

Exclusions: FAQs

This advice is based on the statutory guidance *Exclusions from schools, academies and pupil referral units in England* (DfE guidance 2017). *Text in italics is directly from this source.*

This advice also refers to the [Action for Schools during the Coronavirus outbreak: Guidance for full opening of schools](#); and [Changes to the school exclusion process during the coronavirus \(COVID 19\) outbreak](#).

Covid 19 Updates

- **Should we make any changes to the school's Behaviour Policy at this time?**

The DfE guidance for the reopening of schools from September 2020 advises that an updated behaviour policy is created to plan how new behavioural expectations will be monitored and supported. It also notes that time should be taken to train staff in behaviour that will be expected of them and in the behaviour that they will be expected to teach to pupils.

The policy should clarify sanctions and rewards and how rules will be enforced consistently, including use of exclusions. Make sure that this can be effectively maintained in the changed school environment and consider individual needs. It should make explicit what behaviours are now considered more serious due to the coronavirus (COVID-19) outbreak, for example purposefully coughing on someone, including any escalation points in how they will be dealt with.

Schools must communicate revised behaviour and attendance policies to staff, pupils and parents as soon as possible and ensure expectations are clearly understood. It is important to ensure the Senior Leadership Team are visible around the school and invite discussion and feedback.

- **Can the Headteacher still exclude a child from school at this time?**

Yes, but will be important that a school can evidence that these points have been put into practice before considering exclusion as a sanction for incidents relating to behavioural incidents which breach rules/boundaries put in place or more forcibly enforced as a response to the COVID-19 outbreak. It is also expected that the school will consider the child's level of understanding around the incident and its potential effects when considering the appropriateness of sanctions.

- **Is there anything else which we should be aware of in relation to behaviour when schools reopen in September?**

Many pupils are likely to need some social and emotional support on their return to school. Some pupils will need extra support, such as those who have previously had poor attendance or fixed term exclusions as well as those new to the school, with special educational needs and disabilities (SEND) or who have not engaged with school during the coronavirus (COVID-19) outbreak.

- **What are the new timescales in relation to exclusions?**

The timescales have *not* been changed from those set out in the DfE's statutory guidance [Exclusion from maintained schools, academies and pupil referral units in](#)

[England](#). However, where it has not been reasonably practicable for the Governors to meet in person or by 'remote access' within the statutory timescale, it may be extended as set out in the table below:

Type	Current Timescale	Extended to or Replaced with
Permanent exclusion or fixed-term exclusion where total in current term is more than 15 school days	15 school days	May be extended to 25 school days, or as long as reasonably necessary, for a reason related to coronavirus
Fixed-term exclusion where total in current term is between 6 and 15 school days	50 school days	May be extended to 60 days, or as long as reasonably necessary, for a reason related to coronavirus
Deadline for requesting an IRP	15 school days	Changed to 25 school days
Deadline for arranging an IRP	15 school days	May be extended to 25 school days, or as long as reasonably necessary, for a reason related to coronavirus

Before the PDC

- **What does the head teacher need to inform Governors of?**

40. The head teacher must, without delay, notify the governing board and the local authority of:

- *any permanent exclusion (including where a fixed-period exclusion is followed by a decision to permanently exclude the pupil);*
- *any exclusion which would result in the pupil being excluded for a total of more than five school days (or more than ten lunchtimes) in a term; and*
- *any exclusion which would result in the pupil missing a public examination or national curriculum test.*

The Head teacher must inform Governors of the reason for the exclusion. There is a range of information that Governors may need when considering an exclusion. The responsibility lies with the Governors to request the information they require.

- **What information should a Governors' panel have access to prior to a PDC taking place?**

Each Governor should be sent a meeting pack by the school ahead of the PDC taking place.

The PDC pack should contain, as a minimum, the following documents;

- Behaviour chronology (chronologies are easier to follow than direct print outs from SIMs systems or similar)
- Minutes of any meetings held with parents or agencies relating to the student's behaviour or SEN which may be impacting on behaviour.
- Witness statements as well as statements from the student themselves and, if available, physical evidence of incidents such as redacted photographs, redacted CCTV screenshots or redacted screenshots from social media or text messages. Schools are bound to complete any redaction necessary to protect the identity of other students/young people if their parents have not given permission for their image/name to be included.
- Referrals, reports and assessments completed by relevant external agencies such as Sensory Inclusion Service, or internal specialists such as SENCos. These can be redacted if needed to protect confidential information.
- Record of any intervention strategies put in place to support the student and their outcomes.
- Information pertaining to a student's SEN status and any other characteristics which may place them in a demographic group over-presented in exclusion data.
- Copies of the exclusion letter sent by school together with a timeline between the incident occurring and parents & LA being informed of the exclusion so Governors can be satisfied that everything falls within the timeframe set out by the DfE.
- Any policies or documents which the Governing Body are required to have regard for when making their decision such as; SEN Policy, Behaviour Policy, Exclusion Policy, Anti-Bullying Policy etc.

- **What if this information isn't contained within the meeting pack I am provided with by the school?**

Governors can request information from the Head Teacher/school to be available prior to the PDC, if they have not already been included in the meeting pack. If all relevant information is not sought and considered within the PDC, there is a possibility that an Independent Review Panel, if instructed by a parent, would question why these documents have not been provided and given due consideration at the PDC.

- **What role should the student's view play in a PDC?**

When considering the decision of a Head Teacher to exclude a pupil at PDC, Governors should identify ways to enable the excluded pupil's view to be heard at the meeting, whether or not the pupil is attending the meeting in person (Section 176 of the Education Act 2002 - schools to have regard to statutory guidance on pupil voice). Exclusion guidance states:

Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, considering their age and ability to understand

Can the pupil attend for part of the meeting if they can't manage being in the whole of it? Can the pupil put their views in writing? Can the pupil attend with a friend or with a member of staff whom they trust?

- **How should we prepare for the PDC meeting?**

Where the governing board is legally required to consider the reinstatement of an excluded pupil they should:

- *not discuss the exclusion with any party outside the meeting;*
- *ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school such as those relating to a pupil's SEN);*
- *where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting;*
- *allow parents and the pupil to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing board should first seek parental consent and invite the parents to accompany their child to the meeting);*
- *comply with their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that has an impact upon their ability to attend the meeting or to make representations); and*
- *identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding; or how the excluded pupil may feed in their views by other means if attending the exclusion meeting is not possible.*

Governors have a responsibility to encourage the excluded pupil to participate in the meeting, so should consider how the meeting might be organised to make this easier, or consider alternative ways the pupil could be offered to give their views – in

writing, join the meeting by phone, attend the meeting with a friend or a trusted member of staff.

- **What other guidance, apart from Exclusion, do we need to think about?**

The head teacher and governing board must comply with their statutory duties in relation to SEN when administering the exclusion process. This includes having regard to the [SEND Code of Practice](#).

Therefore, one of the key questions you must ask is whether the pupil is on the SEN Register. The Code of Practice is very clear about what process schools should follow to identify if a pupil has any special educational needs. There should be a process of monitoring and reviewing any additional support provided for the pupil. This should be documented in a clear plan demonstrating support being provided and evidence-based outcomes (what are the school trying to achieve by providing this extra help).

During the PDC

- **What questioning should take place within the PDC, and how do we satisfy ourselves as a panel that suitable interventions have been exhausted for this child?**

This question is paramount to the PDC process and the answer is different for the case of every student who finds themselves excluded, however there are some points to consider which are relevant to every case:

- As well as the DfE guidance on exclusions, schools are also expected to uphold their own policies. School policies often feature clauses or statements which are much more prescriptive and specific than the Government guidance. It's important to be thorough in ensuring that any exclusion is compliant with school policy as well as the DfE guidance. Schools must apply their own behaviour policies in a consistent, rigorous and non-discriminatory way with due regard to the Equality Act 2010. It is expected that Governors will challenge the Head Teacher on any breaches to policy and seek an explanation for why this may be during the PDC meeting.
- In the case of exclusions for persistent disruptive behaviour, Head Teachers should also provide evidence that early intervention measures have been used. Failure to have present, and make due consideration to, such evidence within a PDC would be challenged by a panel reviewing your decision at IRP, especially if there are inconsistencies between accounts of incidents. It is appropriate to question any inconsistencies between accounts of an incident which leads to an exclusion, this will help to gain a greater understanding of the incident.

- The Governors should seek to understand the impact of interventions/support, to understand how relevant they were to the needs of the pupil and what the outcome was for the child. For example;
The fact that a referral to the Educational Psychology Service was made does not provide enough information on what the outcome was for the child or what alternative strategies were implemented in order to engage the child as a result of this intervention.
Whereas a statement from the school which explains why the referral was made; the recommendations which were offered by the Educational Psychologist as a result of the referral; how the school sought to implement these recommendations and the impact which these then had on the student's behaviour offers the Governors more information and reassurance that this intervention has been implemented correctly and satisfies the DfE recommendation that Head Teachers must implement early intervention for students at risk of exclusion, particularly so for those who are in the demographic groups over represented in exclusion figures as outlined in points 21 and 22 of the DfE guidance for exclusion from maintained schools, academies and pupil referral units in England.
- When establishing the facts in relation to an exclusion the Headteacher must apply the civil standard of proof i.e. 'on the balance of probabilities' it is more likely than not that a fact is true. It is pertinent to properly explore any inconsistencies between student involved and witness accounts in light of this.
- The Headteacher should give the pupil the opportunity to present their case *before* taking the decision to exclude. It is appropriate to challenge the Headteacher if this hasn't been done by themselves or another member of staff as it feeds into other pieces of guidance from the DfE exclusion document including the role which extenuating factors such as bullying, mental health needs or bereavement could have had on the incident.
- In making their decision, Governors should also refer to key legislation and guidance where exclusions are considered for example, the Equality Act and Special Educational needs code of practice.
- In order to uphold an exclusion, the Governing body must be suitably convinced that that exclusion is lawful, rational, reasonable, fair and proportionate.

General Questions

- **Can a pupil who is exhibiting disruptive behaviour be excluded?**

Disruptive behaviour can be an indication of unmet needs. Where a school has concerns about a pupil's behaviour, it should try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent exclusion. In this situation, schools should consider whether a multi-agency assessment that goes beyond the pupil's educational needs is required.

Remember the responsibility is with Governors to have the information they need to make an informed decision. Key questions would be:

- ✓ **Is the pupil on the school's SEN Register?**
- ✓ **Is the pupil a looked after child?**
- ✓ **What support has been provided for the pupil?**
- ✓ **Has this been assessed for effectiveness?**
- ✓ **Were the interventions based on any professional advice? (e.g. Educational Psychologist or similar).**
- ✓ **Are there difficulties at home? Has a referral been made for Early Help?**

- **If the school have adhered to their behaviour policy, can a pupil be excluded?**

Schools must also ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act allow schools to take positive action to deal with disadvantages, needs, or low participation affecting one group, where this can be shown to be a proportionate way of dealing with such issues.

Ensure that you are familiar with the relevant school policies. Governors should satisfy themselves that applying a 'blanket policy' or 'zero tolerance' policy to all pupils does not unfairly disadvantage some pupils. For example, if a pupil with SEN (such as autism) may find it difficult to understand a sanction which takes place at a later date (e.g. detention the following week). Making reasonable adjustments should be considered. Equality does not mean treating everyone exactly the same.

- **Our school behaviour policy says that after repeated fixed term exclusions, the next stage is a permanent exclusion. Can we permanently exclude if the pupil isn't changing their behaviour?**

16. A decision to exclude a pupil permanently **should only be taken**:

- *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.*

Whilst it may be appropriate to permanently exclude for repeated breaches of the behaviour policy at a 'lower level', each case should be looked at individually. Governors should avoid considering that where behaviour has not changed following repeated fixed term exclusions that the inevitable next stage is a permanent exclusion.

- **What should the school do when a pupil who has SEN or is a looked after child displays disruptive behaviour, resulting in repeated exclusions?**

The head teacher should, as far as possible, avoid permanently excluding any pupil with an EHC plan or a looked after child.

Where a school has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with an EHC plan or a looked after child, it should, in partnership with others (including the local authority as necessary), consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN. Where a pupil has an EHC plan, schools should consider requesting an early annual review or interim/emergency review.

Governors need to question whether the school has worked in partnership with other agencies, such as:

[Inclusion](#)

[Virtual School](#)

[Educational Psychology](#)

[SEN Team](#)

[Early Help](#)

- **We want to support the school with dealing with challenging pupils. How can we avoid the meeting being uncomfortable?**

It is understandable that it feels uncomfortable challenging staff who are facing difficult circumstances and who are working hard. It is important to understand that parents and pupils have a right to challenge the Head teacher's decision at the PDC. If the decision to exclude is upheld, there is the option of challenging the decision by going to an Independent Review Panel hearing. It is important to understand that it is a much more challenging experience for Head teachers to justify their actions to the Independent Review Panel. It is supportive in the long term if the initial challenge comes at the PDC.

In addition, remember that the role of the Independent Review Panel is to scrutinise how effectively the PDC has challenged the Head teacher in the first place.

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