

References from DfE Guidance 2017 - Exclusion from Maintained Schools, Academies and Pupil Referral Units in England: A guide for those with legal responsibilities in relation to exclusion (DfE Statutory Guidance)

**Balance of probabilities** the standard of proof in civil cases, demanding that the case that is the more probable should succeed. This is the kind of decision represented by the scales of justice. The court weighs up the evidence and decides which version is most probably true. Thus, the actual truth may never be known. All that is done in the Anglo-American system is to choose which of the combatants has presented the most probable version. **If both seem equally balanced, then the person pursuing the case loses** on the basis of the maxim melior est conditio defendentis, 'better is the position of the defender'.

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

**It is unlawful to exclude** for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment/ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting

Issues to Consider:	Evidence:
Were parent/carers, governing board and LA (including home LA) informed of the exclusion and within stated timescales?	
Was the appropriate information provided in writing?	
Has the school taken steps to set & mark work or arranged alternative provision from day 6 of a longer exclusion?	
Were the papers (written evidence and information) sent at least 5 school days before the meeting, including a copy of the school's Behaviour Policy?	
Were the parent/carers, head and LA officer invited to the meeting - maintained school or PRU only? (A parent may invite a representative of the local authority to attend a meeting of an Academy's governing board as an observer; that representative may only make representations with the governing board's consent.)	
Has a clear reason for the exclusion decision been given? Is it clear whether the exclusion was for a 'one-off' serious breach <b>or</b> persistent breaches of the school's behaviour policy? If a Permanent Exclusion was the decision taken: <ul style="list-style-type: none"> <li>• in response to a serious breach or persistent breaches of the school's behaviour policy; and</li> <li>• where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school?</li> </ul> DfE Statutory Guidance Para 16/17 page 10	
The law does not allow for extending a fixed-period exclusion or 'converting' a fixed-period exclusion into a permanent exclusion. In exceptional cases, usually where further evidence has come to light, a further fixed-period exclusion may be issued to begin immediately after the first period ends; or a permanent exclusion may be issued to	

# Education Inclusion Services Checklist for Governor Review of Exclusions

<p>begin immediately after the end of the fixed period.</p> <p>DfE Statutory Guidance Para 3 page 8</p> <p>Has the Headteacher written to the parents explaining the reasons for the permanent exclusion?</p> <p>DfE Statutory Guidance para 26-28 page 12</p>	
<p>The behaviour of a pupil outside school can be considered grounds for an exclusion.</p> <p>Whether the exclusion was for behaviour on or off the school premises?</p> <p>Disciplining beyond the <i>school gate</i> covers the school's response to all noncriminal bad behaviour and bullying which occurs anywhere off the school premises and which is witnessed by a member of staff or reported to the school. The governing body must be satisfied that the measures proposed by the headteacher are lawful.</p> <p>DfE Statutory Guidance, Behaviour &amp; Discipline in Schools (Guidance of governing bodies) Para 14</p>	
<p>Whether the police were involved? How does this affect the evidence and decision? (Evidence may be limited by a police investigation or criminal proceedings)</p> <p>DfE Statutory Guidance Para 190-194 page 45</p>	
<p>Has the pupil been enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and understanding? (The decision on whether to exclude is for a Headteacher to take. However, where practical, Headteachers should give pupils an opportunity to present their case before taking the decision to exclude.)</p>	

Issues to Consider:	Evidence:
<p>Has the headteacher taken into account of any contributing factors that are identified after an incident of poor behaviour has occurred? (E.g. where it comes to light that a pupil has suffered bereavement, or has mental health issues or has been subject to bullying.)</p>	
<p>Has the school taken account of pupils with additional needs, Education Health Care Plans or Looked After Children? (Headteachers should, as far as possible, avoid excluding permanently any pupil with an EHCP or a Looked After child (see DCC Protocol for Children in Care); Where a pupil has an EHCP, schools should consider requesting an early annual review or interim /emergency review)</p>	
<p>Has the headteacher had regard to the Equality Act 2010?</p> <p>DfE Statutory Guidance Para 9 Page 9</p> <p>Is there evidence of discrimination, harassment or victimisation because of: sex; race; disability; religion or belief; sexual orientation; because of a pregnancy/maternity; or because of a gender reassignment? Has the school taken any positive action to deal with particular disadvantages affecting one group?</p> <p>DfE Statutory Guidance page 11 para 21/22</p>	

# Education Inclusion Services Checklist for Governor Review of Exclusions

Has the Headteacher taken account of their statutory duties in relation to special educational needs (SEN), including the SEN Code of Practice? (For disabled children, this includes a duty to make reasonable adjustments to policies and practices)	
Has the school engaged proactively with parents/carers and the local authority?	
Has the school tried to identify whether there are any causal factors and intervened early in order to reduce the need for a subsequent exclusion e.g. a multi-agency assessment that goes beyond the pupil's educational needs, including seeking to identify mental health or family problems? ( <b>Disruptive behaviour can be an indication of unmet needs</b> ) DfE Statutory Guidance Page 49	
Is there evidence that the Headteacher has considered extra support needed to identify & address the needs of pupils in order to reduce the risk of exclusion? (Early intervention including multi-agency assessment e.g. Early Help/'Rights for Children')	
Is there clear evidence of the strategies used and support provided by the school – do the papers include current and recent plans with dates, reviews and outcomes e.g. an Individual Education Plan, Integrated Support Plan, Pastoral Support Programme? (Are there identified targets and clear outcomes?)	
LA or other agencies/services involved e.g. Educational Psychology, Behaviour Support Team, PRU (Schools Company), Special Educational Needs, Youth Offending Team, Social Care, Ethnic Minority and Traveller Achievement Service, CSW. (Are details provided of the referrals to other services or professionals, the support provided and dates of plans/reviews and outcomes?)	

Issues to Consider:	Evidence:
<p>Have alternatives to exclusion been considered? For example:</p> <ol style="list-style-type: none"> <li>1. Mediation, restorative justice, internal exclusion</li> <li>2. Curriculum alternatives at Key Stage 4 – college placement or other form of alternative provision</li> <li>3. Temporary placement in an in-school Learning Support Unit</li> <li>4. Temporary or part-time placement in a Pupil Referral Unit or with a voluntary/private sector alternative provider</li> <li>5. A Managed Move to another school</li> <li>6. Assessment of special educational needs. DfE SEN Code of Practice para 6.14</li> </ol>	
<p><b>Have you (the governing body):</b></p> <ul style="list-style-type: none"> <li>• Considered the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and had regard to the interests of other pupils &amp; people working at the school.</li> <li>• Considered any representations made by parents/carers, the Headteacher and a representative of the local authority. (in the case of a maintained school or PRU)</li> <li>• Established the facts 'on the balance of probabilities'. (see para 1</li> </ul>	

# Education Inclusion Services Checklist for Governor Review of Exclusions

on page 1 of this documents)

- Considered whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the Headteacher's legal duties. (In reaching a decision on whether or not to reinstate a pupil)
- Decided to direct reinstatement of the pupil immediately or on a particular date.
- Where legally required to consider an exclusion, notified parents/carers, the Headteacher and the local authority of your decision, giving reasons, in writing and without delay. (Also inform the pupil's 'home authority')
- Informed parents, if a Permanent Exclusion, of their rights to apply for an Independent Review of your decision and to make a discrimination claim.
- Ensured that clear minutes of the meeting were taken as a record of the evidence that was considered. (These minutes should be made available to all parties on request)
- Noted the outcome of your consideration on the pupil's educational record, along with copies of relevant papers for future reference.
- Made arrangements to retain records and evidence relating to an exclusion for at least six months in case a discrimination claim is made.
- Also: (Where recommended or directed by an Independent Review Panel) reconsidered your decision and notified parents, the Headteacher and local authority of your reconsidered decision, and the reasons for it, in writing and without delay.