

EXCLUSION FROM SCHOOL

INTRODUCTION AND CONTENT (Updated Aug 2015)

1. Background

The DfE Guidance: Exclusion from maintained schools, Academies and pupil referral units in England relates to:

- The Education Act 2002, as amended by the Education Act 2011;
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 updated Feb 2015;
- The Education and Inspections Act 2006; and
- The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007

The exclusions process has very demanding legal requirements; to meet them, schools must ensure that they keep detailed and accurate records and that there is no scope for parent(s)/carer(s) to claim that they were not aware of the grounds or procedures for the exclusion.

2. Decision Making

Only the Headteacher has the right to exclude. If the Headteacher is off site, then a deputy should be identified as taking on the responsibility for exclusion. In many instances, other senior members of staff may have carried out much of the work with a pupil prior to exclusion. Whilst the evidence for the exclusion may have been prepared or collated by other staff, the letter(s) must make it clear that the Headteacher (or nominated deputy in a Head's absence) has reviewed the information and evidence available and has made the decision to exclude the pupil him/herself.

The process makes an important separation between the role of the Headteacher and the Governors. A Headteacher cannot discuss a potential exclusion with Governors nor can any changes be made to the status or length of exclusion after the Pupil Discipline Committee Meeting. If a pupil is excluded for a fixed period but subsequent investigation leads the Headteacher to decide that the exclusion should be permanent, then a separate letter must be sent about the permanent exclusion and the relevant timescale adhered to. The letter must also include on what grounds the decision to exclude permanently has been reached.

Throughout the DfES's guidance, the need for parent(s)/carer(s) to understand the process is stressed and this means that letters must be explicit about the status of the exclusion and the grounds on which the exclusion is made. Where English is not the first language of a parent/carers schools should make arrangements for letters to be translated. The linked guidance on evidence of permanent exclusion outlines the additional information that is required to support the letter in the case of a permanent exclusion.

A decision to exclude a child permanently is a serious one. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies, which have been tried without success. A decision to exclude a pupil should be taken only in response to serious breaches of

the school's behaviour policy; and if allowing the pupil to remain in school would seriously harm the education and welfare of the pupil or others in the school. There will, however, be exceptional circumstances where, in the Headteacher's judgement, it is appropriate to permanently exclude a child for a first or 'one-off' offence. These might include:

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

Schools should also consider whether or not to inform the Police where such a criminal offence has taken place. They should also consider whether or not to inform other agencies, e.g. Youth Offending Team, Social Workers, etc.

In cases where a Headteacher has permanently excluded a pupil for:

- a) one of the above offences; or
- b) persistent and defiant misbehaviour including bullying (which would include racist or homophobic bullying) or repeated possession and/or use of an illegal drug on school premises, the Secretary of State would not normally expect Governors' Discipline Committee or an Independent Appeal Panel to re-instate the pupil.

Grounds for Exclusion

Each exclusion must be considered individually but in the context of the school's behaviour and discipline policy. Whilst no policy can set out every possible reason for an exclusion, the policy must indicate the sort of incidents that might lead to exclusion and how exclusion fits in with the other sanctions that a school might use. This means that each instance of exclusion will be a logical and supportable part of a school's behaviour strategy.

Part of a case for exclusion might be repeated infringements of school rules in spite of a series of sanctions and support measures put in place by the school. In these instances, the pattern of events should show a steady increase in both attempts to offer support and the level of sanction used.

In some instances, events outside school may affect what happens inside school. It is generally unwise to rely on such incidents as grounds for exclusion. If no one from school was present, there is unlikely to be secure evidence to use and hearsay is unacceptable and open to challenge. Also, exclusion happens when it is no longer reasonable to keep the pupil on school premises and it is difficult to argue that an incident off-site is a reason to exclude from the school without there being any difficulty within the school itself.

Informal or unofficial exclusions are illegal regardless of whether they are done with the agreement of parent(s)/carer(s)

3. Challenge

The exclusion process is complex but has a built in system of checks and balances, which must be considered during the process. Restricting the right to exclude to the Headteacher (or deputy in his/her absence) indicates that exclusion must be taken seriously. The Headteacher must review all the evidence and be confident that it is full and accurate and will stand up to challenge by the parent(s)/carer(s) and the Governors if appropriate.

The Pupil Discipline Committee Meeting gives the parent(s)/carer(s) the right to present their case but also allows the Governors, through their Committee, to have scrutiny of the Headteacher's actions. If the exclusion is upheld, then the Pupil Discipline Committee is saying, firstly, that the evidence to support the exclusion is both adequate and accurate and, secondly, that the exclusion is in line with the School's behaviour policy. Clearly it must ask searching questions and challenge the process leading up to the exclusion in order to be satisfied that the exclusion should be supported.

The LA must be informed of any permanent exclusion and be invited to attend the meeting of the Pupil Disciplinary Committee. The LA representative can offer advice to the Committee and to the pupil and parents.

4. Police Involvement and Parallel Criminal Proceedings

A school-related incident may sometimes also be the subject of police investigation, which may subsequently result in criminal proceedings. This can mean that the evidence available to Headteachers, Governing Bodies and Independent Appeal Panels is very limited, for example they may not be able to hear relevant witness statements. It should be remembered that the police and the courts will be applying the criminal standard of proof – beyond reasonable doubt, whereas the Headteacher, Governing Body and Independent Appeal Panel must apply the civil standard of proof (the balance of probabilities).

A Headteacher need not postpone his/her decision to exclude a pupil simply because of the possibility that criminal proceedings might be brought in respect of the same incident. The critical factor in any such case will be that the evidence that is available to the Headteacher and judgement made must be on the basis of the evidence available to them. Relevant considerations include the fact that:

- a serious allegation has been made against the pupil by another pupil or member of staff at the school which is the subject of a police investigation which may result in criminal proceedings being brought;
- pending the conclusion of any such criminal proceeding, the pupil's continued presence in the school may have had an adverse effect on the complainant and other potential witnesses, and on the promotion of good order and discipline at the school generally.

Where a Headteacher excludes a pupil in the circumstance such as those in the preceding paragraph, the Pupil Discipline Committee has no power to postpone their meeting to consider the pupil's exclusion beyond the statutory time limit. In deciding whether to direct the Headteacher to reinstate the pupil, therefore, they too may be subject to the same constraints as regards the availability of witnesses and other relevant information and will have to consider the case on the same basis. For additional advice on police involvement and criminal proceedings in relation to exclusions from schools.

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