretion in deciding whether to also invite this person to make representations.

174. 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.

## **Ensuring that panel members and clerks are trained<sup>59</sup>**

175. 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 suspensions and permanent exclusions on disciplinary grounds (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 headteachers, governing boards, and the panel under the Equality Act 2010
- 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.

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<sup>59</sup> Paragraph 175 gives guidance about section 51A Education Act 2002.



## Appointing a SEN expert

### Guidance to the local authority and the academy trust on appointing a SEN expert

176. If requested by parents with their application for an independent review, the local authority/academy trust must appoint a SEN expert to attend the review and must cover the associated costs of this appointment.
177. 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.
178. Parents or a pupil if they are 18 years or over 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.
179. The SEN expert's role is set out in paragraphs 218 to 221.
180. 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 permanent exclusion, which might reasonably be taken to raise doubts about their ability to act impartially. However, an individual should not be assumed to have such a connection simply by virtue of the fact that he/she is an employee of the local authority/academy trust.<sup>60</sup>
181. The SEN expert should 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.
182. 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 and disability. Additionally, they should also be able to demonstrate that they have experience of working in schools.
183. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, a local authority or academy trust, they should not

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<sup>60</sup> Paragraphs 176 to 180 gives guidance about section 51A Education Act 2002.

have had any previous involvement in the assessment or support of SEN for the permanently excluded pupil, or siblings of the permanently excluded pupil. The local authority/academy trust should request that prospective SEN experts declare any conflict of interest at the earliest opportunity.

184. The final decision on the appointment of a 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. 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.

185. 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.

## **Part ten: The roles of independent review panel members, the clerk, the SEN expert, the social worker, and the Virtual School Head in the conduct of an independent review**

The role of the independent review panel is to assess whether a pupil's exclusion has been lawful, reasonable, and procedurally fair and what further action might need to be taken. This section offers guidance on how IRPs should be conducted, and the roles of relevant experts and advocates, to achieve this.

### **Guidance on the independent review process<sup>61</sup>**

186. 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.

187. 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 permanently excluded pupil, including the circumstances in which the pupil was permanently excluded, and have regard to the interests of other pupils and people working at the school.

188. The panel must apply the civil standard of proof i.e., 'on the balance of probabilities' which means that it is more likely than not that a fact is true. This should be applied rather than the criminal standard of 'beyond reasonable doubt'.

189. Following its review, the panel can decide to:

- uphold the governing board's decision not to reinstate;
- recommend that the governing board reconsiders reinstatement; or
- quash the governing board's decision and direct that the governing board reconsiders reinstatement.

190. The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied vote, the chair has the casting vote.

191. The independent review panel's decision is binding on the: pupil; parents; governing board; headteacher; and local authority.

192. The panel may only quash a governing board's decision not to reinstate if it considers that the decision was flawed when considered in the light of the principles

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<sup>61</sup> Paragraphs 186 to 204 gives guidance about section 51A Education Act 2002.

applicable on an application for judicial review (statutory guidance on this consideration is provided by paragraphs 211 to 215).

193. New evidence may be presented to the panel, though the school may not introduce new reasons for the permanent exclusion or for the decision not to reinstate the pupil and the panel must disregard any new reasons that are introduced.

194. In deciding whether the governing board's decision was flawed, and therefore whether to quash the decision not to reinstate, the panel must only take account of the evidence that was available to the governing board at the time of it making its decision not to reinstate. This includes any evidence that the panel considers would, or should, have been available to the governing board and that it ought to have considered if it had been acting reasonably.

195. If evidence is presented that the panel considers it is unreasonable to expect the governing board to have been aware of at the time of its decision, the panel can take account of the evidence when deciding whether to recommend that the governing board reconsider reinstatement.

196. Where a SEN expert is present, the panel must seek and have regard to the SEN expert's view of how SEN may be relevant to the pupil's permanent exclusion.

197. Where a social worker is present, the panel must seek and have regard to the social worker's view of how the pupil's experiences, needs, safeguarding risks and/or welfare may be relevant to the pupil's permanent exclusion.

198. Where a VSH is present, the panel must seek and have regard to the VSH's view of how any of the child's background, educational and safeguarding needs were considered by the headteacher in the lead up to the permanent exclusion or relevant to the pupil's permanent exclusion.

199. 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.

200. 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 217 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 a permanently 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.

201. 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 permanently excluded pupil and their parents, and any victim.

202. A review cannot continue if the panel no longer has representation from each of the three categories of members required (see paragraph 148). In this event, the panel may be adjourned until the number can be restored.

203. 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.

204. 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 does not subsequently decide to offer to reinstate a pupil within ten school days; and
- any information that the panel has directed the governing board to place on the pupil's educational record.

## **Guidance to independent review panel members on the conduct of an independent review panel**

205. 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. The panel should support all parties to participate in the review and ensure that their views are properly heard. The independent review should be conducted in an accessible, unthreatening, and non-adversarial manner.

206. 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 a SEN expert can attend.

207. 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.

208. 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.

209. 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.

210. If a panel cannot continue because it no longer has representation from each of the three categories of members required (see paragraph 148) it should, having regard to the circumstances and the effect on the parties, victim, and pupil/parent, adjourn to allow reasonable time for enough missing members to become available.

## **Guidance to independent review panel members on coming to a decision**

211. 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 that the pupil should not be reinstated.

212. 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 suspensions and permanent exclusions and the legal principles that apply. Headteacher 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 a decision was reasonable in the circumstances.

213. 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 a 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?

214. 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 issues 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 headteacher who took the decision to exclude were also to vote on whether the pupil should be reinstated).

215. Where the criteria for quashing a decision not to reinstate has not been met, the panel should consider whether it would be appropriate to recommend that a governing board reconsiders its decision not to reinstate the pupil. This should not be the default option but should be used where evidence of procedural flaws has been identified that do not meet the criteria for quashing the decision, but which the panel believes justify a reconsideration of the governing board’s decision. This could include when new evidence presented at the review hearing was not available to the governing board at the time of its decision.

216. In all other cases the panel should uphold the governing board’s decision.

## **Guidance to independent review panel members on the financial readjustment/payment**

217. 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.

## **Guidance to SEN experts on their conduct during an independent review**

218. The SEN expert’s role is analogous to an expert witness, providing impartial specialist advice to the panel on how SEN might be relevant to the permanent 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.

219. 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 permanently excluded pupil, were lawful, reasonable, and procedurally fair (in line with the guidance to panels in paragraph 213). 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 permanent exclusion.

220. Where the school does not recognise a pupil as having 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 permanent exclusion.

221. 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.

## **Guidance to social workers on their attendance at an independent review**

222. The focus of the social worker's advice should be on whether the pupil's welfare, safeguarding needs and risks were considered in the lead up to the permanent exclusion. If the social worker believes that this was not the case, they should, where possible, advise the panel on the contribution that the pupil's needs could have made to the circumstances of the pupil's permanent exclusion.

## **Guidance to Virtual School Heads on their attendance at an independent review**

223. The focus of the VSH role for any LAC should be on helping the panel consider whether the child's background and educational needs were considered by the head teacher in the lead up to the permanent exclusion, including whether any additional support to the pupil could be provided to improve their behaviour and avoid exclusion where possible. If the VSH believes that this was not the case, they should, where possible, advise the panel on the contribution that the pupil's needs could have made to the circumstances of the pupil's permanent exclusion.



## **Guidance to the clerk and local authority/academy trust on the record of the proceedings of a review panel**

224. 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.
225. 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 Local Government and Social Care Ombudsman.
226. The local authority/academy trust should be aware of its duties under the Freedom of Information Act 2000, the Data Protection Act 2018, and the General Data Protection Regulation (EU) 2016/679 as it forms part of UK law (the UK GDPR) when retaining information.

## **Guidance to the independent review panel and clerk on notifying parties of the outcome of the review**

227. If the panel upholds the governing board's decision not to reinstate, the clerk should immediately report this to the local authority (who should inform, where a pupil has one, the social worker and VSH), and notify the parents and the governing board. If the pupil lives outside the local authority area in which the school is located, the clerk should make sure that the 'home authority' is also informed in writing of the outcome of the review without delay. This includes any situation where parents withdraw or abandon their application for a review.

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

When an independent review panel directs or recommends a pupil's reinstatement, the governing board has the opportunity to look at the pupil's reinstatement afresh. This section offers guidance on how this reconsideration should be undertaken and the necessary next steps.

### Guidance on the governing board's duty to reconsider reinstatement following a review<sup>62</sup>

228. 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 day of delivery if it is delivered directly or on the second working day after posting if it is sent by first class mail.

229. 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.

230. 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 will 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 will be required to make an equivalent payment directly to the local authority in whose area the school is located. This payment will be in addition to any funding that would normally follow a permanently excluded pupil.

231. If the governing board offers to reinstate the pupil within the specified timescale but this is declined by the parents, no budget adjustment 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.

232. The clerk must also note, where a pupil is reinstated following a direction or recommendation to reconsider, or would have been reinstated if it had been practical to do so, the permanent exclusion does not count towards the rule that an admission authority may refuse to admit a child who has been permanently excluded twice; nor, in the case of a community or voluntary controlled school, does it count for the

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<sup>62</sup> Paragraphs 228 to 233 gives guidance about section 51A Education Act 2002.

purposes of the rule that the governing board may appeal against the decision of the local authority as the admission authority to admit the child.

233. 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 headteacher;
- the local authority; and, where relevant, the 'home authority'.

234. 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.

235. 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.

236. 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.

237. The governing board should note the outcome of its consideration on the pupil's educational record, and copies of relevant papers should be kept with the educational record.

238. 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.

## Part twelve: The local authority's role in overseeing the financial readjustment/payment<sup>63</sup>

In certain cases, a transfer of funding will take place to ensure that the right resources and support follows a pupil following their permanent exclusion. This section sets out when the local authority is responsible for arranging such funding transfers.

### Guidance to the local authority on overseeing the transfer of funding following a permanent exclusion

239. 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>64</sup>.

240. 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<sup>65</sup>, issued on an annual basis.

241. 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.

242. 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.

243. 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.

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<sup>63</sup> Paragraphs 239 to 243 gives guidance about section 51A Education Act 2002. 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>64</sup> This does not include circumstances where a school has voluntarily entered into a separate legally binding agreement with the local authority.

<sup>65</sup> <https://www.legislation.gov.uk/uksi/2021/59/made>

244. 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 the payment to the local authority in which the academy is located within the same timescale.

245. 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.

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

Police involvement and parallel criminal proceedings against a pupil may affect how the exclusion and its review process are conducted, although they must always remain lawful, reasonable, and procedurally fair. This section offers guidance to headteachers, governing boards, and independent review panels when this is the case.

### Guidance for headteachers, governing boards and independent review panels on police involvement and parallel criminal proceedings

246. The headteacher need not postpone taking a decision on a suspension and permanent exclusion solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, the headteacher will need to take a decision on the evidence available to them at the time. Please see paragraphs 23 and 24 in this guidance **[placeholder: for updated guidance on KSCIE]**. In all cases, schools should follow general safeguarding principles as found in [Keeping children safe in education 2021 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/90122/keeping-children-safe-in-education-2021.pdf).

247. Where the evidence is limited by a police investigation or criminal proceedings, the headteacher should consider any additional steps they may need to take to ensure that the decision to suspend or permanently exclude is fair. However, the final decision on whether to suspend or permanently exclude is for the headteacher to make.

248. 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.

249. 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 likely length of delay if the hearing were adjourned and the effect it may have on the suspended or permanently excluded pupil, the parents, any victim, or the

school; and

- whether an adjournment or declining to adjourn might result in injustice.

250. 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 201).

## Annex A: Further information

Guidance	Link
<b>Behaviour in Schools</b>	<a href="http://www.gov.uk">Behaviour in Schools - GOV.UK (www.gov.uk)</a>
<b>Governance handbook and competency framework</b>	<a href="http://publishing.service.gov.uk">Governance Handbook 2019 (publishing.service.gov.uk)</a>
<b>Alternative Provision</b>	<a href="http://www.gov.uk">Alternative Provision: Statutory guidance for local authorities, as well as headteachers and governing bodies of settings providing alternative provision - GOV.UK (www.gov.uk)</a>  <a href="http://www.gov.uk">Education for children with health needs who cannot attend school - GOV.UK (www.gov.uk)</a>
<b>Mental health in schools</b>	<a href="http://publishing.service.gov.uk">Mental health and behaviour in schools (publishing.service.gov.uk)</a>
<b>Children with Special Educational Needs and Disabilities</b>	<a href="http://www.gov.uk">Children with special educational needs and disabilities (SEND) - GOV.UK (www.gov.uk)</a>  <a href="http://www.gov.uk">SEND code of practice: 0 to 25 years - GOV.UK (www.gov.uk)</a>
<b>Departmental Advice on attendance</b>	<a href="http://www.gov.uk">School attendance: guidance for schools - GOV.UK (www.gov.uk)</a>
<b>Departmental Advice on safeguarding and child protection</b>	<a href="http://publishing.service.gov.uk">Keeping children safe in education 2021 (publishing.service.gov.uk)</a>  <a href="http://www.gov.uk">Sexual violence and sexual harassment between children in schools and colleges - GOV.UK (www.gov.uk)</a>  <a href="http://publishing.service.gov.uk">Working Together to Safeguard Children 2018 (publishing.service.gov.uk)</a>  <a href="http://www.gov.uk">Children missing education - GOV.UK (www.gov.uk)</a>
<b>Departmental Advice on Promoting the education of looked-after and previously looked-after children</b>	<a href="http://www.gov.uk">Promoting the education of looked-after and previously looked- after children - GOV.UK (www.gov.uk)</a>  Adverse Childhood Experiences training and resources (funded by the Home Office): <a href="https://www.acesonlinelearning.com/">https://www.acesonlinelearning.com/</a>  <a href="http://publishing.service.gov.uk">The designated teacher for looked-after and previously looked- after children (publishing.service.gov.uk)</a>
<b>Sharing and publishing information</b>	<a href="http://www.gov.uk">What maintained schools must publish online - GOV.UK (www.gov.uk)</a>  <a href="http://www.gov.uk">What academies, free schools and colleges should publish online - GOV.UK (www.gov.uk)</a>  <a href="http://www.gov.uk">School to school service: how to transfer information - GOV.UK (www.gov.uk)</a>





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write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

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