



Department
for Education

Consultation on revised statutory guidance and regulations for exclusions from maintained schools, academies and pupil referral units in England

A summary of responses

Introduction

The Department for Education launched a nine week consultation on 16 December 2011 to gather views on the Department's draft guidance document and regulations relating to exclusions. This included proposals for how regulations should be applied to Academies, including Free Schools.

The revised guidance document is aimed at head teachers, governing bodies, local authorities, independent review panel members, clerks and special educational needs experts.

The guidance document aims to provide, in a concise form, a clear description of the exclusions process, including a separation between legislative duties / powers, and statutory guidance.

Background to the consultation

The revised exclusions guidance and regulations relate to new provisions in section 51A of the Education Act 2002, as inserted by section 4 of the Education Act 2011. These provisions change the process by which the decision of a governing body to uphold a permanent exclusion can be challenged. The current system of independent appeal panels will be replaced by independent review panels, which have different powers. The review panels are intended to provide a swift, fair and accessible process for reviewing exclusion decisions, in a way that takes account of the impact that persistent or significant poor behaviour can have on the education and welfare of the wider school community. The new system will provide increased access to expertise on special educational needs (SEN) through the introduction of the SEN expert role.

The changes to the exclusions system are part of the Government's wider strategy for promoting good behaviour in schools so that all pupils have the opportunity to achieve their full potential, regardless of their circumstances.

Summary of responses

Throughout the report, percentages are expressed as a measure of those answering each question, rather than as a measure of all respondents.

The organisational breakdown of responses was as follows:

Local authority official	73	40%
Head teacher	41	23%
Other	34	9%
Voluntary / Community organisation	17	19%
School governor	7	4%
Teacher	6	3%
SEN professional	2	1%
Parent	2	1%

Total: 182

The summary of responses to the individual consultation questions were as follows:

Q1: Do you agree with the scope of the proposed regulations for Academies? If not, what further changes should be made so that the regulations are appropriate for Academies?

There were 161 responses to this question.

43 (27%) Yes 41(25%) Not sure 77(48%) No

Where respondents had objections, the majority were related to the desire for greater consistency between the arrangements for maintained schools and Academies, rather than an objection to the principle of applying the exclusions regulations to Academies.

Over three-quarters of the local authority officials that responded were either not sure or did not agree with question 1. Objections tended to relate to respondents' views that local authorities should have more involvement in the exclusions process, particularly in relation to Academies. The responses included proposals for local authority officials to be invited to attend Academy governing body meetings where exclusion decisions were being considered, and independent review panels arranged by Academy Trusts. Other objections centred on the need for impartiality and accountability linked to the role of Academy Trusts in arranging the independent review panels and the SEN expert where a pupil is excluded from an Academy.

Q2: Do you think that the guidance on early intervention is sufficiently clear? If not, how might it be improved?

There were 168 responses to this question.

63(38%) Yes 21(12%) Not sure 84(50%) No

While almost two-thirds of the responses from head teachers were positive, the majority of local authority officers and respondents from voluntary organisations did not agree that the guidance on early intervention was sufficiently clear. Where respondents had concerns, these often related to a desire for more guidance and examples of best practice around early intervention strategies, and the action schools should take to address issues. A different perspective was provided by one national representative organisation, which made the point that schools should already have appropriate early intervention strategies in place before they consult the exclusions guidance, and the purpose of the guidance should be to provide a final reminder about the importance of early intervention.

Q3: Do you think the explanation of how the Equality Act 2010 applies in relation to exclusions and the statutory guidance on exclusion of pupils from ethnic groups vulnerable to exclusion is sufficiently clear? If not, how might it be improved?

There were 166 responses to this question.

97(58%) Yes 16(10%) Not sure 53(32%) No

The majority of head teachers, local authority officials and governors that responded to question 3 agreed that the explanation was clear. However, responses from voluntary organisations were less positive. Concerns about the section of the guidance covering the Equality Act 2010 often related to a desire for more detail around schools' specific duties, as well as links and references to other sources of information.

Q4: Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to enable the SEN expert to perform their role effectively. If not, how might it be improved?

There were 169 responses to this question.

59(35%) Yes 35(21%) Not sure 75(44%) No

Just over half of the head teachers that responded to this question felt that the guidance was sufficiently clear, as did most of the governors that responded to this question. Under a third of local authority officials that responded answered positively to this question and around a quarter of voluntary / other organisations agreed that the explanation was clear. Where respondents had concerns, these tended to relate to a desire for greater detail on the role of the SEN expert and the duties and qualifications that would be required of an expert.

Q5: Do you believe these examples are sufficient to enable the local authority to identify individuals that are suitable for the role? If not, please explain what other examples of expert would clearly meet the criteria of having the required expertise and experience of the SEN requirements on schools.

There were 154 responses to this question.

50(32%) Yes 38(25%) Not sure 66(43%) No

A range of issues were raised by respondents in relation to this question. These included comments seeking assurance about the impartiality of the role and the importance of clarifying whether the expert could be an employee of the local authority; the more general desire for clarity around the role of the expert; and issues relating to resourcing. Responses also included a number of suggestions for persons who could fulfil the role of the SEN expert.

Q6: Do you think the statutory guidance in relation to the exclusion of looked after children is sufficiently clear? If not, how might it be improved?

There were 159 responses to this question.

78(49%) Yes 24(15%) Not sure 57(36%) No

Over three-quarter of head teachers that responded were content with this aspect of the statutory guidance. Local authority officials and respondents from voluntary and other organisations were more likely to raises issues about this section. Comments included the suggestion that roles and responsibilities should be made more explicit; there should be clarity around 'day 1' provision for looked after children; and there should be more guidance on support available in avoiding exclusion of looked after children.

Q7: Do you agree with this approach to simplify the requirements on when information relating to an exclusion should be provided?

There were 157 responses to this question.

103(66%) Yes 15(9%) Not sure 39(25%) No

The majority of respondents supported the proposal to amend the relevant regulations to simplify the requirements around informing parents of an exclusion and of alternative provision arrangements. Head teachers and governors were most supportive of this measure. Some respondents felt there was a need to clarify the term 'without delay' and that parents needed tailored guidance and information about the exclusions process.

Q8: Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to ensure that parents will be properly informed about the exclusion process? If not, how might it be improved?

There were 160 responses to this question.

73(46%) Yes 22(14%) Not sure 65(40%) No

The majority of head teachers and governors were content with the guidance in this respect, whereas over half of respondents from local authorities and voluntary and other organisations did not feel the guidance was sufficiently clear. Some respondents suggested that parents should have access to 'user friendly' leaflets. There were also comments around strengthening the guidance in relation to communicating with parents, particularly those with poor literacy skills, English as a second language or additional needs. Some respondents felt that the guidance could be clearer about local advice and support for parents.

Q9: Do you think that the guidance on supporting pupil participation is sufficiently clear? If not, how might it be improved?

There were 156 responses to this question.

98(63%) Yes 17(11%) Not sure 41(26%) No

The majority of head teachers, governors and local authority officials were content with this aspect of the guidance. Voluntary organisations were most likely to raise issues about clarity on pupil participation within the exclusion process. Organisations representing children's rights felt the guidance should do more to stress the importance of ensuring that pupils are fully included and supported throughout the process.

Q10: Do you agree with the proposal to allow governing bodies to meet in order to consider reinstatement earlier than six school days after being notified?

There were 160 responses to this question.

88(55%) Yes 26(16%) Not sure 46(29%) No

Where respondents had concerns about this proposal, these often related to the need for parents, governors and head teachers to have adequate time to prepare for and attend where appropriate, the meeting with governors.

Q11: What should the limit on the number of school days of fixed period exclusion in a school year be under the new system?

There were 151 responses to this question.

7(5%) Higher 39(26%) Lower 67(44%) Same 38(25%) Not sure

Head teachers, governors and local authority officials were more likely to respond on the basis that the current 45 day limit should be maintained. Voluntary organisations were more likely to want a lower limit. Respondents suggesting a lower limit tended to emphasise the importance of minimising the time pupils miss education and the need for effective intervention strategies before the limit is reached.

Q12: Do you think the guidance on pupil reintegration following a fixed period exclusion is sufficiently clear? If not, how might it be improved?

There were 159 responses to this question.

67(42%) Yes 25(16%) Not sure 67(42%) No

Over half of head teachers that responded were content with this aspect of the guidance, whereas a similar proportion of local authority officials that responded were either not sure or not content. Voluntary organisations were generally not content. Respondents that were not content were likely to feel that a reintegration meeting should be a requirement. Some respondents stressed that the guidance should be clearer that schools should have a strategy for reintegrating pupils and that a reintegration meeting should be seen as good practice.

Q13a: Is a flat rate sum of £4,000 right? If your answer is no, please go to question 13b.

There were 154 responses to this question.

34(22%) Yes 35(23%) Not sure 85(55%) No

Q13b: If you answered 'No' to question 11, please indicate whether you consider the amount should be higher, lower or varied. If you think it should be varied, please explain how you think the amount should be calculated so that it is clearly understood and consistently applied.

There were 111 responses to this question.

35(32%) Higher 9(8%) Lower 38(34%) Varied 29(26%) Not sure

Head teachers that responded and were not content with a flat rate were more likely to favour a varied approach, whereas local authority officials were more likely to favour a higher figure. Some responses emphasised that the sum should reflect the specific circumstances such as when the exclusion occurred and type of school. Others suggested that £4,000 would not cover enough of the cost of alternative provision for the excluded pupil. Some respondents, primarily local authority officials, felt that the figure should be higher in order to act as a deterrent, while some head teachers felt that schools should not be penalised for deciding not to offer reinstatement.

Q14: Do you regard this 15 day requirement for responses as reasonable?

There were 141 responses to this question.

97(69%) Yes 23(16%) Not sure 21(15%) No

Most head teachers and local authority officers that responded to this question favoured the 15 day requirement for respondents (e.g. governing bodies) to respond where a claim of disability discrimination in relation to a permanent exclusion is made to the First-tier Tribunal (Special Educational Needs and Disability). Responses from voluntary organisations were mixed. There were a variety of reasons for respondents not being content. Some respondents felt 15 days was too short a period while others would have preferred a 10 day limit.

Q15: Do you think the Tribunal Procedure Rules need amending in any other respect in order to be suitable for permanent exclusion cases? If so please explain.

There were 131 responses to this question.

23(18%) Yes 68(52%) Not sure 40(30%) No

Some respondents suggested that there should be greater clarity with regard to timescales and a small number of respondents commented that the process was overly complex and bureaucratic.

Q16: Please let us have any other comments on the revised guidance or regulations, including any further suggestions for how they might be improved without significantly increasing their length.

There were 72 responses to this question.

The responses covered a range of detailed points about and suggestions for improving the guidance.

Q17: Overall, do you think that the explanation of the legislation and statutory guidance is sufficiently clear to enable head teachers to fulfil their statutory duties? If not, how might it be improved?

There were 83 responses to this question.

40(48%) Yes 14(17%) Not sure 29(35%) No

There were a range of comments from respondents including some that suggested that the guidance should include summary information and give greater emphasis to early intervention.

The majority of head teacher respondents (70%) agreed that the guidance was sufficiently clear to enable them to fulfil their statutory duties.

Q18: Overall, do you think the explanation of the legislation and statutory guidance is sufficiently clear for governing bodies to fulfil their statutory duties? If not, how might it be improved?

There were 85 responses to this question.

38(45%) Yes 18(21%) Not sure 29(34%) No

Respondents raised a range of issues including the importance of governors being trained in the new arrangements.

Most of the governors that responded to this question, and a national organisation representing governors, agreed that the guidance was sufficiently clear for governors to fulfil their statutory duties.

Q19: Do you think the statutory guidance is sufficiently clear to enable local authorities to carry out this financial adjustment?

There were 108 responses to this question.

51(47%) Yes 31(29%) Not sure 26(24%) No

Some respondents suggested that greater clarity was needed on specific matters relating to the power of the review panel to make the financial readjustment, including the extent to which the panel has discretion in this regard.

Q20: Overall, do you think the explanation of the legislation and statutory guidance is sufficiently clear for a local authority to fulfil their statutory duties? If not, how might it be improved?

There were 126 responses to this question.

44(35%) Yes 36(29%) Not sure 46(36%) No

While head teachers generally felt the guidance was clear, the majority of local authority officials were not content with the guidance in relation to their statutory duties. Some of the issues raised included a desire for greater clarity around the role of the local authority in relation to exclusions from all types of school; clarity around the SEN expert; the need for training; and clarity around the review panel.

Next steps

The Department has considered the general and detailed comments from respondents to the consultation. Particular attention has been paid to providing additional clarity within the guidance around the role of SEN expert; the role of the local authority and Academy Trust within the exclusions process; and the conduct and role of the independent review panel.

The intention is to provide sufficient clarity whilst avoiding over-prescription. For this reason, statutory guidance will only be provided where it is necessary to ensure a duty or power is exercised effectively.

In addition, the Department is mindful of the need to keep the focus of the guidance on the exclusion process itself. Therefore, for example, whilst the exclusions guidance will provide a reminder about the importance of early intervention, it is not intended to be the key source of information on this issue.

The final guidance and regulations will provide for a single set of arrangements that apply to Academy schools and Alternative Provision Academies (including Free Schools), maintained schools and pupil referral units.

The current 45 day limit for the number of days a head teacher can temporarily exclude a pupil within a single school year has been retained within the final regulations.

The Department has considered carefully the range of views around the proposed £4,000 fixed payment where a governing body does not offer to re-instate a pupil following a direction from a review panel to reconsider its decision. In response the Department has decided to retain provision for a flat rate payment of £4,000 within the final arrangements to ensure consistency in the way the payment is applied.



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