

Guidance on Permanent Exclusions

Who can exclude?

Only the Headteacher has the power to exclude your child. If the Headteacher is not on site then the decision can be made by the acting Headteacher. Other members of staff such as Heads of Year cannot exclude, though they may provide information to support the Headteacher's decision.

Reasons for exclusion

All exclusions must be for disciplinary reasons only. All schools must have a Behaviour Policy setting out what the school rules are. All exclusions must be for disciplinary reasons only. All schools must have a Behaviour Policy setting out what the school rules are. Permanent Exclusion should only happen:

- 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 pupil or others in the school.

In practice this means that there are two likely scenarios for a Permanent Exclusion:

- a child has had a history of disruptive behaviour and the school feel they have exhausted all strategies; and
- a child has committed a single serious offence e.g. assaulting a pupil or member of staff or bringing a knife or drugs into school.

Standard of proof

The Headteacher's decision to exclude must be taken on the 'balance of probabilities'. That means that it is more likely than not that the pupil did what they are accused of. This is not the same as the 'beyond reasonable doubt' standard required in a criminal case.

When exclusion is not allowed

It is unlawful to exclude for a non-disciplinary reason, for example:

- if a child has special educational needs and the school say it can't meet those needs. It should look at putting more or different support in place instead;
- because of something a parent has done e.g. made a complaint or not going to a meeting at school; and
- not allowing a child back into school after a fixed period exclusion unless they meet particular conditions. Once the exclusion is ended a child must be allowed back into school.

Behaviour outside school

Pupils can be excluded for behaviour outside school, but this should be in line with the school's Behaviour Policy. This can include behaviour on school trips, behaviour when in uniform or on the way to and from school and behaviour which may bring the school into disrepute.

Having a say

Where practical, a Headteacher should allow a child to present their case before deciding whether to exclude.

Vulnerable groups

These include children with SEN, children eligible for free school meals, children from particular racial groups and Looked After Children.

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Children with SEN or disabilities

Before excluding a child with SEN, the school should look first at what additional support is needed or whether a different school would be more suitable. If a child has a statement of SEN then the school should consider bringing forward the annual review or holding an emergency review. Headteacher should, as far as possible, avoid permanently excluding children with statements.

Looked After Children

Schools should work together with foster carers, children's homes and the Local Authority that looks after the child to try to avoid exclusion. This might include putting in additional support or looking at whether a different school would be more suitable. Foster carers have the same rights in education law as other parents if a looked after child is excluded. Headteachers should, as far as possible, avoid permanently excluding Looked After Children.

Other factors affecting the exclusion

Before deciding to exclude Headteacher should take account of factors that may have affected the child's behaviour. These might be:

- bullying;
- mental health issues;
- bereavement;
- unidentified SEN.

Permanent Exclusion

What the school must tell you

If a child is permanently excluded, parents/carers must be notified in writing without delay

<http://www.devon.gov.uk/index/learningschools/attendance/inclusion/inclusion-infoschools.htm>

The letter must tell them:

- the reason for the exclusion;
- the fact that it is permanent;
- the right to put parents/carers views in writing to the governing body;
- parents/carers right to go to a meeting of the governing body and put their views in person.

If a child is of compulsory school age, parents/carers must be told about their responsibilities for the child during the first five days of the exclusion.

The first five days

Schools should take reasonable steps to set and mark work for the first five days of any exclusion. During these five days, parents/carers are responsible for the child. They must make sure they are not in a public place without reasonable justification during school hours. This duty is similar to that on school attendance and parents/carers could be fined if in breach of it. The fine is £60 and goes up to £120 pounds if not paid within 28 days. Failure to pay within 42 days could lead to prosecution.

Day six and beyond

If a child has been permanently excluded, the Local Authority has a duty to provide suitable full-time alternative education from day 6. That is most likely to take place at a pupil referral unit or other alternative provision. If a child has a statement of special educational needs, the alternative provision must be able to meet the child's needs as set out in the statement.

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For Looked After Children it is recommended that alternative educational provision start from the first day of an exclusion. Local Authorities do not have to provide alternative education for children who are below or above compulsory school age.

Making representations to the Governors

Responsibility for reviewing exclusions lies with the Governors of the school. This may be delegated to a subcommittee which may be called the behaviour or discipline committee. The subcommittee must have at least 3 members. The Governors must be informed of a Permanent Exclusion without delay. They must meet within 15 school days to consider the exclusion. Governors are no longer prevented from meeting within 5 days after an exclusion.

The Governors' meeting

Who will be there?

- the panel of Governors. There must be at least three and none of them should have any involvement in the case that might lead them to favour one side above another; and
- a clerk to take minutes and advise on procedure. It is normal practice to have a clerk but is not a legal requirement.
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The following people must be invited to the meeting

- the Headteacher;
- parents/carers. They are allowed to bring a friend or representative to support at the meeting;
- a representative of the Local Authority.

If the school is an Academy, parents/carers may ask for a Local Authority representative to be present. The Governors will decide if they can make representations at the meeting. When the Governors send the papers, they should include a list of everyone who will be present at the meeting.

Time and date

There are strict timescales for when the Governors have to meet. The Governors must try to arrange the meeting at a time that is convenient to everyone.

Papers

The Governors should ask for written material to be sent in before the meeting. They should try to circulate these before the meeting so parents/carers/ Local Authority representative have the opportunity to read them. If any new papers are brought up at the hearing, time should be given in order to read them. The following documents should be available to all parties involved in the Governors' meeting:

- Government guidance on exclusions;
www.education.gov.uk/schools/pupilsupport/behaviour/exclusion
- the school behaviour policy;
- the school SEN policy (if a child has SEN which may be relevant to the exclusion);
- a child's school record; and
- incident report and witness statements – the school should have compiled a report of the incident and may have taken witness statements from the pupils involved.

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A fair hearing

The Governors should not discuss the exclusion with any of the parties outside the meeting. If parents/carers have a disability, the Governors must take steps for an accessible venue or materials in alternative formats or extra time to present a case. All parties should be supported to participate and have their views heard. Requests should be made for any other support such as an interpreter. A child's views are important and they should be encouraged to go to the meeting if possible.

What will happen at the hearing?

The order of the hearing is not set out in guidance. A typical order of proceedings might be:

When the parents/carers/child/Local Authority representative and Headteacher join the meeting, the Chair should:

- ensure that the meeting is carried out in 'Part 2' procedure (this applies to confidential business) and the clerk should minute this;
- introduce everyone present;
- explain the purpose of the meeting;
- explain that the papers circulated for the meeting should be returned to the clerk at the end to be destroyed; the original set will be kept on the child's record in a confidential file. The parents/carers and Local Authority representative may keep their copies;
- remind everyone that information must only be given in the presence of all parties;
- explain the procedure to be followed;
- the Headteacher gives the school's case for excluding the child ;
- the parents/carers/child put their case;
- opportunities for all parties to ask questions;
- summing up by the Headteacher and the parents/carers/child.

The parents/carers/child/Local Authority representative and the Headteacher will then be asked to leave, as the Governors must make the decision on their own. A clerk may stay with them to help by referring to minutes of the meeting.

The Governors' decision

When making their decision, the Governors must:

- consider the interests and circumstances of the excluded pupil; and
- have regard to the interests of other pupils and people working at the school.

They will look at the facts on balance of probabilities and consider whether the Headteacher's decision was lawful, reasonable and procedurally fair. The Governors may either

- uphold the exclusion; or
- direct reinstatement immediately or on a particular date.

If reinstatement is not practical because parents/carers do not want the child to go back to the school, the Governors must still consider whether the Headteacher's decision was justified. The clerk should take minutes during the meeting as they may be used in any appeal. The clerk must record a formal minute of the decision and include a statement of the reasons for it. The Governors should log the outcome on the child's school record along with copies of the relevant papers. The parents/carers/child/Local Authority representative and Headteacher then rejoin the meeting to be told the Governors' decision.

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After the meeting

The Governors must let parents/carers know the outcome and the reasons for their decision in writing without delay. If they uphold the exclusion the letter must also state

- the fact that it is a Permanent Exclusion;
- parents/carers right to ask for the decision to be reviewed;
- timescales for applying for a review;
- parents/carers right to ask for an SEN expert at the review;
- parents/carers right to be represented; and
- additional rights to make a claim in discrimination cases.

If the Governors uphold the decision, parents/carers may ask for their decision to be reviewed by an independent review panel <http://www.devon.gov.uk/exclusion-leaflet-parents-guide-2012.pdf>. The IRP does not have the power to reinstate the child but may direct the Governors to look at their decision again. If a child has a disability which affected the exclusion and parents/carers feel that the Governors did not take this into account, they may make a disability discrimination claim to SEND.

Useful contacts for advice and support

Inclusion Officers

- For schools in Torridge, Mid & North Devon, tel 01271 388559 or email david.archer@devon.gov.uk
- For schools in East Devon & Exeter, tel 01392 383000 and ask for Marc Kastner or email marc.kastner@devon.gov.uk
- For schools in South & West Devon, tel 01392 3000 and ask for Ian Hemelik or email ian.hemelik@devon.gov.uk

Devon Parent Partnership provide impartial and independent advice for parents and carers of children with additional needs from birth to 19 years and can be contacted on tel: 01392 383080 or visit www.parentpartnershipdevon.org.uk or email parentpartnershipservice-mailbox@devon.gov.uk

ACE - Education Advice <http://www.ace-ed.org.uk/>

Confidential telephone adviceline on **0300 0115 142**. Normal opening hours:

Monday to Wednesday from 10am to 1pm. Term time only.

Email enquiries@ace-ed.org.uk

Contact a Family - SEN National Advice Service

Advice and information for families whose child may have special educational needs. Telephone helpline: 0808 808 3555. Opening hours: Monday to Friday 9.30am to 5.00pm

Coram Children's Legal Centre - Family, Child & Education Legal Advice Line

Free legal advice on english law and policy affecting children and families.

Telephone advice line: 08088 020 008. Opening hours: Monday to Friday 8.00am to 8.00pm www.childrenslegalcentre.com