

EOTAS **EDUCATION
OTHER THAN
AT SCHOOL
TEAM**

**A Guide for
Governors/PRU
Management
Committees
Reviewing Exclusions**

The following information is taken from the DfE 2012 'Exclusion from maintained schools, Academies and pupil referral units in England'. This is statutory guidance and it is expected that Governing Bodies have regard to it when carrying out their functions in relation to exclusions

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Purpose of Meeting

Governors/PRU Management Committees have a responsibility to review the headteacher's decision to exclude a pupil from school if they have been excluded for a total of more than 15 days in any one term, or permanently.

Governors/PRU Management Committees must consider any representations about an exclusion made by the parents of the excluded pupil, or the pupil him/herself if over 18 years. (See attached sheet for further information re the governor's/Management Committee's role in reviewing exclusions of varying lengths.)

The Governor's Panel

- The panel must consist of a quorum of at least 3 governors/management committee members.
- The members should decide on a chairperson to manage the meeting and must appoint a separate clerk to take minutes. These minutes should be available to all parties on request.
- The meeting should be at a mutually convenient time.
- If the parent/carer requests that the meeting is adjourned, the chair can agree this and the re-arranged meeting should then take place as quickly as possible but it does not have to be within 15 days of the exclusion: the panel has discharged its duties by arranging the initial meeting within this timescale. Should the meeting go ahead, even though the parent/carers have requested an adjournment, the panel should bear in mind the fact that the parents were not present will be taken into account if the case then goes to Independent Review.
- No governor should discuss the case with any party outside of the committee meeting.
- If any governor/management committee member has a connection with the pupil, or knowledge of the incident that led to the exclusion, he or she should step down. Teacher or parent governors/management committee members should be part of the panel if it can be shown that they have no knowledge of the incident or pupil.
- The chair has the casting vote in all cases where an even number of governors/management committee members are considering the case.
- The panel should make sure they are familiar with the relevant Government guidelines (DfE 2012 'Exclusion from maintained schools, Academies and pupil referral units in England'), all relevant school policies e.g. Behaviour / Discipline, SEN, Disability, Drugs & Alcohol and have read the exclusion papers thoroughly.

The following are entitled to attend the meeting, submit written representations and address the panel:

- The Headteacher
- The parent of the pupil, who may be accompanied by a friend or legal representative
- The excluded pupil, with parental consent
- The pupil themselves if over 18 years of age
- The LA representative, in all cases of permanent exclusion and longer fixed term exclusions.

At the Meeting

Although the proceedings can be reasonably informal, some formality is needed in order to ensure fairness and the principles of natural justice should apply, (and should be seen to apply) namely:

- *No party attending a hearing should be alone with the panel* in the absence of the other parties.
- No member of the panel should have a vested interest in the outcome of the proceedings or any involvement at an earlier stage of the proceedings.
- Each side should be given an opportunity to state their case without unreasonable interruption.
- *Written evidence/information should be circulated to all parties, in advance, ideally at least 5 school days before the meeting.* This should include witness statements and other relevant information such as evidence relating to the pupil's SEN. If a new issue arises during the proceedings, all parties should be offered an opportunity to consider and comment on it.

If these principles are not observed, parents may be allowed to apply to the High Court for Judicial Review.

Recommended Procedure

The Chair opens the meeting by making introductions and outlining the following procedure:

1. The headteacher describes the incident which led to the exclusion and presents the evidence/witnesses.
2. Questions from parent(s) and governors/management committee members (N.B. the governors/management committee members may ask questions of any party throughout the proceedings).
3. The parent(s) presents his/her case, including evidence/witnesses (can include character witness).
4. Questions from the headteacher and governors/management committee members.
5. The Local Authority representative makes a statement to the panel re points of law, procedure and good practice.
6. Summing up by:
 - (i) The headteacher
 - (ii) The parent.
7. The Chair ensures that the parent(s) feels satisfied that he/she has had every opportunity to complete all representations and asks the parent whether he/she wishes to wait for the panel's decision or to be informed by letter.
8. The Chair then asks all present to retire whilst the panel comes to its decision in private. (The clerk may remain to assist the governors/management committee members with reference to his / her notes and in wording their decision letter).

MAKING A DECISION

Governors should apply civil standard of proof i.e. 'on the balance of probabilities' in their decision-making, rather than the criminal standard 'beyond reasonable doubt'. They should consider if the decision to exclude was lawful, reasonable and procedurally fair bearing in mind the headteacher's legal duties.

The decision can be either to

- Uphold the exclusion or
- Direct reinstatement of the pupil immediately or on a particular date (e.g. to allow a reintegration plan to be drawn up).

The outcome of their consideration should be noted on their educational record, along with copies of relevant papers. (Claims of discrimination to the First-Tier Tribunal or County Court can be made up to six months after the discrimination is alleged to have occurred so schools should retain records for at least 6 months in case such a claim is made).

AFTER THE DECISION

- The governors/management committee should inform the parent(s) and/or pupil, the headteacher and the LA of their decision in writing after the hearing, **without delay**, stating their reasons.
- If the governors/management committee decide to reinstate the pupil either immediately, or by a particular date, they **may not attach conditions to this direction**.
- Where the governors/management committee decide to uphold the headteacher's decision to permanently exclude a pupil, the letter (**a model letter is available which includes the relevant information governors should provide to parents**) to the parent should include:
 - the reason for the decision;
 - their right to appeal to an Independent Review Panel, together with the name and address of the person any notice of appeal should be sent;
 - the date by which any notice of appeal should be lodged (15 school days after the day on which notice of the governor's/management committee's decision was received);
 - that any notice of appeal must set out the grounds on which the appeal is made and, where appropriate, reference to the pupil's special educational needs and how these are considered to be relevant to the exclusion;
 - that, regardless of whether the excluded pupil has recognised special educational needs, the parents have the right to require that the Independent Review Panel appoint an SEN expert to attend the review
 - details of the role of the SEN expert and that there would be no cost to parents for this appointment
 - that parents must make it clear in their application if they want an SEN expert to be appointed;
 - that parents may appoint someone to make oral or written representations to the panel on their behalf. This may be a friend or other representative but any costs attached would not be met by the Independent Appeal Panel;

The letter may either be delivered directly to parents at their last known address or it may be posted to that address. Notice is deemed to have been given on the same day if it is delivered directly and on the second working day after posting if it is sent by **first class** mail.

- The parent(s) has 15 school days in which to make a written request for an Independent Review Panel hearing, from the receipt of the letter informing him/her of the Governors'/Management Committee's decision.
- No request for an independent review will be accepted after this time has elapsed.

Governors should be aware that Independent Review Panels will review the decision of the governing body regarding the exclusion. A Review Panel does not have the power to direct a governing body to reinstate a pupil. It can decide to:

- Uphold the exclusion;
- Recommend the governing body reconsiders its decision;
- Where it considers the decision is flawed in the light of the principles applicable on application for judicial review, quash the decision and direct that the governing body considers the exclusion again. In these cases, if the governing body does **not** reinstate the pupil within 10 school days, the panel also has the power to order a readjustment of the school's budget by £4,000.

N.B. In addition to the right to apply for an independent review, parents may also make a claim to the First-tier Tribunal (SEN and Disability), in the case of disability discrimination, or the County Court, in the case of other forms of discrimination.

What the Governors/PRU Management Committees must consider

- Has the statutory guidance been followed re the notice of exclusion?

- | | Yes | No | |
|--|-------------------------------------|-------------------------------------|--|
| • Was it the headteacher who excluded? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | continue |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | only the head/acting head can make this decision |
|
 | | | |
| | Yes | No | |
| • Has the headteacher informed the parent of the exclusion, whether fixed term or permanent at the earliest opportunity. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider disadvantage to parent/pupil |
| | <input checked="" type="checkbox"/> | <input type="checkbox"/> | continue |
|
 | | | |
| | Yes | No | |
| • Did the head's letter to the parent include all of the required information about the exclusion, the parent's rights, arrangements for meetings and provision of work? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider disadvantage to parent/pupil |
| | <input checked="" type="checkbox"/> | <input type="checkbox"/> | continue |
|
 | | | |
| | Yes | No | |
| • If any information was missed, has this affected the pupil or parent's case? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | consider disadvantage |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | continue |

- Did the pupil do what he/she was accused of?

- | | Yes | No | |
|--|-------------------------------------|-------------------------------------|---|
| • Did the head conduct a thorough investigation and base his/her decision on all available evidence? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | continue |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider disadvantage and reinstatement |
|
 | | | |
| | Yes | No | |
| • Was the pupil given the opportunity to give his/her version of events? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | continue |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider disadvantage to pupil |
|
 | | | |
| • Do witness statements conflict, | <input checked="" type="checkbox"/> | <input type="checkbox"/> | consider accuracy, and reliability |
| Could witnesses have been mistaken? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | continue |
|
 | | | |
| | Yes | No | |
| • Is it more likely than not that the pupil has done what they are accused of? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | continue |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | reinstate |

- **Was exclusion the most appropriate response?**

- Was the pupil's behaviour a serious breach of the school's discipline policy?

Yes	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	continue
<input type="checkbox"/>	<input checked="" type="checkbox"/>	reinstate

AND

- Would allowing the pupil to remain in school seriously harm the education or welfare of the pupil or others in the school?

Yes	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	uphold
<input type="checkbox"/>	<input checked="" type="checkbox"/>	reinstate

- If yes to the above, was the length of the exclusion appropriate (if fixed term)

Yes	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	uphold
<input type="checkbox"/>	<input checked="" type="checkbox"/>	reinstate immediately or by a particular date – 5 days

- **If this was a one-off, serious offence, does the evidence reflect the seriousness of the accusation?**

Yes	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	uphold
<input type="checkbox"/>	<input checked="" type="checkbox"/>	reinstate

ALSO

- Are there mitigating circumstances which made this an exception?

Yes	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	consider impact on pupil's actions and motivation
<input type="checkbox"/>	<input checked="" type="checkbox"/>	uphold exclusion

- Is the pupil likely to repeat the offence?

Yes	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	uphold exclusion if risk to others considered actual
<input type="checkbox"/>	<input checked="" type="checkbox"/>	consider reinstatement

- **Has the pupil been excluded for persistent disruption, bullying or repeated drug use on school premises?**

- Does the evidence support this decision?

Yes	No	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	uphold exclusion
<input type="checkbox"/>	<input checked="" type="checkbox"/>	reinstate

ALSO

- | | | | | | | | | | | |
|--|--|--|-----------|--|-------------------------------------|-------------------------------------|--|--------------------------|-------------------------------------|------------------------|
| <ul style="list-style-type: none">• Could the head have avoided exclusion altogether by imposing a different punishment or providing extra help, e.g. Pastoral Support Programme, referral to Locality Inclusion Support Team, PRU, drugs counselling, or the offer of a parenting contract. | <table border="0"><tr><td style="text-align: center;">Yes</td><td style="text-align: center;">No</td><td></td></tr><tr><td style="text-align: center;"><input checked="" type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td>reinstate</td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input checked="" type="checkbox"/></td><td>uphold exclusion</td></tr></table> | Yes | No | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | reinstate | <input type="checkbox"/> | <input checked="" type="checkbox"/> | uphold exclusion |
| Yes | No | | | | | | | | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | reinstate | | | | | | | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | uphold exclusion | | | | | | | | |
| <ul style="list-style-type: none">• Has exclusion been a last resort? | <table border="0"><tr><td style="text-align: center;">Yes</td><td style="text-align: center;">No</td><td></td></tr><tr><td style="text-align: center;"><input checked="" type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td>uphold exclusion</td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input checked="" type="checkbox"/></td><td>consider reinstatement</td></tr></table> | Yes | No | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | uphold exclusion | <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider reinstatement |
| Yes | No | | | | | | | | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | uphold exclusion | | | | | | | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider reinstatement | | | | | | | | |
| <p>- Were there any mitigating factors?</p> | | | | | | | | | | |
| <ul style="list-style-type: none">• Is the pupil a 'child at particular risk'? | <table border="0"><tr><td style="text-align: center;">Yes</td><td style="text-align: center;">No</td><td></td></tr><tr><td style="text-align: center;"><input checked="" type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td>consider impact on incident(s)</td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td></td></tr></table> | Yes | No | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | consider impact on incident(s) | <input type="checkbox"/> | <input type="checkbox"/> | |
| Yes | No | | | | | | | | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | consider impact on incident(s) | | | | | | | | |
| <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | | |
| <ul style="list-style-type: none">• Was the pupil's behaviour in response to bullying, sexual or racial harassment? | <table border="0"><tr><td style="text-align: center;">Yes</td><td style="text-align: center;">No</td><td></td></tr><tr><td style="text-align: center;"><input checked="" type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td>consider impact on incident(s)</td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td></td></tr></table> | Yes | No | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | consider impact on incident(s) | <input type="checkbox"/> | <input type="checkbox"/> | |
| Yes | No | | | | | | | | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | consider impact on incident(s) | | | | | | | | |
| <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | | |
| <ul style="list-style-type: none">• Is the pupil disabled?
Was the pupil's behaviour related to their disability? | <table border="0"><tr><td style="text-align: center;">Yes</td><td style="text-align: center;">No</td><td></td></tr><tr><td style="text-align: center;"><input checked="" type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td>see disability discrimination policy</td></tr></table> | Yes | No | | <input checked="" type="checkbox"/> | <input type="checkbox"/> | see disability discrimination policy | | | |
| Yes | No | | | | | | | | | |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | see disability discrimination policy | | | | | | | | |
| <ul style="list-style-type: none">• Was sufficient allowance made for the impact of the pupil's disability re the incident? | <table border="0"><tr><td style="text-align: center;">Yes</td><td style="text-align: center;">No</td><td></td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input checked="" type="checkbox"/></td><td>see above</td></tr></table> | Yes | No | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | see above | | | |
| Yes | No | | | | | | | | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | see above | | | | | | | | |
| <p>- Does the School's/PRU's Behaviour Policy describe the types of actions which generally lead to exclusion and indicate punishments in order of severity?</p> | | | | | | | | | | |
| <ul style="list-style-type: none">• Did the pupil know they were breaking the school rules? | <table border="0"><tr><td style="text-align: center;">Yes</td><td style="text-align: center;">No</td><td></td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input checked="" type="checkbox"/></td><td>consider whether pupil was aware of unacceptability of actions</td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td></td></tr></table> | Yes | No | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider whether pupil was aware of unacceptability of actions | <input type="checkbox"/> | <input type="checkbox"/> | |
| Yes | No | | | | | | | | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider whether pupil was aware of unacceptability of actions | | | | | | | | |
| <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | | |
| <ul style="list-style-type: none">• Has the policy been publicised during the last school year? | <table border="0"><tr><td style="text-align: center;">Yes</td><td style="text-align: center;">No</td><td></td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input checked="" type="checkbox"/></td><td>consider implications on above</td></tr><tr><td style="text-align: center;"><input type="checkbox"/></td><td style="text-align: center;"><input type="checkbox"/></td><td></td></tr></table> | Yes | No | | <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider implications on above | <input type="checkbox"/> | <input type="checkbox"/> | |
| Yes | No | | | | | | | | | |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider implications on above | | | | | | | | |
| <input type="checkbox"/> | <input type="checkbox"/> | | | | | | | | | |

- | | | | |
|--|-------------------------------------|-------------------------------------|---|
| • Was the action intended to cause hurt or damage? | Yes | No | |
| | <input checked="" type="checkbox"/> | <input type="checkbox"/> | consider seriousness or otherwise of motivation |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | |
| • Have others involved been punished for the incident? | Yes | No | |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | consider parity of response |
| | <input type="checkbox"/> | <input type="checkbox"/> | |

Governors/Management Committee members are expected to consider all of the above to gain a thorough picture of all aspects of the exclusion before coming to a fair and reasonable decision, based on the balance of probabilities. Governors/Management Committee members may uphold the headteacher's decision or reinstate immediately, or by a particular date (conditions may not be attached to reinstatement).