

Busy Governance Guide to Exclusions

1. There are two types of exclusion, fixed period exclusions of one or more school days up to a maximum of 45 days cumulatively per school year and permanent exclusions where a child is removed from the register at the school and the LA then finds alternative provision for them. Schools cannot convert a fixed-term exclusion into a permanent exclusion. Instead, they must issue a separate permanent exclusion. Exclusions from maintained schools, academies and pupil referral units in England are covered by [guidance](#) regularly updated. **Note: Internal exclusion** is an **internal** process within the school and is used when the objective is to remove the pupil from class, for disciplinary reasons, not from the school site.

2. 'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off' are unlawful, regardless of whether they occur with the agreement of parents or carers. If a pupil is sent home in response to a breach of discipline, this must be formally recorded as an exclusion.

3. Only a headteacher (or acting headteacher) can exclude a pupil and this must be on disciplinary grounds. Any decision to exclude must be lawful, rational, reasonable, fair and proportionate. Permanent exclusions must be a last resort. **It is unlawful** to exclude for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for reasons such as: academic attainment/ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting. Consider including in your school behaviour policy reference to incidents that would result in automatic consideration for a permanent exclusion.

4. In every instance where a pupil is sent home for disciplinary reasons, headteachers must formally record and specify the length of the exclusion.

5. SEND and exclusions: Schools are required by law to ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion; take account of their statutory duties in relation to SEND when administering the exclusion process; this includes having regard to the SEND Code of Practice and avoid (as far as possible) excluding permanently any pupil with a statement of SEND or a looked after child. If an excluded child has an Education, Health and Care Plan (EHCP), the council may have to review the plan, or reassess their needs, with parents, "with a view to identifying a new placement".

6. From the sixth day of a fixed period exclusion, schools are required to arrange full-time education for the excluded pupil. This duty would be triggered by consecutive fixed period exclusions totaling more than five days.

7. The headteacher must, without delay, notify the governing board (GB) and the Local Authority of any permanent exclusion or any fixed period exclusion which would result in the pupil being excluded for more than five school days in a term, missing a public examination or national curriculum test. From September 2022 legislative changes mean that if a pupil has a social

worker, or if a pupil is looked-after, the headteacher must now, also without delay after their decision, notify the social worker and/or Virtual School Head (VSH), as applicable.

The headteacher must notify the Local Authority as soon as possible and notify the GB of all other exclusions once a term including the reasons for the exclusion and the duration of any exclusion. Governors should keep a record of the number of exclusions and if the number is rising ask why.

Headteachers may cancel an exclusion that has not been reviewed by the governing board. This practice is sometimes known as withdrawing/rescinding a suspension or permanent exclusion. If this occurs, parents, the governing board and the local authority should be notified, and if relevant, the social worker and VSH.

8. The governing board may delegate their functions with respect to the consideration of an exclusion decision to a designated sub-committee consisting of at least three governors.

9. While current government guidance makes no reference to governor training on exclusions, it is very important that governors/trustees/committee members who are called upon to review exclusions receive training along with the clerk/governance professional.

10. Parents are entitled to make representations about any exclusions that take place and when they do Governing Boards (GB) must consider them. For fixed term exclusions the GB must consider the representations within 50 days of receiving them, although the GB has no power to overturn the headteacher's decision, or have to meet with parents. It is often at this point that parents will also make use of the school complaints procedure if they feel they are not being given an opportunity to be heard. However, if the fixed term exclusion total for the term is over 5 days and the parents have requested a GB meeting, then the GB must arrange one within 50 days of receiving notice of exclusion. In the case of a suspension which does not bring the pupil's total number of days of suspension to more than five in a term, the governing board must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

11. Where an exclusion would result in a pupil missing a public examination or national curriculum test, a GB should consider the exclusion before the date of the examination or test. The guidance states that the GB must, "so far as is reasonably practicable", consider the exclusion before the exam takes place. It sets out what schools should do if not enough governors are available to do this.

12. Permanent exclusions and fixed period exclusions that result in the pupil being excluded for more than 15 school days in a single term must be reviewed by the GB within 15 days of being notified regardless of whether parents make a representation. The purpose of the review is for the GB or panel to have oversight of whether the headteacher's decision to exclude was lawful, rational, reasonable, fair and proportionate.

13. In reaching a decision on whether or not to reinstate a pupil, the GB should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the headteacher's legal duties. When establishing the facts in relation to an exclusion, the GB must decide whether facts are true, with the guidance stating that "the decision-maker(s)

should accept that something happened if it is more likely that it happened than that it did not happen”

14. For maintained schools it is the responsibility of the LA to arrange an independent review panel (IRP) if parents appeal the decision of the GB. In academies, it is the responsibility of the academy trust. The LA or the academy trust must ensure that these individuals are entirely independent from the school that has made the exclusion that is being considered. Schedule 1 to the Regulations sets out explicit requirements in relation to the composition and training of members of IRPs. The IRP reviews the GB decision on the balance of probabilities to decide if the decision was flawed or not. The governor who chaired the review panel will be expected to attend the IRP. The IRP will need to be clerked, ideally by a clerk that has not served at the governing board review meeting of the relevant exclusion case and the academy trust must ensure that they are fully qualified for their role. The IRP will either uphold the decision of the GB or recommend them or direct them to review their original decision. The GB would then have to carry this out within 10 days. If the Review Panel decides that the exclusion was unfair or illegal and **directs** the GB to reconsider a financial penalty of £4000 can be levied on the school if it refuses to offer to readmit the excluded child. .

15. Useful Documents: Ofsted will be looking at exclusion data, which is still referred to in the Ofsted Inspection Framework Handbook. There is also information available locally through the [Devon Education Inclusion Service](#): this service provides a statutory, but impartial service for parents and carers, school governors, headteachers, school staff and other agencies about inclusion, reintegration and exclusion. Including guidance on school funding changes when a child has been permanently excluded and a checklist for governor review of exclusions.

It would be helpful to read the latest DfE guidance alongside:

- [Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](#)