

SUSPENSION and EXPULSION Procedures

Proposals for Change

March 2004

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FOREWORD

The legislative and administrative framework used in the suspension and expulsion of pupils from school has remained largely unchanged since 1995. The Department has recognised for some time the need to review this framework against the increased emphasis on the rights of children in education, the duty on statutory agencies to promote social inclusion and current best practice in the management of pupils with challenging behaviours. The Department's Business Plan for 2002/03 signalled the intention to undertake a review of suspension and expulsion procedures and a Working Group was established in May 2002 for this purpose.

The Working Group has now completed its deliberations and has made a number of specific proposals and identified options for change based on findings from across all Education and Library Board areas and all sectors of the schools' system. The findings of the Working Group and its proposals are set out in this document.

The Department wishes to thank the members of the Working Group for undertaking this comprehensive review and for producing proposals for improvement. The membership of the Group is listed at Appendix A.

The Department plans to consult widely on these proposals and you are invited to participate by submitting your views either by normal post to:-

Pupil Support Unit
Department of Education
Rathgael House
43 Balloo Road
BANGOR
Co Down
BT19 7PR

or, by e-mail to: psuconsultation@deni.gov.uk

For convenience, a questionnaire about the proposals is provided at Appendix C. This can be returned by normal post or an electronic version can be completed at www.deni.gov.uk/about/seconsultation

If you require copies of this document in large print, Braille or audiotape, please contact Pupil Support Unit at the address above or telephone 028 9127 9749. Requests for translations into other languages will be considered. The document has also been placed on the Department's website at www.deni.gov.uk/about/seconsultation/se.htm

All Consultation Responses must be with the Department by 2 July 2004

1

BACKGROUND TO UNDERTAKING THE REVIEW

- 1.1 Since 1993 there have been a number of significant changes in the legislative context in which schools operate and these should be reflected in the arrangements for suspension and expulsion. The Human Rights Act 1998 has now been incorporated into domestic law and in the context of this review the right to education and the right to a fair hearing are of particular significance. The Northern Ireland Act 1998, in particular Section 75, places a duty on all public authorities to promote social inclusion and to ensure that policies do not have a differential impact on any of the groups identified in the legislation as at risk.
- 1.2 During the 2002/03 school year 5,779 pupils or some 1.8% of the school population were suspended from school. Information collected by the Department shows that 70% of these pupils were suspended only once. A similar pattern of single suspensions has been recorded in previous school years. Some 70 pupils were formally expelled during the 2002/03 school year. Since the 1996/97 school year when the Department first collected this information the number of expulsions has always been below 90 pupils in any year. Some further contextual statistics around suspensions and expulsions can be found at Appendix B.
- 1.3 The legislative framework used in the suspension and expulsion of pupils dates from the Education and Libraries Order 1993. While there have been changes since then, these have been minor in nature and largely in response to changes with the parallel legislation for England and Wales. There has never been a fundamental review here of the arrangements for suspensions and expulsions which took account of local circumstances, the different structure of the schools' sector and the differences in external support systems for schools.
- 1.4 In 1998 the Department published the 'Promoting and Sustaining Good Behaviour: A Discipline Strategy for Schools'. The aim of the Strategy was to provide a coherent and consistent approach to

promoting good behaviour in school, beginning in the classroom with appropriate and targeted support for teachers and pupils. Implementation involved the creation of new services such as the Boards' Behaviour Support Teams and the expansion of existing services, particularly alternative education provision. While the full impact of the Strategy has yet to be evaluated, it was expected that the emphasis on early and effective intervention with pupils displaying challenging behaviour would reduce the use by schools of suspension and expulsion as sanctions.

- 1.5 During the course of implementing the Strategy a number of important issues and concerns about the existing procedures for the suspension and expulsion of pupils have been raised with the Department. These concerns have been raised by diverse interested parties, including schools, teacher unions, children's rights groups, parents, Education and Library Boards, Council for Catholic Maintained Schools (CCMS), and Department of Education officials. Issues have been raised in the context of meetings with Ministers, officials and in correspondence about individual cases referred to the Department.
- 1.6 For all of these reasons the case for undertaking a review of the current arrangements gained momentum and it was decided that the task should be included in the Department's Business Plan for 2002/03. A Working Group, comprising representatives from the Department, the Education and Library Boards and CCMS (see Appendix A) was set up to undertake a comprehensive review of the current procedures for the suspension and expulsion of pupils and to make recommendations on how these might be improved.
- 1.7 The report which follows describes how the Group set about its task, its findings and proposals. The Department's plans for consultation on these recommendations are set out in Section 8.

2

APPROACH TO THE TASK

2.1 The Working Group began by setting objectives for the review. This was done through considering the place of suspensions and expulsions in the broader context of a school's approach to promoting positive behaviour by pupils. A model system was then developed which embodied the key elements:

- A respect for the rights of all parties involved in the process.
- A recognition that suspension and expulsion were extreme sanctions.
- A consistent and fair process.

This model was the basis for assessing current practice and determining the objectives of the review.

The Model System

2.2 Every child has a fundamental right to be educated in accordance with the relevant statutory provisions and every school has a responsibility to do all it reasonably can to maintain pupils within the mainstream setting. Equally school staff and other pupils have a right to teach and learn in a peaceful and secure environment. When a pupil fails to meet the minimum required standards of behaviour the school is entitled to employ appropriate strategies which may include sanctions in line with the school's discipline policy. That policy, and the sanctions which the school may employ, must be familiar to both pupils and parents. The creation of an atmosphere of mutual respect between teachers and pupils is also an essential element of a school's pastoral care and discipline policies.

2.3 A range of strategies and procedures for addressing poor behaviour within the school and classroom context are available to schools; some of these are detailed in the Department of Education publication 'Pastoral Care in Schools: Promoting Positive Behaviour'. Early

interventions are particularly important in tackling emerging patterns of poor behaviour and schools are encouraged to consider and make full use of the range of strategies open to them, including where appropriate use of the Special Education Needs Code of Practice. The Behaviour Support Teams and other appropriate support services which have been established in each Education and Library Board can also offer useful advice and support to schools on behavioural issues. However, despite the most skilled interventions by teachers and others, there are some occasions when poor pupil behaviour is so serious or frequent that more radical sanctions such as suspension or expulsion may be warranted.

- 2.4 The suspension of a pupil is a serious sanction and should be imposed:
- by the Principal only;
 - in situations where the pupil's behaviour is presenting serious difficulties to the school; and
 - normally only after all reasonable attempts have been made to modify the pupil's behaviour.
- 2.5 Before a decision is taken to suspend or expel a pupil it is essential that all the facts are established. While pupils are on suspension responsibility for continuation of their education rests with the school and every effort should be made to ensure that they are kept up to date with work so that a return to school can be made with the minimum of disruption. In some situations it may be necessary to extend the period of a suspension. Any extension must be for acceptable reasons.
- 2.6 Expulsion is the final and most serious disciplinary action that can be applied to a pupil. The decision to expel a pupil must only be in response to very serious breaches of the school's discipline policy, and normally as a final step when all other alternative strategies have been tried and have failed. There will however be exceptional circumstances where, in the school's judgement, it is appropriate to expel a pupil for a first or 'one-of' offence.

- 2.7 When a school is considering an expulsion a consultation meeting must be held at which all key players – the Principal, the Chair of the Board of Governors, the pupil, his parents, representatives from the Board, and where appropriate CCMS, and others who can contribute – discuss in a realistic manner options for the continuing education of the young person. The meeting should produce agreement on the action to be taken and by whom, including a target date for the young person's return to full-time suitable education if an expulsion is to take place.
- 2.8 Where young people and their parents decide to appeal against an expulsion, the hearing should be arranged quickly. The way in which appeals are heard and the outcomes should be consistent across all Board areas.

Objectives for the Review

- 2.9 The agreed objectives are as follows:
- To encourage schools, as a matter of normal practice, to explore and use all other alternative strategies before imposing a suspension or expulsion.
 - To ensure that any suspensions and expulsions are imposed for appropriate reasons and on a fair and consistent basis by each school.
 - To ensure that all schools follow proper and consistent procedures when suspending or expelling pupils.
 - To ensure that the voice of the pupil is also heard before any decision to suspend or expel is taken.
 - To ensure that full and appropriate consultation takes place about the future education arrangements for pupils whose expulsion is under consideration, including exploration of the pupil being retained within the school.
 - To ensure that those persons involved in the expulsion procedure whether at school, Board of Governor, or appeal tribunal level are properly trained and that some of the

members serving on the expulsion appeal tribunal have experience of school management or teaching.

- To ensure that, where a pupil has been expelled, alternative education arrangements are made by the Education and Library Board within a specific period of the Board having been notified of the expulsion.
- To ensure that guidance to schools is specific about the appropriate use of suspensions and expulsions, including incidents involving drug, solvent or alcohol abuse, and incidents which occur outside the school environment.
- To ensure that schools, Education and Library Boards, CCMS and other interested parties make meaningful use of the suspension and expulsion statistics to help inform future planning and strategies and to target support in a more effective manner.

3

SUSPENSION AND EXPULSION SCHEMES

Legal Framework

3.1 All schools must have a scheme in which the procedures to be followed when suspending or expelling pupils are set out. The matters that must be covered in the scheme and the authority responsible for its preparation are prescribed by legislation. In brief:

- each Education and Library Board prepares a scheme specifying the procedures to be followed in relation to the suspension or expulsion of pupils in controlled schools in its area;
- the CCMS prepares a scheme to be followed in relation to the suspension or expulsion of pupils by all Catholic maintained schools; and
- the Board of Governors of each voluntary school, grant-maintained integrated school and Irish-medium school must prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from the school.

3.2 Legislative references:

Education and Libraries (NI) Order 1986 – Article 49 as amended by Article 39 of the Education and Libraries (NI) Order 1993

Schools (Suspension and Expulsion of Pupils) Regulations (NI) 1995 and 1998

Review Group Findings

3.3 Controlled schools operate within the scheme prepared by the relevant Education and Library Board. All Catholic maintained schools operate within a common scheme prepared by CCMS. All other grant-aided schools operate within their own scheme. The schemes

prepared by each Education and Library Board, the scheme prepared by CCMS and a sample of those used by voluntary grammar and grant-maintained integrated schools were examined by the Review Group.

- 3.4 The examination revealed that there were quite significant differences between the schemes in terms of contents and detail. Some schemes only set out the basic legislative procedures to be followed and contained little or no cross-reference or guidance on the appropriate use of suspension and expulsion contained in the Department's 'Promoting Positive Behaviour' document issued in 2001. Some schemes did define the circumstances for a suspension to be extended, however, on occasion the basis was of dubious legality. For example, one scheme imposed an extension because the parent(s) did not accept an invitation to come to the school to discuss the pupil's initial suspension.
- 3.5 In addition, the Group was concerned that when the Department asked a number of those schools responsible for drawing up their own schemes for a copy of their scheme, some schools advised that they did not have a scheme.
- 3.6 It is illegal for schools not to have a scheme. There is also a lack of consistency between schemes in the contents and the procedures to be used which can result in unfair practice. It is crucial in the interests of equity and the promotion of best practice that all schools should operate on a common basis in the matter of suspensions and expulsions.

Proposal

- 3.7 All schools should be required by law to use the same model scheme for the suspension and expulsion of pupils. A universal scheme should be prepared by the Department in consultation with education partners and issued to schools as the required basis for their suspension and expulsion scheme. If an employing authority wishes to make any changes to the universal scheme this would require the specific approval of the Department of Education.

4

SUSPENSIONS

Legal Framework

4.1 Under the existing legislation:

- a pupil can be suspended only by the Principal;
- an initial suspension must not exceed 5 days;
- a pupil can only be suspended for a maximum of 45 school days in a school year;
- the Principal cannot extend a period of suspension without the prior approval of the Chair of the Board of Governors; and
- the Principal must immediately give written notification of a suspension to the parent of the pupil, the Chair of the Board of Governors, the Education and Library Board in which the school is located and (in the case of a pupil at a Catholic maintained school) to CCMS.

4.2 Legislative references:

Education and Libraries (NI) Order 1986 – Article 49 as amended by Article 39 of the Education and Libraries (NI) Order 1993

Education (NI) Order 1998 – Article 86 (1)

Schools (Suspension and Expulsion of Pupils) Regulations (NI) 1995 (SR 1995 No 99)

Schools (Suspension and Expulsion of Pupils) (Amendment) Regulations (NI) 1998 (SR 1998 No 255)

INITIAL AND EXTENDED SUSPENSIONS

Review Group Findings

4.3 Examples identified of unsatisfactory or illegal practices were as follows:

- The legal length of an initial suspension being exceeded.
- The length of extended suspensions (in some cases a single extended period of suspension up to 40 days had been imposed).
- Extended suspensions being imposed simply because a parent did not accept an invitation to come to the school to discuss the child's initial suspension.
- The absence of a pastoral support programme in some schools to help re-integrate pupils who had been on long suspensions (over 10 days).
- Pupils being sent home for an indefinite period outside the legal suspension framework.

4.4 It is essential that schools operate within the statutory framework and guidelines issued by the Department and the employing authorities. Schools' management need to be made aware of the consequences of operating illegally and have clear and unambiguous advice on the legal requirements and best practice.

Proposals

4.5 The Department should issue guidance to schools, specifying that:

- it is illegal to suspend pupils for more than 5 days at initial suspension stage or for more than 45 days in a school year;
- extended suspensions should be imposed for specific reasons which should be clearly stated in the written notification to parents and the appropriate Education and Library Board, CCMS and the Chair of the Board of Governors;

- extended suspensions should be for short reasonable periods, normally in blocks of not more than 5 days;
- a suspension should not be extended simply because a parent fails to accept an invitation from the school to discuss the child's initial suspension; and
- a pastoral support programme should be put in place by the school to help reintegrate pupils who have been suspended from school for a continuous period in excess of 10 days.

4.6 A school's suspension procedures and practice should be monitored by the Education and Training Inspectorate as part of the pastoral care element of general and focused inspections.

EDUCATION PROVISION DURING PERIODS OF SUSPENSION

Review Group Findings

4.7 A school is responsible for the education of all pupils on its register. Casework examples indicated a considerable variation in practice by schools in maintaining contact with pupils on suspension and in providing school work for completion at home. Encouraging pupils on suspension to keep up with school work does minimise disruption on return to school and improve the prospects of a successful re-integration.

4.8 Legislation should be amended to clarify that schools retain responsibility for the education of pupils on suspension.

Proposals

4.9 The legislation should be amended to clarify the position on a school's responsibility.

4.10 Good practice guidance to schools should define that responsibility as providing school work, arranging for it to be marked and arranging for suspended pupils to take all public examinations, including Key Stage assessments, for which they had been taught.

APPEALS AGAINST SUSPENSIONS

Review Group Findings

- 4.11 The suspension process is internal to a school and it is the responsibility of the Principal and the Chair of the Board of Governors to ensure that it operates in a fair manner. Casework examples indicate that the process is not always perceived as fair. Underpinning this perception are concerns around:
- a failure to listen to the suspended pupil's position;
 - a failure to investigate all aspects of the incident giving rise to the suspension;
 - illegal action by the school; and
 - a belief by parents that a suspension may have serious consequences in a pupil's later career.
- 4.12 These concerns have given rise to the view that an appeals mechanism against suspensions will rectify matters.
- 4.13 The question of a suspension appeals mechanism was given detailed consideration but significant practical and administrative problems were identified in establishing such a process. Suspension, as a sanction, is in the main imposed by schools very quickly after the incident and serves as a strong signal to the pupil that their behaviour is unacceptable. This pattern is confirmed by the statistics which show that the vast majority of suspended pupils are suspended only once in a school year and for periods of less than 5 days. Accordingly, any effective appeals mechanism needs to be capable of being activated quickly. Further it needs to be independent of those who have made the decision(s) in question and the basis on which an appeal can be made clearly defined.
- 4.14 Extended suspensions (beyond the initial 5 days) have to be approved by the Chair of the Board of Governors who could be given responsibility for hearing appeals up to that stage. However, the availability of the Chair at short notice and the perceived ability of the Chair to take a totally independent and objective view of events are likely to pose serious obstacles.

- 4.15 The possibility of establishing an independent suspension appeals panel in each Education and Library Board (perhaps by extending the remit of the existing expulsion appeals tribunal) was also considered. However, evidence from the operation of existing appeals panels indicates that this option could not cope with the volume of potential cases or meet the time constraints.
- 4.16 It was concluded that the creation of an effective formal appeal mechanism which allowed parents and/or the pupil to appeal against a proposed suspension was not administratively practical or desirable as part of a school's approach to behaviour management. The legitimate concerns about the deficiencies in the way the suspensions process operated in some schools could be addressed through the 'universal scheme' and through best practice guidance for schools.

Proposals

- 4.17 A formal right of appeal against a suspension should not be introduced.
- 4.18 The Department should issue guidance to schools, specifying that:
- suspensions should not be imposed until the school has established all the facts;
 - the pupil to be suspended must be given an opportunity to explain their position; and
 - schools should set out in advance the arrangements which will be made when time is needed to establish the facts of a situation which may warrant a suspension. For example, in a case of suspected drug abuse or an attack on a pupil, and where removal from class is desirable while enquiries are made, schools could consider using a short 'timeout' period (not more than 2 days) within the school setting.
- 4.19 The Department, in collaboration with education partners, should make available advice leaflets for parents on the legal position in respect of suspensions.

5

EXPULSIONS

Legal Framework

5.1 The expulsion of a pupil is legal only if the following requirements are satisfied:

- the pupil has served a period of suspension;
- a consultation has taken place between the Principal, the parent of the pupil, the Chair of the Board of Governors, an authorised officer from the relevant Education and Library Board and (in the case of a Catholic maintained school) an authorised officer from CCMS. The consultation must include consultations about the future provision of suitable education for the pupil concerned;
- the decision to expel the pupil is made by the appropriate 'expelling authority' which is the relevant Education and Library Board in the case of pupils attending controlled schools and the Board of Governors in all other cases; and
- where a final decision has been taken to expel a pupil the Principal must immediately notify the parent(s) of their right to appeal that decision to an independent appeal tribunal established by the Education and Library Board and the arrangements and timetable for doing so.

5.2 Legislative references:

Education and Libraries (NI) Order 1986 – Article 49 as amended by Article 39 of the Education and Libraries (NI) Order 1993

Schools (Suspension and Expulsion of Pupils) Regulations (NI) 1995

DIFFERENTIAL IMPACT OF EXPULSION PROCEDURES

Review Group Findings

- 5.3 The statistics on expulsions (see Appendix B) show that a significantly higher proportion of pupils were expelled from Catholic maintained, voluntary grammar and grant-maintained integrated schools than from controlled schools. This pattern and other anecdotal case evidence pointed to the need for a more consistent cross-sectoral approach to expulsions in the interests of equity of treatment for all pupils. In controlled schools a consistency of decisions to expel is achieved because the Education and Library Board is the 'expelling authority' rather than the school, which can only recommend an expulsion to the Board.
- 5.4 A consistency of decisions across all other school sectors could be achieved by replicating the arrangements in the controlled sector. An independent panel could become the 'expelling authority' for all schools in the Board's area, and its membership could, in part, be flexible to reflect the school sector from which an expulsion is proposed. This development should result in decisions to expel pupils being made on a consistent basis across all schools in a Board's area. However, it will mean that many schools will lose the power to make the final decision on the expulsion of a pupil and such a change is not likely to be welcomed.
- 5.5 An alternative approach to ensuring equity of treatment for pupils may be to require schools to satisfy an independent assessor that expulsion is appropriate before the final decision is made by the Board of Governors of a school. This could be done through the establishment of a small team of (non-legal) 'assessors' in each Board area. The primary function of an 'assessor' would be to represent the interests of the pupil and/or parents where an expulsion is proposed. Assessors, who would be carefully selected, trained and supported by each Education and Library Board (but not directly accountable to the Board) would be entitled by law to:
- gather background information from the school, the Board, and/or CCMS, in advance of the consultation meeting in order to consider whether in all the circumstances the possible

expulsion of the pupil might be reasonable, or, what support (if any) might be needed either to help retain the pupil in school, or, in the event of an expulsion to help the pupil secure a place in another school;

- attend and make representations at the ‘consultation’ meeting provided for under current expulsion procedures;
- submit a written report (shortly after the ‘consultation’ meeting) to the Board of Governors, the Board, and where appropriate CCMS, setting out whether, in the assessor’s opinion the school had taken all reasonable steps to tackle the pupil’s behaviour and whether any proposed expulsion was justified or considered to be premature;
- attend the Board of Governors meeting at which a final decision on the pupil’s future would be made and make oral representations or answer any questions in relation to his/her independent written report; and
- advise the parent(s) and/or the pupil whether an appeal to an expulsions appeal tribunal might be justified.

Proposal

- 5.6 Expulsion procedures should operate in an equitable manner across all school sectors. The Department should consult on the options for achieving this and consider any other proposals which might be presented as part of the public consultation process. Any changes which are made as a result of the consultation process should apply to all schools.

EXPULSION - THE THREAT

Review Group Findings

- 5.7 Casework evidence identified situations where expulsion was used as a threat to have a pupil moved from a school. Despite recent guidance from the Department of Education and others, some schools still pressured parents into removing their child from the school and

seeking a place elsewhere in order to avoid the possibility of expulsion. This form of pressure is unacceptable; it infringes a whole raft of rights, and can often result in the pupil being unable to find a place in an alternative school easily or quickly. The formal expulsion process protects the rights of all concerned - the pupil, his parents, the school authorities and other pupils. A pupil has a right to remain on the school register and receive educational support until he is expelled and parents have a right to appeal against an expulsion decision. While avoiding the formal procedures may appear expedient to a school in the short term, in the longer term it may prove costly as the pupil's education may have been adversely affected by the school's actions and the school may be proved liable.

Proposals

- 5.8 New guidance should issue re-emphasising that schools should act in a manner which respects the rights of all parties.
- 5.9 The Department, in collaboration with education partners, should produce an information leaflet for parents about the expulsion process and advice on how to support their child where this action is proposed. The current regulations on the registration of pupils should be amended to clarify the circumstances under which a pupil may be legitimately removed from the register of a school.

THE CONSULTATION PROCESS

Review Group Findings

- 5.10 The consultation is the last opportunity to rescue a pupil's educational career within the school. The consequences of an expulsion for a pupil can be very serious and the consultation may be the first time that these have been fully explored and appreciated by pupils and parents. The consultation may also be the first time that a school has been asked to explain its approach to the management of a pupil's behaviour and it may be that the support provided is deficient. All parties to the consultation need to understand their roles and responsibilities in the process so that the best outcome can be achieved for the pupil and the school.

- 5.11 Casework evidence indicates that too often the consultation, required by law, prior to an expulsion decision is regarded by schools as a formality. It is regarded as a pre-expulsion meeting with a pre-determined outcome and agenda aimed solely at making the case for an expulsion. Frequently it is left to the Education and Library Board and, where appropriate, the CCMS representatives to explore with parents how and where alternative education provision might be made for the pupil.
- 5.12 The purpose of the 'consultation' should be defined so that all options for the pupil's future education are considered, including retention within the school. The school should be required, as part of the process, to provide evidence of the strategies used, to address the pupil's serious behavioural problems and their impact. Schools should also provide details of what support, if any, has been sought from and given by external agencies such as the Education and Library Boards. The process should facilitate the active participation of both pupils and parents.

Proposals

- 5.13 The purpose of the 'consultation' meeting should be defined by amending existing legislation to ensure consideration of all options for the pupil's future education and a requirement that schools must take account of guidance issued by the Department, the Education and Library Boards and, in the case of Catholic maintained schools, CCMS.
- 5.14 The Department should prepare new guidance on the consultation process which will recommend best practice, specifically:
- the pupil should, subject to his/her age and understanding, be given the opportunity to attend and be heard at this meeting;
 - parents, Education and Library Boards and CCMS' staff must be given adequate notice (a minimum of 5 working days) of both the 'consultation' meeting and any subsequent meeting of the Board of Governors at which a final decision on the future of the pupil is being taken;

- meetings with parents should be arranged for mutually convenient times and parents should, if they wish, be entitled to bring along a friend or supporter to either of these meetings;
- the circumstances when persons nominated by the Chief Executives from 2 different Education and Library Boards will be able to attend the meeting; and
- both they, and any representative nominated by the Chief Executive of CCMS who may also be in attendance, will be entitled to present their impartial and professional views on the case.

EXPULSION APPEAL TRIBUNAL

Legal Framework

- 5.15 Any appeal must be made in writing setting out the grounds on which it is being made. In hearing the appeal the tribunal must give the person(s) making the appeal and the expelling authority the opportunity to make written and oral representations. The appeal tribunal may also allow the person(s) making the appeal to be accompanied by a friend or a supporter; and
- 5.16 Appeals must be disposed of without delay and the decision of the tribunal relayed to both the person(s) making the appeal and the expelling authority. If the tribunal upholds an appeal the school must let the pupil return to the school.
- 5.17 Legislative references:
- Education and Libraries (NI) Order 1986 – Article 49 as amended by Article 39 of the Education and Libraries (NI) Order 1993
- Schools (Suspension and Expulsion of Pupils) Regulations (NI) 1995
- Schools (Expulsion of Pupils) (Appeals Tribunals) Regulations (NI) 1994
- Schools (Expulsion of Pupils) (Appeals Tribunals)(Amendment) Regulations (NI) 1998

Review Group Findings

- 5.18 The feasibility of setting a time limit in legislation for reaching a decision on an appeal against an expulsion from school was considered. Education and Library Board officers who are responsible for arranging expulsion appeals were consulted about this and were unanimously of the view that it would be inappropriate and impractical to impose an artificial deadline. Operating experience demonstrated that for a variety of reasons, mostly outside the Boards' control (for example requests from both parties to delay or adjourn proceedings to allow their legal representatives to attend, or requests for specialist reports) such deadlines simply could not always be achieved. In addition, since tribunal members are acting in a voluntary capacity, the clerk to the tribunal has no power to compel their attendance within a particular timescale.
- 5.19 The suitability of the current process for dealing with appeals against expulsions from schools was considered against the criteria of consistency and fairness. While there was no evidence to suggest that appeal tribunals operated other than in a fair and reasonable way and reached totally objective decisions, the current process is open to criticism on a number of counts. An expulsion appeal tribunal is established and administered by an Education and Library Board, the same board which is the expelling authority for some of the decisions being challenged. Members of the tribunal are volunteers and those members of a specific tribunal are often those available at the time of the hearing. Tribunal members do not have to have any particular qualifications or experience or have undertaken training for the task.
- 5.20 Given the seriousness of a decision to expel a young person from school and the importance of the outcome of an appeal for that young person's future, the establishment of an independent appeal tribunal which would draw its membership from an experienced panel of trained persons was considered appropriate.

Proposals

- 5.21 An independent expulsions process should be established which will deal with appeals on a regional basis. This can be done by extending the remit of the Special Educational Needs (SEN) Tribunal, or, by

establishing a separate independent panel which would, like the SEN panel, be constituted and administered by an agent other than the Education and Library Boards.

- 5.22 The independent appeal tribunal should have 3 members:
- a legally qualified or legally trained chairman appointed on a salaried basis.
 - a school Principal selected from a panel of serving or recently retired Principals; and
 - a person (not a teacher) with experience in education or familiar with educational arrangements in a Board area, for example someone who is or recently was a school governor, or a parent of a registered pupil.
- 5.23 To avoid any possible conflict of interest tribunal members should not hear appeals in their own Board area. All panel members should receive suitable and regular training and the chair should receive specific training on the chairing skills the panel requires.
- 5.24 Sufficient panel members should be available to ensure that hearings can be disposed of with the minimum of delay.

EDUCATION PROVISION AFTER EXPULSION

Legal Framework

- 5.25 Each Education and Library Board is required to make arrangements for suitable education for children of compulsory school age who have been expelled if they are unlikely to receive education without these arrangements being made for them.
- 5.26 Legislative references:
- The Education (NI) Order 1998, Article 86 (1)

Review Group Findings

- 5.27 In some cases, the failure to consider future educational options in a realistic manner during the consultation prior to expulsion can mean that many young people are out of regular education for unacceptably long periods. This situation can also occur when parents have been 'encouraged' to remove their child from a school as a way of averting expulsion action.
- 5.28 New legislation introduced in England and Wales places a responsibility on local education authorities to provide suitable full-time education for expelled pupils within 15 days. While responsibility for making provision here rests with the Education and Library Boards there is no legal time constraint and suitable education is not defined as full-time. Retaining maximum flexibility in the type of provision made is essential to be able to accommodate considerations such as:
- some children cannot cope with a full-time education regime;
 - not all children or their parents are prepared to accept education provision outside a mainstream school;
 - delays by schools in responding to admissions applications from expelled pupils;
 - the limited number of alternative education places, particularly for pupils below Key Stage 4;
 - the availability of suitably qualified home tutors;
 - the specialist needs of pupils with severe emotional problems;
 - the difficulty for providers of alternative education programmes (including Institutes of Further and Higher Education), to operate an open door policy and admit pupils mid-academic term.
- 5.29 Young people should be out of regular education for as short a period as possible. A period of 15 school days was considered a reasonable maximum and the basis for a reasonable operational target.

Proposals

- 5.30 A 15 working day operational target should be set for providing suitable education for pupils who, because of expulsion, are unable to attend mainstream school. Further work in converting this into a workable target should be undertaken by a group of Education and Library Board officers, possibly the Regional Behaviour Group.
- 5.31 The alternative education arrangements made should be tailored to best suit each individual pupil's circumstances and the range of options, where applicable, open to the pupil (including the recommended option), should be fully discussed and agreed with both the pupil and their parent(s). A written record of what has been agreed should be kept by the Education and Library Board for future reference.

6

PREVENTION AND SUPPORT SYSTEMS

VULNERABLE PUPILS**Review Group Findings**

- 6.1 While the overall number of pupils expelled in any year is small, it was found that a significant number of pupils had a long history of behavioural problems and some had statements of special educational needs. This information raised questions about the appropriateness of expulsion as a sanction for statemented pupils and why some schools were not using the 5 stage approach to supporting pupils with behavioural problems.
- 6.2 The application of the Special Educational Needs Code of Practice 5 stage approach to behaviour management was set out in 'Promoting and Sustaining Good Behaviour; A Discipline Strategy for Schools'. The strategy placed an emphasis on early intervention and on progressively more intensive support as necessary leading, where appropriate, to a statement of special educational needs because of behavioural difficulties. Expulsion is an inappropriate way of meeting the needs of pupils with statements of special educational needs. Schools can ask that the Education and Library Board review the statement and that an alternative placement or additional support be considered. Where the immediate behaviour is extreme, a fixed period suspension can be used to create a 'respite' period during which all key parties can review the options.

Proposals

- 6.3 Pupils with statements of special educational needs should not be expelled.
- 6.4 The Department should prepare new guidance for schools about the use of early interventions and the application of the Special Educational Needs Code of Practice to behavioural problems.

ADMISSION TO ANOTHER SCHOOL

Review Group Findings

- 6.5 It is recognised that some schools may have genuine and understandable concerns about admitting a pupil expelled because of behavioural problems. However, casework evidence indicated that some schools deliberately prevaricated over an admission application hoping the parents of an expelled pupil would seek a place elsewhere. The need to call a meeting of the Board of Governors to consider the application is often used as the basis for the delay even though Principals do have delegated powers to decide on the application. These delaying tactics can often contribute to an expelled pupil being out of mainstream education for a long period and can require the Education and Library Board to make some form of unsatisfactory stop-gap provision.
- 6.6 Schools with spare places can only reject applications after Year 1 and Year 8 if they can clearly demonstrate that accepting the child would be prejudicial to the efficient use of resources, or, in the case of grammar schools, the academic ability of the child is not of a standard equivalent to that of the pupils with whom they would be taught at the school. Education and Library Boards are of course also prepared to discuss with the school what support might be given to help integrate the expelled pupil into the new school and tackle the behavioural problems. In the interests of the continuity of the expelled pupil's education, the process of making a decision about the application for admission to a school should not be unduly delayed and a mechanism put in place to achieve this.

Proposals

- 6.7 Legislation should be introduced requiring schools to make decisions on applications received outside the normal admission periods within 15 school days.
- 6.8 Where a school has not responded to the admission application within that timescale, or has, in the Education and Library Board's view, not given sufficiently good reasons for refusing to admit the pupil, the Board should use the power given to it in Article 42 of the Education

(NI) Order 1996 to direct the school to admit that pupil, subject to the parent(s) having made every attempt to get their child into alternative schools providing suitable education within a reasonable distance of the child's home.

- 6.9 Article 42 of the Education (NI) Order 1996 should be suitably amended to clarify the circumstances in which a Board can direct a school to admit a pupil.

PREVENTION STRATEGIES

Review Group Findings

- 6.10 Some school clusters in England and Wales operate a voluntary admissions forum where pupils who have been expelled or are in danger of being expelled from one of the schools in the cluster, can quickly be placed in another school in the cluster. Anecdotal evidence shows that in some instances a change of school can help to address a pupil's serious behavioural problems. Such cluster arrangements only work well when all the schools abide by the pre-agreed rules. A pilot, involving 5 post-primary schools in the Belfast area, is to commence during the 2003/04 school year and the evaluation of this approach may provide a basis for preventative action across all Boards areas.

Proposals

- 6.11 Education and Library Boards should facilitate the formation of voluntary admissions clusters which will give pupils with behavioural problems the opportunity to be taught in a different environment.
- 6.12 The lessons learnt from the evaluation of the proposed pilot in Belfast should be circulated to other schools for information.

SUSPENSION AND EXPULSION DATA

Review Group Findings

- 6.13 The Department of Education and the Education and Library Boards now gather data on suspensions and expulsions on a consistent

basis. The data, in particular that which is collected through the standard suspension notification form, asks schools to list the reason for the suspension, whether an existing suspension is being extended and whether the pupil is on the Special Educational Needs register. This provides good information about trends in pupil behaviour. The Education and Library Boards are moving to a computerised pupil information database which will allow linkages between the databases of key services such as Education Welfare, Education Psychology and Special Education. These developments will help identify those pupils and schools requiring support or intervention and assist in future strategy planning.

Proposal

- 6.14 Education and Library Boards, CCMS and other interested parties, including schools, should use the more detailed and consistent data about suspensions to help inform future planning and strategies, and to target support or intervention more promptly and effectively both at individual pupil and school level.

7

SUMMARY OF PROPOSALS

Suspension and Expulsion Schemes

- 7.1 All schools should be required by law to use the same model scheme for the suspension and expulsion of pupils. A universal scheme should be prepared in consultation with key interests and issued to schools. If an employing authority wishes to make any variations in the universal scheme this will require the specific approval of the Department of Education.

Initial and Extended Suspensions

- 7.2 Specific guidance should be issued to schools on the proper use of the suspension sanction, a pupil's rights in the process and re-integration after an extended period of suspension.
- 7.3 A school's suspension procedures and practice should be monitored by the Education and Training Inspectorate as part of the pastoral care element of general and focused inspections.

Education Provision during Periods of Suspension

- 7.4 Education (NI) Order 1998, Article 86 should be amended to clarify that the education of a suspended pupil remains a school's responsibility.
- 7.5 Good practice guidance to schools should define that responsibility as providing school work, arranging for it to be marked and facilitating the taking of any public examinations for which the pupil is being prepared.

Appeals against Suspensions

- 7.6 A formal right of appeal against a suspension should not be introduced.

- 7.7 The 'universal scheme' and good practice guidance for schools should specify that suspensions should not be imposed until a school has established all the facts. The pupil to be suspended must be given an opportunity to explain their position and schools should address in advance the need to provide a 'timeout' period within school for a pupil while enquiries are made.
- 7.8 The Department, in collaboration with education partners, should make available advice leaflets for parents on the legal position in respect of suspensions.

Differential Impact of Expulsion Procedures

- 7.9 Expulsion procedures should operate in an equitable manner across all school sectors. The Department should consult on how this might be done, specifically through the creation of a common 'expelling authority' for all schools or by the intervention of 'an independent assessor' to represent the interests of the pupil.

Expulsion – The Threat

- 7.10 Schools should be reminded to act in a manner which respects the rights of all parties.
- 7.11 The Department, in collaboration with education partners, should make available advice leaflets for parents on the legal position in respect of expulsions.

The Consultation Process

- 7.12 Current legislation should be amended to ensure consideration of all options for the pupil's future education and this process should take account of any relevant guidance.
- 7.13 New guidance should be prepared which recommends that the pupil, subject to age and understanding, should have the opportunity to attend and be heard in the process, that parents are facilitated to be involved in the process and that the relevant personnel from the Board(s) and CCMS, as appropriate, be present and contribute their professional expertise.

Expulsion Appeal Tribunal

- 7.14 An independent expulsion appeals process should be established which will deal with appeals on a regional basis.

Education Provision after Expulsion

- 7.15 Pupils should not be out of education, because of expulsion, for longer than 15 school days.

Vulnerable Pupils

- 7.16 There should be a 'no expulsions' policy for pupils with statements of special educational needs.
- 7.17 The Department should prepare new guidance about the use of early interventions and the application of the Special Educational Needs Code of Practice to behavioural problems.

Admission to Another School

- 7.18 Schools should be required to respond to applications for admission, outside the normal admission periods within 15 school days.

Prevention Strategies

- 7.19 Education and Library Boards should facilitate the formation of voluntary admissions clusters which will give pupils with behavioural problems an opportunity to be taught in a different environment.
- 7.20 Lessons learnt from the pilot 'cluster' in Belfast should be circulated to other schools for information.

Suspension and Expulsion Data

- 7.21 The Education and Library Boards, CCMS and other interested parties, including schools, should use the more detailed and consistent data about suspensions to help inform future planning and strategies and to target support or interventions more promptly and effectively.

8

THE NEXT STEPS

Consultation

- 8.1 The Department is actively promoting widespread consultation on the proposals set out in this document given that they will impact on all schools, pupils and their parents. It is important that the views of all interested parties are sought before decisions are taken on what changes will be made. Copies of the document have been distributed to all grant-aided nursery, primary and post-primary schools, education organisations and all those who have asked to be placed on the Department's circulation list for consultations.
- 8.2 To assist those who wish to make their views known, a questionnaire response form is included (Appendix C). Alternatively this form can be completed electronically. Details on how to submit a response are given on page 1.
- 8.3 In addition to the general consultation, specific exercises have been commissioned to seek the views of pupils and parents.

Future Action and Timetable

- 8.4 The table below sets out the main activities involved in taking forward the proposals and an indicative timetable.

Action	Duration	Estimated Completion Date
Consultation Period	3 months	2 July 2004
Analysis of responses	3 months	30 September 2004
Policy decisions. Preparation of detailed action plan and timetable	4 months	31 January 2005
Completion of work not requiring legislation changes		1 September 2005
Commencement of new legislation		1 September 2006

A

MEMBERS OF THE SUSPENSIONS AND EXPULSIONS
WORKING GROUP

Mr Jackie Simpson (Chair)	Department of Education
Mrs Yvonne Tate (Secretary)	Department of Education
Mr Bertie Stewart	Belfast Education and Library Board
Mr Malachy O’Loane	Western Education and Library Board
Mr David Lewers	North-Eastern Education and Library Board
Mr Colum Boal	South-Eastern Education and Library Board
Miss Eileen Keville (until August 2003)	Southern Education and Library Board
Mrs Mairead Maguire (from September 2003)	
Mr Fintan Murphy	Council for Catholic Maintained Schools

B**EXPULSIONS AND SUSPENSIONS – CONTEXTUAL STATISTICS****Background**

1. Information about expulsions and suspensions was collected for the first time as part of the commissioned research 'The 1996/97 Northern Ireland Suspension and Expulsion Study' and subsequently by the Department as an annual return from the Education and Library Boards. Until the 2002/03 school year the majority of Boards recorded the information on 'paper' systems, so collation for the annual return was a considerable manual task. Over the course of 2003/04 computerised recording is to be introduced and this will greatly enhance the opportunities to use the information for more complex analyses and targeting purposes.
2. The information about pupil expulsions is regarded as accurate given the small numbers involved. The information about suspensions may be regarded as a strong indicator of the position, though not wholly accurate. The returns are based on the notifications of suspensions sent by schools to the Education and Library Boards. A standard notification form was introduced for the start of the 2002/03 school year. Until then schools used a proforma provided by the Board or more usually a form of their own devising. This considerable variation created a risk of information being miscoded, for example the same pupil name on separate notifications could be treated as 2 different pupils or the same pupil with 2 suspensions.
3. The introduction of the computerised recording of suspensions notification data and the use of the pupil's roll number on the standard form should improve the accuracy of future information. The Department continues to work with the Boards to identify the most appropriate information for the purposes of determining trends, service development and targeting of support and how best to collect it.

EXPULSIONS: NUMBER OF PUPILS BY BOARD AREA

Year	BELB	NEELB	SEELB	SELB	WELB	Total
1998/99	6	29	6	14	18	73
1999/00	19	20	3	16	25	83
2000/01	5	29	11	16	19	80
2001/02	7	18	12	23	16	76
2002/03	18	17	16	7	12	70

Commentary

4. Since the Department started to collect information about expulsions the figure in any school year has never been higher than 83 pupils (1999/2000). The annual total is volatile and not regarded in itself as a good indicator of pupil behaviour. A single major incident in a school resulting in multiple expulsions could create the impression of a serious deterioration. While data about the reasons for expulsion is not collected at present, there is anecdotal evidence to indicate that some pupils, particularly those expelled for drugs related offences, had not been regarded previously by their schools as disruptive or difficult.

EXPULSIONS: NUMBERS AND RATE BY SCHOOL MANAGEMENT TYPE

Year : 2000/01

School Management Type	Pupils Expelled	Number of Pupils	Ratio
Controlled	23	140,863	1:6124
Catholic Maintained	38	126,695	1:3334
Other*	19	62,476	1:3882
Total	80	330,034	1:4125

Year : 2001/02

School Management Type	Pupils Expelled	Number of Pupils	Ratio
Controlled	22	139,413	1:6337
Catholic Maintained	49	124,695	1:2545
Other*	5	63,422	1:12,684
Total	76	327,530	1:4310

Year : 2002/03

School Management Type	Pupils Expelled	Number of Pupils	Ratio
Controlled	22	137,571	1:6253
Catholic Maintained	37	122,739	1:3317
Other*	11	64,416	1:5856
Total	70	324,726	1:4639

* Other covers voluntary grammar, integrated and Irish-medium schools

Commentary

5. The breakdown of expulsions by school management type for the school years 2000/01 to 2002/03 shows a consistently higher number from Catholic maintained schools. The number of pupils expelled has been converted to ratios using the total enrolments in each of the school management types and in the tables above the rate for Catholic maintained schools is around twice that from controlled schools.

EXPULSIONS: CONSULTATIONS PRIOR TO DECISION – 2002/03

	BELB	NEELB	SEELB	SELB	WELB	Total
Consultations	37	26	27	14	24	128
Expulsions	18	17	16	7	12	70

Commentary

6. The table shows the number of individual cases of consultation involving officers from the Education and Library Boards where an expulsion decision was under consideration.

EXPULSIONS: APPEAL HEARINGS – 2002/03

	BELB	NEELB	SEELB	SELB	WELB	Total
Appeals Withdrawn		3		1		4
Appeals Heard	1	5	5		3	14
Appeals Upheld		1	4			5

Commentary

7. During 2002/03, 18 appeals were lodged with the Education and Library Boards and 4 were withdrawn before the hearing. In 5 cases the Appeals Tribunal considered that the expulsion was not legal.

SUSPENSIONS: NUMBERS OF PUPILS BY BOARD AREA

Year	BELB	NEELB	SEELB	SELB	WELB	Total
2000/01	1066	1189	803	763	919	4740
2001/02	1229	1107	919	914	882	5051
2002/03	1473	1200	992	1208	906	5779

SUSPENSIONS : NUMBER OF PUPILS BY KEY STAGE

Year	Key Stage 1	Key Stage 2	Key Stage 3	Key Stage 4	Total
2000/01	25	238	2155	2322	4740
2001/02	53	308	2400	2290	5051
2002/03	57	274	2645	2803	5779

Commentary

8. The tables above show an overall year-on-year increase in the number of pupils being suspended, though there are variations in that pattern within some Boards' returns. Over the period the number of pupils suspended as a percentage of the school population ranged between 1.4% and 1.8%.
9. The pattern of suspensions across Key Stages shows significant differences in the rate between the primary and secondary phases.
10. At the start of the 2002/03 school year the Department wrote to all schools reminding them of the legal requirement to notify suspensions to the Boards and urging that the new standard form be used. There is a view that this led to greater diligence on the part of all schools in sending notifications and that this may account for part of the increase in numbers for 2002/03.

SUSPENSIONS: NUMBERS OF PUPILS BY SCHOOL MANAGEMENT TYPE

Year : 2001/02

School Management Type	Pupils Suspended	Number of Pupils	Ratio
Controlled	2131	139,413	1:65
Catholic Maintained	2115	124,695	1:59
Other*	805	63,422	1:79
Total	5051	327,530	1:65

Year : 2002/03

School Management Type	Pupils Suspended	Number of Pupils	Ratio
Controlled	2443	137,571	1:56
Catholic Maintained	2386	122,739	1:51
Other*	950	64,416	1:68
Total	5779	324,726	1:56

* Other covers voluntary grammar, integrated and Irish-medium schools

Commentary

11. The rates of suspension by school management type show that the controlled and Catholic maintained sectors are broadly the same.

SUSPENSIONS : FREQUENCY

Year	Suspended Once	Suspended Twice	Suspended 3 or More Times	Total
2000/01	3517	763	460	4740
2001/02	3704	794	553	5051
2002/03	4044	921	814	5779

Commentary

12. The majority of suspended pupils are suspended only once. Over the 3 school years the percentage of pupils with a single suspension has ranged from 74% to most recently 70%.



**DEPARTMENT OF EDUCATION
CONSULTATION ON REVIEW OF PROCEDURES FOR
SUSPENSION AND EXPULSION OF PUPILS**

Proposals	Please tick one of the boxes below		Comments, if any. Please continue on a separate sheet if necessary and attach to this questionnaire
	Agree	Disagree	
a. All schools should use the same scheme for the suspension and expulsion of pupils			
b. The Department of Education (DE) should issue guidance on the proper use of suspension			
c. The Education and Training Inspectorate should monitor schools' suspension arrangements			
d. A school is responsible for the education of a pupil while on suspension			
e. There should be no formal right of appeal against a suspension			
f. DE should prepare an information leaflet for parents about the legal position on suspensions			
g. There should be a single 'expelling authority' for all schools			
h. An 'independent assessor' should represent the interests of a pupil during a proposed expulsion			
i. DE should prepare an information leaflet for parents about the legal position on expulsions			
j. New guidance on the consultation process should issue before an expulsion decision is made			
k. Expelled pupils should not be out of education for longer than 15 school days			

Proposals	Please tick one of the boxes below		Comments, if any. Please continue on a separate sheet if necessary and attach to this questionnaire
	Agree	Disagree	
l. A regional independent expulsions appeals process should be established			
m. New guidance should issue about the application of the Special Education Needs Code of Practice to behavioural problems			
n. Pupils with statements of special educational needs should not be expelled			
o. Applications for admissions to schools, outside the normal period, should be determined within 15 school days			
p. Schools working together as a voluntary admissions cluster should be facilitated			
q. ELBs, CCMS, schools and other interested parties should use information about suspensions to plan services and target support			

Name:

(in CAPITAL letters) _____

Name of Organisation:

(if appropriate) _____

Contact Address: _____

Post Code: _____

Signed: _____

Date: _____

Please note that under the current Open Government Code and the Freedom of Information Act which is due to come into force in January 2005, your response to this consultation may be made available, on request, to the public.