

Equality analysis to accompany consultation on revised exclusion guidance and regulations

Title: Revised exclusion guidance and regulations

This equality analysis is being published as part of the consultation on new exclusion regulations and guidance.

The revised exclusion guidance and regulations set out the new provisions that will be enacted by Section 4 of the Education Act 2011. These provisions will 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 will have different powers and increased access to expertise on special educational needs. Parents will also be able to apply to the First-tier Tribunal (Special Educational Needs and Disability) to hear cases alleging disability discrimination.

The revised guidance has been made clearer by: identifying to whom each section applies; clarifying the separation between legislative duties / powers and statutory guidance; and only providing statutory guidance where it is necessary to ensure a duty or power is exercised effectively.

Consultation on the revised guidance and regulations will last for 10 weeks. The final version of the guidance, incorporating views from the consultation, will be published in summer 2012. It is intended that new regulations will be commenced from September 2012.

Description of the policy

Reforms to the exclusion review process are intended to ensure an effective system of exclusion which takes account of the impact that persistent, or significant, poor behaviour can have on the education or welfare of all members of the school. These reforms are one part of the Government's wider policy to support schools to promote good behaviour so that all children can benefit from a good education. We believe that it is vital to support schools to promote good behaviour if we are to address the current gap in achievement between rich and poor pupils.

Clause 4 of the Education Bill 2011 establishes independent review panels to replace independent appeal panels. Independent review panels provide for a quick, fair and accessible process for reviewing exclusion decisions, in a way that takes account of the rights of the wider school community. Unlike appeal panels, review panels will not be able to direct a school to reinstate a pupil. However, where a panel considers that the decision of the governing body to uphold the exclusion is flawed (in light of the principles applicable in a judicial review) it can quash the decision and require the governing body to reconsider the case.

If the governing body of a school is directed to reconsider an exclusion, it will recognise that the independent review panel has come to this conclusion using a threshold similar to that which a court would use in a judicial review. This will

be a serious consideration for them in their final decision on whether to reinstate the pupil. The important point of principle is that it is the school that is best placed to make that decision, taking account of the wider impact of reinstatement on other pupils at the school. Where a governing body is directed to reconsider its decision but does not reinstate the pupil, a school would be expected to pay an additional financial contribution towards the costs of providing an alternative education for that pupil.

Exclusion is an issue that disproportionately affects some of the most vulnerable pupils in society. In addition to pupils with special educational needs (SEN), this includes pupils receiving free school meals and pupils from certain communities. Under the new system, parents will be able to request the presence of an SEN expert at the panel to advise the panel on how special educational needs could be relevant to the exclusion. Parents will have this right, irrespective of whether a school recognises that a child has SEN. The new system will also allow cases alleging disability discrimination in relation to a permanent exclusion to be heard by the First-tier Tribunal (Special Educational Needs and Disability). The revised exclusions guidance has been drafted to set out how schools' duties under the Equality Act 2010 apply to the exclusions process. It also includes statutory guidance on how schools should ensure that all pupils are treated fairly, particularly those pupils who are most vulnerable to exclusion.

Ultimately, the intention is to reduce the need for exclusion by supporting schools to manage poor behaviour and intervene earlier to address any underlying causes. In addition, the Government is committed to improving the quality of the provision that excluded pupils receive to ensure that exclusion from a school is not an exclusion from a good education.

The evidence base

Quantitative evidence:

Annual exclusions SFR

<http://www.education.gov.uk/rsgateway/DB/SFR/s001016/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000942/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000860/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000793/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000733/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000662/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000465/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000331/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000259/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SFR/s000025/index.shtml>

<http://www.dcsf.gov.uk/rsgateway/DB/SBU/b000298/index.shtml>

Bradshaw, J., Ager, R., Burge, B. and Wheeler, R. (2010). *PISA 2009: Achievement of 15-year-olds in England*. Slough: NFER

Centre for Social Justice (2011) *No Excuses: A review of educational exclusion*
London: Centre for Social Justice

http://www.centreforsocialjustice.org.uk/client/downloads/CSJ_Educational_Exclusion_WEB_12.09.11.pdf

Chamberlain, T., Golden, S. and Bergeron, C (2011). *Children and young people's views of education policy*. Office of the Children's Commissioner

David, A.H (2010) *The 'collateral impact' of pupil behaviour and geographically concentrated socio-economic disadvantage* British Journal of Sociology of Education Vol.31 No 3 pp261-276

LYPSE Wave 1 data available from

<https://ilsype.education.gov.uk/workspaces/public/datasets/W1YP>

NASUWT (2010) *Taking Abuse: The experiences of teachers working with pupils with challenging behaviours in alternative provision* Birmingham: NASUWT

NASUWT

http://www.nasuwt.org.uk/TrainingEventsandPublications/NASUWTPublications/Publications/TakingAbuse/NASUWT_006258

National Foundation for Educational Research (2008) *Teacher Voice Omnibus June 2008 Survey: Pupil Behaviour* DCSF Research Report RW-069

<https://www.education.gov.uk/publications/eOrderingDownload/DCSF-RW069.pdf>

OECD (2010) *PISA 2009 Results: What Makes a School Successful?: Resources, Policies and Practices (Vol IV)* Paris: OECD Publishing

<http://browse.oecdbookshop.org/oecd/pdfs/free/9810101e.pdf>

OECD (2011) *Has discipline in school deteriorated?* PISA in Focus 2011/4 (May) Paris: OECD Publishing

<http://www.oecd.org/dataoecd/18/63/47944912.pdf>

Department for Education and Skills (DfES) Priority Review "Getting it. Getting it right" (September 2006)

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/a0076522/black-and-minority-ethnic-exclusions>

What the evidence shows

Exclusion numbers and duration

- Exclusions from maintained schools have been falling sharply in recent years. In 2009/10 there were 5,740 permanent exclusions and 331,380 fixed period exclusions (down from 6,550 and 363,000 respectively in 2008/09).
- In 2009/10 the average duration of a fixed period exclusion also fell to 2.1 days in state-funded primary schools and 2.5 days in state-funded secondary schools. 97% of fixed period exclusions last for one week or less.

Reasons for exclusion

- The most common reason for exclusion in 2009/10 was persistent disruptive behaviour – 29.0 % of permanent exclusions and 23.8 % of fixed period exclusions.
- 10.2% of permanent exclusions and 4.9% of fixed period exclusions were due to physical assault against an adult.
- 17.1% of permanent exclusions and 19.3% of fixed period exclusions were due to physical assault against a pupil.

Exclusion appeals

- In 2009/10 there were 510 appeals lodged by parents against the permanent exclusion of their child (a 21% decrease since 2008/09 compared to a 12% decrease in the number of permanent exclusions).
- Of 470 appeals heard, 110 (24%) were determined in favour of the parents. Reinstatement of the pupil was directed in 30 cases (6%).

Disproportionate exclusion of pupils with SEN

- The percentage of pupils with a statement of SEN permanently excluded fell from 0.24% in 2008/09 to 0.20% in 2009/10. However, pupils with a statement of SEN are still around eight times more likely to receive a permanent exclusion than those pupils with no SEN.
- The number of pupils receiving one or more fixed period exclusions with statements of SEN is six times higher than for pupils with no SEN, similar to the pattern in 2008/09.
- In 2009/10 pupils with SEN (with or without statements) accounted for 74% of all permanent exclusions (unchanged from 2008/9). Pupils with SEN are 12 times more likely to be permanently excluded than those without SEN.

Disproportionate exclusion of pupils from certain communities

- The highest rates of disproportionate exclusion analysed by ethnicity are seen for Traveller of Irish heritage (6 times higher than average); Gypsy / Roma (4 times higher); and Black Caribbean (4 times higher) pupils.
- Overall exclusion rates for Black pupils are approximately twice the national average. However, the exclusion rate for Black African pupils (0.11%) is much closer to the average rate (0.09%) than that of Black Caribbean pupils (0.34%). This difference has been persistently seen over recent years.
- Research has indicated that exclusion relating to ethnicity is not merely a reflection of socioeconomic inequalities in society (*Getting it. Getting it Right: exclusion of black pupils: priority review – DFES, 2006*).

Exclusion from Academies

A review of academy exclusions by the previous Government showed that as a group, academies had an overall pattern of exclusions that is almost identical to the pattern for a control group of similar schools. The control group of schools were a set of statistically similar schools to Academies in terms of the proportion of Free School Meal pupils and the prior attainment of pupils and the schools.

Analysis of exclusions data between 2008 and 2009 indicates that the disproportion in exclusion rates between pupils with or without SEN, as well as between Black and other pupils, was smaller in academies compared with local authority maintained secondary schools. For example, in maintained schools, black pupils were 2.1 times more likely to be permanently excluded than the population as a whole. The comparative figures in Academies open for a year or less and in all Academies were 1.4 times and 1.2 times respectively.

The impact of poor behaviour

There is a significant body of evidence highlighting the impact of poor behaviour on educational attainment in schools. In a one-week period in March 2009, NASUWT undertook a survey of teachers and head teachers working in primary and secondary schools, and over 10,000 responses to the survey were received (NASUWT, 2010).

The survey indicated that the impact of lost teaching time as a result of pupil indiscipline was acute; in primary schools an average of 30 minutes of available teaching time was lost per teacher per day, whilst in secondary schools the figure for lost teaching time increased to 50 minutes per teacher per day.

These results support the findings of the Programme for International Student Assessment (PISA) survey undertaken by the Organisation for Economic Co-operation and Development (OECD), which surveyed 15 year-olds in 65 countries and economies. This survey indicated that, whilst the majority of pupils in OECD countries enjoy orderly classrooms, there was still a sizeable proportion of students from these countries who perceived a poor disciplinary climate (OECD, 2010).

Specifically for schools in England, when asked about the discipline in their English lessons:

- 27% of students reported that 'in most or all lessons' students don't listen to what the teacher says;
- 31% of students reported that 'in most or all lessons' there is noise and disorder;
- 26% of students reported that 'in most or all lessons' that their teacher has to wait a long time before students quieten down;
- 14% of students reported that 'in most or all lessons' students cannot work well; and
- 18% of students reported that 'in most or all lessons' students don't start working for a long time after the lesson begins (Bradshaw et al., 2009).

According to the OECD, students who reported that there are few disciplinary problems in their classes performed better in the PISA 2009 tests than those who reported a lack of discipline in class that disrupts teaching (OECD, 2011).

In a survey of almost 1,400 children and young people aged 9 to 16, Chamberlain et al (2011) asked whether 'other pupils make it difficult for me to learn'. Almost a fifth (17%) answered 'always' and a further two-thirds (65%) said 'sometimes'.

David (2010) puts forward the hypothesis that, particularly in deprived areas, the presence of pupils with poor behaviour adversely affects the educational attainment of other pupils. David quotes several qualitative studies in socio-

economically disadvantaged areas which support his view that individuals may suffer educational 'collateral impact' from other people's disruptive behaviour in the classroom (David, 2010).

The Longitudinal Study of Young People in England (LSYPE) asked young people at age 14 how often in the last year it was difficult to study or follow their teacher because of bad behaviour by others. Almost half (45%) said that other students' bad behaviour had made it difficult to study in at least half of lessons (LSYPE Wave 1).

The most common reason for exclusion in 2009/10 was persistent disruptive behaviour (the same as in the previous year), accounting for 29 per cent of permanent exclusions and 24 per cent of fixed period exclusions from all schools.

Pupil and staff safety is another important consideration. In 2009/10, 980 pupils were permanently excluded for physical assault against a pupil and 580 for physical assault against an adult (DfE, 2011). Also in 2009/10, 64,030 pupils received a fixed period exclusion for a physical assault against another pupil and 16,370 pupils received a fixed period exclusion for a physical assault against an adult (DfE, 2011).

Indiscipline in schools also has a significant impact on staff recruitment, retention and well being. A survey by NFER on behalf of the Department in 2008 indicated that two-thirds of teachers believe negative behaviour is driving people out of the profession, and the most frequent factor cited as a cause of classroom stress is pupils' lack of respect towards teaching staff (NFER, 2008).

In a small-scale survey of 139 members of Nottingham City NUT, Illingworth (2007) found that 1 in 3 teachers claim that they struggle to deal with disruptive pupils and that 1 in 4 are afraid of violence from pupils or parents.

In another small-scale survey undertaken by the Association of Teachers and Lecturers (ATL), 33.7% of 813 respondents claimed that dealing with a disruptive pupil had caused teachers to suffer mental health problems, such as stress (ATL, 2008).

In another survey undertaken by ATL of its members, 40.5% of 1,078 respondents working as teachers in maintained primary schools claimed to have suffered a loss of confidence at school due to dealing with disruptive pupils, with 26.5% claiming to have suffered mental health problems such as stress, 5.3% taking leave from work, and 9.4% making a visit to the doctor (ATL, 2009). The survey also found that 76.5% of respondents felt that their job had become more difficult as a result of disruptive pupils. Multiple responses were permitted to this question.

Challenges and opportunities

In recent years there has been a significant decrease in the total number of exclusions. However, evidence shows that there are still disproportionately high rates of exclusions of special educational needs (SEN), Black Caribbean and Gypsy Roma/Traveller pupils. In all groups, boys have higher rates of exclusion

than girls. In addition, although we have no hard evidence to date, we are also aware that lesbian, gay or transgender pupils and those with different religious beliefs may be at greater risk of exclusion as a result of reacting to bullying for example. Therefore, they too may be disproportionately affected by the changes to the system.

In determining the potential impact of this increase we have considered the number of cases that are successfully challenged through the existing process as a percentage of the total number of permanent exclusions. In 2009/10 470 cases heard by independent appeal panels led to the reinstatement of 30 pupils, 0.5% of the total number of permanent exclusions. This is a very small proportion of any school population. It is, therefore, unlikely that the policy will have significant impact upon the exclusion rates for any specific group. However we know that the impact on any one individual can be significant for their life chances.

Importantly, the new system can still lead to reinstatement of a pupil but this decision will now be made by the school. SEN is the most significant correlating factor in relation to exclusion and, therefore, demands a clear focus but we do recognise the importance of tackling the disproportionate exclusion of all vulnerable groups. Parents will be able to request the presence of an impartial SEN expert to advise the panel in making their decision. Consideration was given as to whether there could be a similar arrangement for pupils from different communities, where race or ethnicity was considered to be a factor in their exclusion. However, it was not clear how this system would be implemented.

Disability discrimination permanent exclusion cases will, for the first time, be able to be heard by the First-tier Tribunal (SEND) which has the power to direct reinstatement. Non-disability cases of discrimination under the Equality Act 2010 can already be taken to a County Court and revised guidance will make this clear.

The revised guidance on exclusions draws schools' attention to their legal duties in this area and provided statutory guidance on how these duties should be performed to help ensure that all pupils are treated fairly in relation to exclusions. This includes:

- highlighting to schools that their duties under the Equality Act 2010 not to discriminate against, harass or victimise pupils because of a protected characteristic (such as race or disability) need to be taken into account when developing and implementing school policies so that they do not discriminate against certain pupils by unfairly increasing their risk of exclusion; and
- setting out in statutory guidance that schools should consider the use of multi-agency assessments for pupils displaying persistent poor behaviour.

One way to tackle disproportionate exclusion is through a system in which schools are made responsible for pupils they exclude. Over the next three years, commencing September 2011, the Government is trialling this new approach in about 300 secondary schools across the country (10% of the total). The evaluation of the new system will pay particular attention to the impact on pupil groups with disproportionately high exclusion rates, including pupils with SEN, those receiving free school meals and pupils from communities that are vulnerable to exclusion. It will consider the different experiences of the exclusion process from the perspective of pupils, parents and schools. It will

also aim to identify examples of effective practice in preventing the exclusion of vulnerable pupils which may have wider relevance. The Government will consider carefully what more can be done to tackle this issue on the basis of this evidence.

The Government will continue to review the exclusion statistics on an annual basis and make specific analysis of disproportional exclusion.

Alternative Provision

Exclusion from a school must not mean exclusion from a good education. Some of the most vulnerable pupils in the education system find themselves placed in alternative provision and it is vital that there is a radical improvement in the quality of the education these young people receive and in the outcomes they achieve.

In September this year, the Government commenced legislation that imposed a legal requirement on local authorities to ensure that all pupils they place in alternative provision receive a full-time education, unless for reasons of mental or physical health problems this would not prove suitable.

Further measures include legislating to allow outstanding Pupil Referral Units (PRUs) to apply for Academy status and providers from the voluntary and private sectors to open alternative provision Free Schools.

The Department's behaviour adviser, Charlie Taylor, is conducting a review of alternative provision. The Government will consider further action in the light of his recommendations.

Equality analysis

F Adverse impact is probable or certain for certain groups but the policy as a whole can nevertheless be justified

It is possible that the different powers of independent review panels could lead to a small increase in the number of pupils being permanently excluded and that this would be likely to disproportionately affect certain groups. However, as explained in detail above, guidance has been revised to highlight these vulnerable groups and ensure that head teachers consider their responsibilities under the Equalities Act 2010 in relation to exclusion.

Pupils with special educational needs (SEN) are the largest group likely to be affected by these policy changes and so the additional safeguard of the SEN expert has been introduced to provide advice to independent review panels and enable them to take proper account of the contribution that SEN could have made to the exclusion. Parents will also be able to bring disability discrimination claims to the First-tier Tribunal (Special Educational Needs and Disability) who have expertise on issues of disability and the power to direct a pupil's reinstatement.

Revised guidance makes clear that pupils should be supported and encouraged to be heard at all stages of the exclusion process. Other

measures, such as the trial of a new system of exclusions, are aimed at reducing the need for exclusion and improving the quality of education for excluded pupils. This will also mitigate the impact on groups that are at higher risk of exclusion.

Good discipline is essential to ensure that all pupils can benefit from the opportunities provided by education and to protect them from assault or bullying by other pupils. Overall the policy will benefit significant numbers of pupils from all groups whose education or welfare would have been impacted by the directed reinstatement of a pupil.

Next steps

The Department will continue to review the exclusion statistics on an annual basis and make specific trend analysis for groups who have disproportionately high exclusion rates.

The Department intends to commission a study to compare the different experiences of those parties involved in cases heard by independent review panels and the Tribunal over the first year of implementation which will inform future policy decisions.

The Department will also consider the evaluation of the exclusion trials, in particular the impact on outcomes for those pupils who are most vulnerable to exclusion, and use the evidence from it to inform future policy to address disproportionate exclusion.

A post Implementation review will be undertaken within three to five years after the implementation of the policy.