

## **Exclusion from school**

### **Introduction**

Children with special educational needs and/or disabilities (SEND) are more likely to be excluded from school than their classmates. Only the head teacher of a school (or the teacher in charge of a pupil referral unit or the principal of an academy) can exclude a pupil. They should, as far as possible, avoid permanently excluding any pupil with an EHCP.

Schools should engage proactively with parents in supporting the behaviour of pupils with additional needs. So, where a school has concerns about behaviour, or risk of exclusion, it should, in partnership with others, including the local authority (LA), consider what additional support or alternative placement may be required. This should involve assessing the suitability of support for a pupil's SEN. Where a pupil has an EHCP, schools should consider requesting an early annual review or interim / emergency review.

### **Types of exclusion**

There are only two types of exclusion.

- Fixed term exclusion- where a pupil is excluded for a specific number of school days. The maximum number of days in a school year for which a pupil can be given fixed-term exclusions is 45.
- Permanent exclusion- where a pupil is told they cannot come back to the school.

Pupils can only be excluded for disciplinary reasons. This means that they cannot be excluded because a school are unable to meet their needs. The 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 such as staff or pupils in the school.

The behaviour of pupils outside of school can also be considered as grounds for exclusion. The school's behaviour policy will set out when a pupil's behaviour outside of school premises may lead to disciplinary sanctions.

When reaching the decision to exclude a pupil, the head teacher must apply the civil standard of proof, i.e. 'on the balance of probabilities', which means it is more likely than not that a fact is true.

There is a process school must follow when excluding a pupil. Any exclusion of a pupil, even for a short period of time, must be formally and accurately recorded and parents have the right to challenge the decision. It is important to check the school's behaviour policy which should detail their exclusion process.

### **Fixed Term exclusions**

For any fixed term exclusion, the head must write immediately to parents stating the length of time given and reasons why. If the exclusion is for less than 5 days, there is no requirement for a meeting to be held, unless an external exam or National Curriculum test would be missed, or the total days excluded in that term is over 5 and parents ask for a meeting. However, parents can still choose to make written representations which must be considered by the school governors.

If the pupil has been excluded for 5-15 days, the head must inform the governors and the Local Authority. Parents have the right to make 'written representations' which must be considered by governors. There is still no requirement for a meeting unless an external exam or National Curriculum test would be missed, the total days excluded in that term is over 15 or the total is between 5 and 15 and parents request a meeting.

For any fixed period exclusion, the statutory guidance 'Exclusion from maintained schools, academies and pupil referral units in England' says that school must take reasonable steps to set and mark work for the first five days. If the exclusion is for more than five school days, the governing body must arrange suitable full-time education for any pupil of compulsory school age. This provision must begin no later than the sixth day of the exclusion.

If the exclusion is for over 15 days, the governors must meet within 15 days of receiving the notice of the exclusion. Parents have the right to make 'written representations' which must be considered by governors and to attend the meeting.

It is important to note that 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 or a permanent exclusion may be issued to begin immediately after the end of the fixed period.

### **Permanent Exclusion**

When a pupil is permanently excluded, the head must write immediately explaining that the exclusion is permanent and giving the reasons why. The head must inform the governors and the LA. The governors must meet within 15 days of receiving the notice of exclusion and parents have the right to attend. Parents also have the right to make 'written representations' which must be considered by governors. Prior to this meeting, governors must ask for any written evidence, including witness statements, and other relevant information held by the school. Where possible, they must circulate this information, including a list of those who will be present, to all parties at least five school days in advance of the meeting.

Following consideration, the governing body can either make the decision to uphold an exclusion (agree with it) or direct reinstatement of the pupil immediately or on a particular date. They cannot remove the exclusion from the pupil's record.

LAs are required to arrange alternative full-time educational provision for excluded pupils of compulsory school age from the sixth day of a permanent exclusion. 'Full-time' means supervised education equivalent to that provided by mainstream schools.

### **Independent review panel**

Where parents dispute the decision of a governing board not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel. An independent review panel does not have the power to direct a governing board to reinstate an excluded pupil. However, where a panel decides that a governing board's decision is flawed, it can direct a governing board to reconsider its decision.

Whether or not a school recognises a pupil as having SEN, all parents have the right to request the presence of a SEN expert (at no cost to the parent) at a review meeting, who is independent from the school. The SEN expert's role is to advise the review panel, of the relevance of SEN in the context and circumstances of the review. For example, they may advise whether the school acted reasonably in relation to its legal duties when excluding the pupil.

If parents believe that the exclusion has occurred as a result of discrimination, they may make a claim under the Equality Act 2010 to the (Special Educational Needs and Disability), First-Tier Tribunal. The claim should be lodged within 6 months of the date on which the discrimination is alleged to have taken place, e.g. the day on which the pupil was excluded.

### **Informal exclusions**

'Informal' or 'unofficial' exclusions, such as sending a pupil home to cool off or the school putting a pupil on a 'part-time timetable', are all unlawful regardless of whether they occur with the agreement of parents.

No pupil should be excluded from school for an indefinite period, or for a non-disciplinary reason, or without formal notice in writing from the head. This includes children who are below compulsory school age (those under 5) and young people who are above compulsory school age (those in sixth form/ college).

### **Where can I get further information, advice or support?**

Contact the IASS team on:

**Phone:** 01743 280019 (Open 10am-4pm Monday—Friday)

**Web:** [www.cabshropshire.org.uk](http://www.cabshropshire.org.uk)  
[www.facebook.com/IASSShropshire](https://www.facebook.com/IASSShropshire)

**Email:** [iass@cabshropshire.org.uk](mailto:iass@cabshropshire.org.uk)

**Address:** Fletcher House, 15 College Hill, Shrewsbury, SY1 1LY