

Exclusions Procedure

Exclusions Procedure for Schools

It is essential that a school meets their legal obligation and complies with the applicable statutory regulations should it be required to conduct either a permanent, fixed period or even lunch time exclusion - failure to do so will deem the exclusion unlawful. The

Undoubtedly, exclusions should be taken very seriously by schools as failure to observe the exclusion procedure within the appropriate timescale could have significant implications such as having a decision challenged in the High Court.

1. Statutory framework

Section 51A of the Education Act 2002 enables Head Teachers of schools, Principals of Academies and Teachers in charge of Pupil Referral Units to exclude pupils from a school for either a fixed period or permanently.

The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 came into force on 1 September 2012 and therefore Head Teachers, Principals, Governing Bodies, Local Authorities and Academy Trusts must now have regard to these when carrying out their functions.

Perhaps, one of the most important changes to the legislation in this area is the process by which the decision of a governing body to uphold a permanent exclusion can be challenged.

2. Alternatives to exclusion

Excluding a pupil from school should only be carried out when there has been a serious breach of behaviour and all other available disciplinary procedures have been exhausted. If asked to justify its decision to exclude, a school should be able to show that all measures at its disposal have been considered.

Alternative options to exclusions include:

- Internal Exclusion. This involves excluding the pupil from the mainstream class to a designated area within the school with appropriate support and supervision on a temporary basis. This should be for the shortest time possible and under constant review.

- Lunch time Exclusion. A school may exclude a pupil from the premises during the lunch period where a pupil's behaviour is disruptive at this time. The standard legal requirements for exclusions still apply, for example, notifying parents.

- Restorative Justice. This allows a pupil to amend the harm that has been caused and enables all parties concerned to participate in the process.

- Mediation. A trained mediator or other third party may be used to address a conflict between two parties.

□ Managed move to another school. This allows a pupil to start afresh at a new school with the consent of all parties involved, including the parents. Parents should not be pressured into agreeing to this option with the threat of permanent exclusion.

It is worth noting that it is unlawful to send a pupil home to "cool-off" even if the pupil's parents have agreed to this.

3. The decision to exclude

Before a decision to exclude is made, the school needs to carry out a full investigation into the circumstances surrounding the incident, whilst considering contributory factors and allowing the pupil to present their case. It must be satisfied that, on the "balance of probabilities", the pupil is culpable.

A decision to exclude a pupil should only be taken:

- In response to a serious breach, or persistent breach of the school's behaviour policy.
- Where allowing a pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

An exclusion can be for a fixed-term or permanent but must not be for an indefinite period. A Head Teacher may not exclude a pupil for a fixed term more than 45 school days in the academic year.

The pupil's behaviour outside school can be considered as grounds for exclusion but will be a matter of judgement for the head teacher in accordance with the school's published behaviour policy.

The decision to exclude must not discriminate; it must be lawful, fair and reasonable.

For example, it is unlawful to exclude a pupil because they have special educational needs requiring additional support that the school feels it cannot meet. Under the Equality Act 2010, schools must not discriminate against a pupil's race, disability, religion or belief, sexual orientation, because of pregnancy or maternity or because of a gender reassignment.

Only the Head Teacher of maintained schools, Principals of Academies and Teachers in charge of Pupil Referral Units can exclude a pupil. In their absence, the person acting in this position may exclude a pupil. However, an exclusion authorised by a teacher deputising for the Head Teacher will not be lawful.

4. Duty to notify parents and carers

The Head Teacher must take reasonable steps to notify the parents of the excluded pupil without delay and no later than the end of the afternoon session of the first day on which the pupil is excluded.

The notice must:

- Be in writing.
- Confirm the period of the exclusion if it is for a fixed term or that it is a permanent exclusion.
- Give reasons for the exclusion.

□ Inform the relevant person of their right to make representations about the exclusion to the governing body or management committee.

Other matters that should be included:

- Arrangements for school work to be completed within the exclusion period.
- The parents' right to see the child's school record.
- A web link to the Children's Legal Centre.

If a fixed term exclusion is extended to a permanent exclusion, the Head Teacher must write again to the parents explaining the reasons for the change.

Effective methods of giving notification include:

- Email.
- Text message.
- Giving notice directly to the parents.
- Sending the information home with the excluded pupil (although the notice should also be sent by an alternative method or confirmation of safe receipt should be requested).

Where the parents' first language is not English, practical steps should be taken to ensure that the letter has been translated so that their rights are understood.

5. Duty to notify local authorities

The Head Teacher must inform the local authority and governing body if the exclusion:

- Is permanent or is made permanent.
- Means the pupil will miss a public examination.
- Takes the total exclusions for that pupil over five days or ten lunchtimes in a term.

For all other exclusions, the Head Teacher must notify the local authority and governing body once a term.

6. Duties during the exclusion period

Parents:

Parents of an excluded pupil are under a duty to ensure that the child is not present in a public place during school hours while excluded. Failure to do so could result in prosecution or receiving a penalty notice from the local authority.

School:

The governing body or local authority has a duty to provide full-time education from the sixth day of an exclusion. However, there are obvious benefits to providing school work to the child within the first five days of an exclusion and schools should take reasonable steps to set and mark work for pupils.

There is no duty to provide full-time education where the pupil:

- a) Is in year 11 (However this does not apply).
- b) Has no further examinations left to sit.
- c) Has a statement of special educational needs prescribing fewer hours of education than other pupils of the same age.
- d) Is a looked-after pupil.

A governing body must make reasonable endeavours to arrange a meeting with the parents to allow them to make representations about the exclusion. This should be arranged at a time that is convenient for all parties and within 15 school days of receiving notice of exclusion. The pupil may be involved in this meeting.

The school should also provide a copy of the child's school report if this has been requested by the parents in writing.

7. Reintegration

The school should have a strategy to reintegrate the pupil back into school following a fixed-term exclusion and for managing their future behaviour. This may involve a 'Reintegration Interview' with the parent and child prior to the return to school.

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