

Improving behaviour and attendance: guidance on exclusion from schools and Pupil Referral Units

September 2008



department for
children, schools and families

Contents

Introduction	5
Part 1: Promoting positive behaviour and early intervention	7
Introduction	7
Managing behaviour in schools	7
Alternatives to exclusion	9
Part 2: Removing pupils from a school site and the decision to exclude	11
Removing pupils from a school site	11
The decision to exclude	12
Pupil's opportunity to participate in exclusion procedures	13
Drug-related exclusions	13
Factors to consider before making a decision to exclude	14
Standard of proof	14
When exclusion is not appropriate	15
Unofficial exclusions	15
Removal of pupils from school in exceptional circumstances	16
Removal of pupils on medical grounds	17
Length of fixed period exclusions	18
Lunchtime exclusion	18
Procedures following a fixed period exclusion	19
Reintegration interview	20
Penalty notice for excluded pupils	21
Parenting contracts and orders	22
Parental co-operation	23
Procedures for review and appeal	23
Procedures following permanent exclusion	23
Exclusions from pupil referral units	24
Definition of full-time education	25
Reintegration	26

Behaviour outside school	27
Pupils with special educational needs (SEN)	27
Disabled pupils	28
Race relations	31
Looked after children	32
Role of the Secretary of State	34
Part 3: Procedure for excluding a pupil: role of head teacher/teacher in charge	35
Informing parents about the exclusion	35
Informing the governing body/management committee and the LA	37
Marking attendance registers following exclusion	38
Part 4: Responsibilities of the governing body/management committee	39
The governing body/management committee	39
Governing body's/management committee's role in reviewing exclusions	40
Procedure at the governing body/management committee meeting	42
Governing body's/management committee's decision	43
After the meeting	44
Part 5: Independent appeal panels	45
Notifying parents	45
The timing of the hearing	45
Combined appeals	46
Composition of appeal panels	46
Guidance on training for clerks and panel members	48
Role of the clerk	49
In advance of the hearing	49
Conduct of the appeal hearing	50
Evidence and witnesses	51
Reaching a decision	52
The decision	54
Record of the proceedings of an appeal panel	55
After the hearing	55
Remedies after the appeal hearing	56

Part 6: Police involvement and parallel criminal proceedings	57
Introduction	57
Head teacher's/teacher in charge's decision to exclude and consideration of the circumstances by the governing body/management committee	57
Arrangements for appeal hearings in parallel with criminal proceedings	58
Part 7: Arrangements for money to follow pupils who have been permanently excluded from school	60
Introduction	60
Types of school covered by this part of the guidance	60
Mechanism for deducting and allocating money	61
Amount of funding attributed to the pupil	61
Date from which excluding school loses money	61
The relevant date	62
Reinstatement of excluded pupils	62
The need for prompt payments	62
Complete weeks	62
Exception	62
Pupil numbers for the next year's funding	63
Related documents	63
Part 8: Model Letters	65
Related documents and websites	77
Legislation	77
Guidance and other sources of help	77

Introduction

Headteachers, teachers in charge of a Pupil Referral Unit (PRU), governing bodies, local authorities (LAs) and Independent Appeal Panels (IAPs) must by law have regard to this guidance when making decisions on exclusions and administering the exclusion procedure. This means that, whilst the guidance does not have the force of statute, there is an expectation that it will be followed unless there is good reason to depart from it. The guidance is not exhaustive and judgments will need to take account of the circumstances of individual cases. This version replaces the September 2007 edition and is valid for all exclusions from 1 September 2008.

These procedures apply to all maintained schools, including sixth forms which are part of a maintained school, and Pupil Referral Units and all pupils in them, including pupils who may be below or above compulsory school age (except for the requirements related to the arrangement of provision for pupils from the sixth day of their exclusion which applies only to pupils of compulsory school age). For these purposes 'maintained schools' includes nursery classes in maintained schools and maintained nursery schools.

They do not apply to independent schools, city technology colleges, city colleges for the technology of the arts or sixth form colleges, which have separate exclusion procedures. Academies, by virtue of their funding agreements, must also have regard to this guidance. This means that the procedures followed by Academies should not depart significantly from those in this guidance without good reason. The requirement for schools and local authorities to arrange provision for excluded pupils from the sixth day of exclusion does apply to pupils of compulsory school age excluded from Academies, city technology colleges and city colleges for the technology of the arts, as such schools are defined as 'relevant schools' in section 111 of the Education and Inspections Act 2006. Likewise, the requirement for the head teacher (or principal) to arrange reintegration interviews also applies in respect of those schools.

Where the parents of an excluded pupil do not speak, or have a good understanding of, English, correspondence and documentation relating to the exclusion should be translated into their mother tongue. In such cases the school and/or LA should arrange for an interpreter to be present at any meetings with the parent about the exclusion. Arrangements for disabled parents should also be made.

The main changes to this version of the guidance, compared with the previous version, are:

- Change in the provision of suitable full-time education expected for pupils excluded from schools that were involved in the Behaviour Improvement Programme. Provision need not be made until the sixth day.
- This guidance now reflects the introduction of statutory management committees in PRUs from 1 February 2008 and the implementation of the Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2008, which came into force on 1 April 2008. The regulations impose similar duties on management committees in regard to exclusions from PRUs to those which apply to the governing bodies of mainstream schools, mainly in relation to reviewing decisions to exclude pupils. There are also some changes for teachers in charge in regard to whom they have to inform about exclusions.
- Following permanent exclusion, local authorities should arrange to assess the pupil's needs. This should involve undertaking a Common Assessment Framework (CAF) process where one has not already been carried out.
- Additional details, formerly only provided in the 2007 online version, have been added on the arrangements for money to follow pupils who have been permanently excluded from school.
- Guidance on statutory provision of suitable full-time education for excluded pupils, previously published separately, has been incorporated in this guidance.

Definitions

In this guidance, 'parent' includes anyone who has parental responsibility for, or care of, a child. In cases of exclusion where the pupil is 18 or over, 'pupil' should be read for 'parent'. Where a child is the subject of a care order, the local authority that has parental responsibility for the child is entitled to determine to what extent the parents exercise their parental responsibility. Throughout this guidance, 'school' generally refers to a maintained school or PRU. But in addition to maintained schools, 'relevant schools' include Academies, city technology colleges and city colleges for the technology of the arts. Where guidance for PRUs differs from that for other schools maintained by the local authority, this is indicated.

Part 1: Promoting positive behaviour and early intervention

Introduction

1. In most cases permanent exclusion will be the last resort after a range of measures have been tried to improve the pupil's behaviour. In schools and LAs a range of strategies should be in place to address the types of behaviour which may lead to exclusion. Head teachers should be able to refer pupils identified as at risk of permanent or fixed period exclusion to alternative or additional provision to meet their individual needs, which could include using the Common Assessment Framework to engage the support of other agencies. Many such strategies have proved successful, with few pupils going on to be excluded. The school continues to be responsible for these pupils unless they are permanently excluded.

Managing behaviour in schools

2. Schools must have policies, procedures and staff training in place that promote good behaviour and prevent poor behaviour. These behaviour policies must be widely publicised so that pupils, all school staff and parents are aware of the standards of behaviour expected of pupils and the range of sanctions that can be imposed. Schools

must apply their behaviour policies in a consistent, rigorous and non-discriminatory way and all areas of their application must be monitored routinely to satisfy legal requirements under race, disability and gender discrimination law. The Department has issued new guidance on school discipline and pupil behaviour policies, which is available at <http://www.teachernet.gov.uk/wholeschool/behaviour/schooldisciplinepupilbehaviourpolicies/>

3. For more information on secondary behaviour management strategies please see the National Strategy for School Improvement: Behaviour and Attendance Strand Toolkit: http://www.standards.dcsf.gov.uk/secondary/keystage3/all/respub/ba_toolu
4. For more information on primary behaviour management strategies please see the National Strategy for School Improvement: Behaviour and Attendance Strand publications on school self improvement and staff development: <http://www.standards.dcsf.gov.uk/primary/>
5. Effective policies, procedures and training minimise the number of pupils at risk of either permanent or fixed period exclusion.

For those at risk, additional measures could include:

- the school engaging with parents;
 - a change of teaching set or class;
 - curriculum alternatives at Key Stage 4, including attendance at a further education college or another form of alternative provision;
 - temporary placement in an in-school Learning Support Unit as part of a planned positive programme for pupils;
 - temporary or part-time placement in a Pupil Referral Unit or with a voluntary/private sector alternative provider, where the pupil can receive educational provision intended to improve their behaviour (see paragraph 33);
 - a managed move to another school, with the consent of all parties involved; this can be successful for pupils at risk of exclusion and as an alternative to permanent exclusion (see paragraph 11d);
 - consideration by the Special Educational Needs Co-ordinator (SENCO), with colleagues, of possible interventions within the school;
 - assessment of special educational needs, including possible placement in a special school;
 - allocation of a key worker such as a Learning Mentor, Connexions Personal Adviser, Education Welfare Officer or member of a Behaviour and Education Support Team; and
 - referral to a specific support service, such as the Education Welfare Service, Children's Services or the Child and Adolescent Mental Health Service.
6. The White Paper *Back on Track* published on 20 May 2008 sets out a new strategy for transforming the quality of alternative educational provision for those who are unable to attend mainstream or special schools for whatever reason, including those at risk of exclusion. Schools should intervene as early as possible to address emerging behaviour problems, including those masking underlying learning difficulties or disabilities, thereby minimising the need for permanent exclusion. (See the related documents and websites at the end of this guidance.)
7. Many schools find Pastoral Support Programmes (PSPs) useful to help pupils better manage their behaviour. A PSP will normally involve a number of interventions such as those listed in paragraph 5. It is particularly appropriate for those pupils whose behaviour is deteriorating rapidly. Guidance on PSPs is available on the Department's website: <http://www.teachernet.gov.uk/supplyteachers/detail.cfm?&vid=4&cid=17&sid=111&ssid=4030901&opt=0>. Whether or not there is a PSP in place, LAs should where possible provide active

support for head teachers who are considering a permanent exclusion. This may involve looking at alternatives to exclusion.

8. The Common Assessment Framework (CAF) is a voluntary process, common to all children's services, to help identify a child's needs as early as possible and agree what support is appropriate. Resulting early intervention should help reduce the risk of problems reaching the point where exclusion is considered necessary. A CAF may be undertaken as part of PSP or at any stage. It may be particularly appropriate to carry out a CAF in cases of multiple fixed period exclusions.
9. The LA should be fully involved in any measures involving out-of-school services. Some LAs have successfully reduced the need for exclusion by establishing Pupils at Risk Panels. These panels, which are usually managed by head teachers, consider referrals of pupils at risk of exclusion and make recommendations for school-level action and support from LA and other services.
10. The behaviour of pupils at risk of exclusion is sometimes driven by complex combinations of social, emotional and health problems, so the involvement of LA and other services should be co-ordinated. Multi-agency teams such as Behaviour and Education Support Teams are an effective way of doing that and, increasingly, Children's Trusts are providing targeted multi-agency arrangements to support pupils in school with additional needs. In all cases where a child is receiving support from more than one agency, one

practitioner should act as the 'lead professional' to coordinate support and provide a single point of contact for the child and family.

Alternatives to exclusion

11. A number of options may be available to head teachers/teachers in charge in response to a serious breach of behaviour policy:
 - a) **restorative justice**, which enables the offender to redress the harm that has been done to a 'victim', and enables all parties with a stake in the outcome to participate fully in the process. This has been used successfully to resolve situations that could otherwise have resulted in exclusion. All the professionals need to be thoroughly involved in the process and this can only work with the consent of all parties; further information is available from the Youth Justice Board at <http://www.yjb.gov.uk/en-gb/practitioners/WorkingwithVictims/RestorativeJustice/RJinSchools.htm>;
 - b) **mediation** through a third party, usually a trained mediator, is another approach that may lead to a satisfactory outcome, particularly where there has been conflict between two parties, e.g. a pupil and a teacher, or two pupils;
 - c) **internal exclusion** which can be used to defuse situations that occur in schools that require a pupil to be removed from class but may not require removal from the school premises. The internal

exclusion could be to a designated area within the school, with appropriate support and supervision, or to another class on a temporary basis, and may continue during break periods. Internal exclusion should be for the shortest time possible and should be subject to review. Learning Support Units should not be used to provide internal exclusion (further guidance on using internal exclusion is available at <http://www.teachernet.gov.uk/docbank/index.cfm?id=12506>).

unofficial exclusions in paragraphs 27–30 of this guidance).

- d) **managed move** to another school to enable the pupil to have a fresh start in a new school. The head teacher may ask another head teacher to admit the pupil. This should only be done with the full knowledge and co-operation of all the parties involved, including the parents, governors and the LA, and in circumstances where it is in the best interests of the pupil concerned. In order fully to address the pupil's difficulties it may be helpful for schools within an area to have a protocol in place and to have a full support package in place for the pupil. Parents should never be pressured into removing their child from the school under threat of a permanent exclusion, nor should pupils' names be deleted from the school roll on disciplinary grounds unless the formal permanent exclusion procedures set out in statute and in this guidance have been adhered to or unless a managed move has been agreed by all the relevant parties (see section on

Part 2: Removing pupils from a school site and the decision to exclude

Removing pupils from a school site

12. There are four sets of circumstances in which individual pupils may be required to leave the school site, namely where:

- a) there is sufficient evidence that a pupil has committed a disciplinary offence and if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school. In these circumstances the pupil may be excluded from school for a fixed period or permanently. This guidance specifies procedures for exclusion;
- b) a pupil is accused of a serious criminal offence but the offence took place outside the school's jurisdiction. In these circumstances the head teacher may decide that it is in the interests of the individual concerned and of the school community as a whole for that pupil to be educated off site for a certain period, subject to review at regular intervals. This is not an exclusion. Paragraphs 31–33 of this guidance deal with these circumstances;
- c) for medical reasons, a pupil's presence on the school site represents a serious risk to the health or safety of other pupils or

school staff. In these circumstances a head teacher/teacher in charge may send the pupil home after consultation with the pupil's parents. This is not an exclusion and may only be done for medical reasons. Paragraph 34 of this guidance deals with these circumstances; and

- d) the pupil is given permission by the head teacher/teacher in charge, or person authorised by them, to leave the school premises briefly to remedy breaches of the school's rules on appearance or uniform, where this can be done quickly and easily; this should be for no longer than is necessary to remedy the breach. This is not an exclusion but an authorised absence. However, if the pupil continues to breach uniform rules in such a way as to be sent home to avoid school, the pupil's absence may be counted as unauthorised absence. In all such cases the parent must be notified and the absence should be recorded. When making this decision, the child's age and vulnerability, and the parent's availability, will need to be considered. See <http://www.teachernet.gov.uk/management/>

atoz/u/uniform/ for guidance on school uniform.

These are the **only** circumstances in which pupils may be required to leave the school site. Where a condition of attendance is that pupils should be screened for possession of offensive weapons, and a pupil refuses to undergo such screening, that pupil can be refused entry to the school. This is not an exclusion, but an unauthorised absence (see guidance at www.teachernet.gov.uk/wholeschool/healthandsafety/schoolsecurity/).

The decision to exclude

13. A decision to exclude a pupil permanently should be taken only:
 - a) in response to serious breaches of the school's behaviour policy; and
 - b) if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.
14. A decision to exclude a pupil for a fixed period should be taken, on a balance of probabilities, only in response to breaches of the school's behaviour policy, including persistent disruptive behaviour, where these are not serious enough to warrant permanent exclusion and lesser sanctions such as detention are considered inappropriate. Individual fixed period exclusions should be for the shortest time necessary, bearing in mind that exclusions of more than a day or two make it more difficult for the pupil to reintegrate into the school afterwards. Ofsted inspection evidence suggests that 1–3 days are often long enough to secure the benefits of exclusion without adverse educational consequences. Where it is clear that fixed period exclusions are not being effective in deterring poor behaviour, for example if they are being repeatedly imposed on a pupil in response to the same behaviour, head teachers/teachers in charge should consider alternative strategies for addressing that behaviour.
15. Only the head teacher, or teacher in charge of a PRU (or, in the absence of the head teacher or teacher in charge, the acting head teacher or teacher in charge) can exclude a pupil. Other exclusion-related activities do not have to be undertaken by the head teacher personally, but may be delegated.
16. A decision to exclude a child **permanently** is a serious one and should only be taken where the basic facts have been clearly established on the balance of probabilities. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies which have been tried without success. It is an acknowledgement by the school that it has exhausted all available strategies for dealing with the child and should normally be used as a last resort.
17. There will, however, be exceptional circumstances where, in the head teacher's/teacher in charge's judgment, it is appropriate to permanently exclude a child

for a first or 'one off' offence. These might include:

- a) serious actual or threatened violence against another pupil or a member of staff;
- b) sexual abuse or assault;
- c) supplying an illegal drug; or
- d) carrying an offensive weapon (for advice on what constitutes an offensive weapon, see *School Security – Dealing with Troublemakers – Chapter 6* at www.dcsf.gov.uk/schoolsecurity/dwt6offensive_weapons.shtml) Schools now have a power to screen and search pupils for weapons (please see guidance at : <http://www.teachernet.gov.uk/docbank/index.cfm?id=11454>)

Schools should consider whether or not to inform the police where a criminal offence may have taken place. They should also consider whether or not to inform other agencies such as Youth Offending Teams or social workers.

18. These instances are not exhaustive, but indicate the severity of such offences and the fact that such behaviour can affect the discipline and well-being of the school community.
19. In cases where a head teacher /teacher in charge has permanently excluded a pupil for:
 - a) one of the above offences; or
 - b) persistent and defiant misbehaviour including bullying or repeated possession and/or use of an illegal drug on school

premises (see further guidance on bullying at www.teachernet.gov.uk/wholeschool/behaviour/tacklingbullying/ and drug-related incidents in paragraph 21 below) and where the basic facts of the case have been clearly established on the balance of probabilities, the Secretary of State would not normally expect the governing body/the management committee of a PRU or an Independent Appeal Panel to reinstate the pupil.

Pupil's opportunity to participate in exclusion procedures

20. The pupil's participation in decisions related to their exclusion is not set out in primary legislation or regulations. Nevertheless the child or young person should be invited and encouraged to state their case at all stages of the exclusion process, where appropriate, taking account of their age and understanding. In the case of pupils aged 18 or over the legislation allows them to appeal on their own behalf. Specific guidance on the pupil's participation in the head teacher's/ teacher in charge's investigation, at governing body and management committee reviews and independent appeal panel hearings is given in the relevant parts of this guidance (paragraphs 23c, 81, 88d, 102, 103e, 106 and 139).

Drug-related exclusions

21. All schools should develop a drug policy in consultation with the whole school community. It should clearly state that illegal

and other unauthorised drugs have no place within schools and define any circumstances where authorised drugs may legitimately be in school.

22. In making a decision on whether or not to exclude for a drug-related incident the head teacher/teacher in charge should have regard to the school's drug policy and should consult the designated senior member of staff responsible for managing drug incidents. Where the misuse of authorised drugs is concerned, head teachers/teachers in charge should conduct a careful investigation to judge the nature and seriousness of each incident before deciding what action to take. Factors to consider in determining an appropriate response to a drug-related incident are set out in the Department's guidance *Drugs: Guidance for schools* at www.teachernet.gov.uk/wholeschool/behaviour/drugs/.

Factors to consider before making a decision to exclude

23. Exclusion should not be imposed in the heat of the moment, unless there is an immediate threat to the safety of others in the school or the pupil concerned. Before deciding whether to exclude a pupil, either permanently or for a fixed period, the head teacher/teacher in charge should:
- ensure that a thorough investigation has been carried out;
 - consider all the evidence available to support the allegations, taking account of

the school's behaviour and equal opportunities policies, and, where applicable, the Race Relations Act 1976 as amended and the Disability Discrimination Act 1995 as amended; head teachers /teachers in charge and others involved in exclusion procedures have a positive duty to promote equality (see paragraphs 73–76 and paragraphs 68–72);

- allow and encourage the pupil to give their version of events;
- check whether the incident may have been provoked, for example by bullying, or by racial or sexual harassment;
- if necessary, consult others, but not anyone who may later have a role in reviewing the head teacher's/teacher in charge's decision, for example a member of the governing body (or management committee in exclusions from PRUs); and
- keep a written record of the actions taken (and copies of written records made by other members of staff), including any interview with the pupil concerned. Witness statements must be dated and should be signed, wherever possible (see paragraph 149).

Standard of proof

24. The standard of proof to be applied is the balance of probabilities, i.e. if it is more probable than not that the pupil did what he or she is alleged to have done, the head teacher/teacher in charge may exclude the

pupil. However, the more serious the allegation and thus the possible sanction, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard of ‘beyond reasonable doubt’ to be applied. But it does mean that when investigating more serious allegations, in determining whether it is more probable than not that the pupil has behaved as alleged, head teachers/teachers in charge will need to gather and take account of a wider range of evidence. In some cases this may extend to evidence of the pupil’s past behaviour, if relevant to the seriousness of the present allegation.

25. Where a police investigation leading to possible criminal proceedings has been initiated, the evidence available may be very limited. However, it may still be possible for the head teacher/teacher in charge to make a judgment on the balance of probabilities on whether to exclude the pupil. **Part 6** of this guidance deals with such circumstances in detail.

When exclusion is not appropriate

26. Exclusion should not be used for:
- minor incidents such as failure to do homework or to bring dinner money;
 - poor academic performance;
 - lateness or truancy;
 - pregnancy;
 - breaches of school uniform rules or rules on appearance (for example, relating to

jewellery, body-piercing, hairstyles, etc.), except where these are persistent and in open defiance of such rules. (Pupils may be sent home, their parents first having been contacted – see paragraph 12d, on recorded authorised absence to change clothes without being excluded; this should be for no longer than is necessary, otherwise it may amount to an unofficial exclusion – see paragraph 27);

- punishing pupils for the behaviour of their parents, for example where parents refuse, or are unable, to attend a meeting (guidance on working with parents is contained in the Legal Toolkit for Schools (see related documents section)) and
- protecting victims of bullying by sending them home (see paragraph 34).

Unofficial exclusions

27. If a head teacher/teacher in charge is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and needs to be removed from the school site for that reason, formal exclusion is the only legal method of removal. **Informal or unofficial exclusions are illegal** regardless of whether they are done with the agreement of parents or carers.
28. Where a pupil is sent home for disciplinary reasons for part of a school day, some head teachers have viewed this as a ‘cooling off’ period, and have not taken action to exclude the pupil formally. There is no basis in law for this. The relevant regulations do not state a

minimum length of exclusion. If pupils are sent home in response to a breach of discipline, even for short periods of time, this must be formally recorded as an exclusion.

29. In every instance where a pupil is sent home for disciplinary reasons, head teachers/teachers in charge must formally record and specify the length of the exclusion (for reporting purposes this should be recorded as a half day, whole day or lunchtime). They should ensure that:

- they are meeting their legal duty of care towards pupils, and that parents are formally notified of the exclusion;
- child protection issues are taken into account e.g. bearing in mind the child's age and vulnerability, that a parent/carer is at home and the child is not placed at risk by, for example, being left to wander the streets; and
- that work is sent home or alternative provision is arranged.

Guidance on good practice in preventing unofficial exclusions is available at: http://www.dcsf.gov.uk/exclusions/exclusions_guidance

30. Local authorities are required by section 436A of the Education Act 1996 to identify children of compulsory school age in their area who are not on a school roll and who are not receiving a suitable education otherwise than at school. There is a person/team in each local authority responsible for identifying these children and systems will be in place for schools and other agencies to notify them when they believe a child may be missing from education. If it becomes apparent that these children have been unofficially excluded the local authority will need to challenge the school as this practice is illegal. More information on the duty to identify children not receiving education is available on the *Every Child Matters* website at: <http://www.everychildmatters.gov.uk/ete/childrenmissingeducation/>

Removal of pupils from school in exceptional circumstances

31. There may be exceptional circumstances in which head teachers/teachers in charge need to remove pupils from the school site when exclusion would be inappropriate. An example is where a pupil is accused of committing a serious criminal offence which took place outside the head teacher's/teacher in charge's jurisdiction or where there may be insufficient evidence to warrant exclusion. See paragraph 178 which deals with incidents on the school site where the police are involved and the head teacher/teacher in charge may be constrained from gathering evidence.

32. A head teacher/teacher in charge can authorise leave of absence for a fixed period, with the parents' agreement, or, exercising powers delegated by the governing body (or management committee for PRUs) under section 29(3) of the Education Act 2002, can arrange for the pupil to be educated elsewhere (without parental approval, although the parents should be notified). However, such education elsewhere must be arranged for the purposes of receiving any instruction or training included in the secular curriculum for the school and should not be continued for longer than is absolutely necessary. Whether the pupil has been granted leave of absence or is being educated elsewhere, the school must ensure that the pupil's full-time education continues while off site. Any such arrangements do not amount to an exclusion from school on disciplinary grounds and should be kept under periodic review involving the parents.
33. Where there is sufficient evidence to enable a head teacher/teacher in charge to consider exercise of the power to exclude, we would expect him or her to consider exercising that power, rather than the power in section 29(3) or authorising leave of absence. It is important that, in the exceptional circumstances where the section 29(3) power or authorised leave of absence is used, the head teacher/teacher in charge's actions and arrangements are documented to remove any possibility of this being construed as an illegal exclusion. If exclusion some time later remains a possibility, the head teacher/

teacher in charge should make the parents aware of this at the outset. The more time that passes the more likely it is that the exclusion will be regarded as an improper exercise of the power. The section 29(3) power should **not** be used to direct pupils off-site for educational provision/training to improve their behaviour. Subject to parliamentary approval, from January 2009, the Education and Skills Bill 2008 will amend section 29 of the Education Act 2002. A power will be introduced for governing bodies to arrange for registered pupils to be directed off-site, in order for them to receive educational provision which is intended to improve their behaviour, for example to attend courses in anger management. This new power will come into force in January 2009 and guidance will be available.

Removal of pupils on medical grounds

34. Head teachers/teachers in charge may send a pupil home, after consultation with that pupil's parents and a health professional (for example, a school nurse) as appropriate, where because of a diagnosed illness such as a notifiable disease he or she poses an immediate and serious risk to the health and safety of other pupils and staff. This is not an exclusion, but it is an authorised absence and should be recorded as such in the attendance register. It should be for the shortest possible time. If difficulties persist, the head teacher should seek medical advice. Health and safety considerations, including a risk assessment, can contribute to a school's

case for exclusion, but cannot in themselves be grounds for exclusion, which can only lawfully be for disciplinary reasons. Similarly, pupils cannot be sent home on health and safety grounds for their own protection because they are being bullied. It is not appropriate to send home children with SEN, with conditions such as ADHD and autism, purely for that reason and schools should arrange a statutory annual or interim/emergency review if they feel they are no longer able to meet a child's needs. The child should not be sent home in anticipation of such a review.

Length of fixed period exclusions

35. Regulations allow head teachers/teachers in charge to exclude a pupil for one or more fixed periods which, when aggregated, do not exceed a total of 45 school days in any one school year. The limit of 45 school days applies to the pupil and not to the institution. Therefore, any days of fixed period exclusion served by the pupil in any school or PRU in the same school year will count towards the total. It is important therefore that, when a pupil transfers to a new school during the academic year, records of the fixed period exclusions a pupil has received and served so far during the current academic year are also transferred promptly to the new school. When imposing fixed period exclusions head teachers/teachers in charge should bear in mind the guidance in paragraph 14 concerning duration and frequency. Exclusions may not

be given for an unspecified period, for example until a meeting can be arranged. Such a practice amounts to an indefinite exclusion for which no legal authority exists. A fixed period exclusion does not have to be for a continuous period: for example, a pupil may be normally attending school three days a week and a local further education college for the other two; so a five-day exclusion from the school could be for three days in one week and two days in the next week.

Lunchtime exclusion

36. Pupils whose behaviour at lunchtime is disruptive may be excluded from the school premises for the duration of the lunchtime period. Lunchtime exclusions are counted as one half of a school day for statistical purposes and to trigger governor/management committee meetings so that parents can make representations. Lunchtime exclusions will not be counted towards the school's duty to provide full-time education from day six of a fixed period exclusion. Therefore lunchtime exclusions are not affected by the new regulations on providing pupils with education from the sixth day of their exclusion. Taking into account the child's age and vulnerability, the head teacher/teacher in charge should ensure that a parent/carer has been contacted and is available, if appropriate, to arrange collection and supervision of the pupil during the lunchtime exclusion. A lunchtime exclusion for an indefinite period, like any other indefinite exclusion, would not

be lawful. The Secretary of State does not expect lunchtime exclusion to be used for a prolonged period, e.g. for longer than a week. In the long run another strategy for dealing with the problem should be worked out. Arrangements should be made for pupils who are entitled to free school meals to receive their entitlement which may mean, for example, providing a packed lunch.

Procedures following a fixed period exclusion

- 37.** For a maintained school, but not for a PRU, the school's obligation to provide education continues and must be met during a fixed period exclusion (see paragraph 56 for day 6 provisions relating to exclusions from PRUs). Parents are not responsible for making educational provision for their excluded child, but are expected to cooperate with schools in this regard. Where a pupil is given a fixed period exclusion of a duration of six school days or longer, the school has a duty to arrange suitable full-time educational provision from and including the sixth school day of the exclusion: this does not apply to pupils of non compulsory school age. Schools that were involved in the Behaviour Improvement Programme are no longer expected to provide full-time education for every excluded pupil from the first day. However, because they continue to benefit from additional resources, they are strongly encouraged to make provision for vulnerable pupils as quickly as possible and must make provision for every pupil no later than the sixth school day of the exclusion.
- 38.** During this period the school or PRU should set work for the pupil to complete and arrange for it to be marked, unless the school/LA has made arrangements, on a voluntary basis, for suitable full-time provision for the pupil to commence earlier than the sixth day. A head teacher considering whether to exclude a pupil for a period which will mean there is a duty to provide suitable full-time educational provision should plan:
- a) to make suitable full-time provision available to the pupil from the sixth school day of any period of fixed period exclusion of six school days or longer, and if he or she wishes, make provision available to the pupil at an earlier day than the sixth school day. Provision should normally be off-site, but a school may make provision on-site where arrangements for shared on-site provision have been made jointly with the governing body of at least one other school and is available to excluded pupils from that or those other schools. Provision can also be arranged by having reciprocal arrangements between schools. Pupil Referral Units, other external providers and e-learning (see paragraph 39 below) may also be used to provide full-time education. Such provision does not have to be made for pupils in the final year of compulsory education who have already taken (or

missed) their public examinations. For a pupil with a statement of special educational needs, suitable full-time provision must be appropriate to their special educational needs as set out on the statement;

- b) to ensure that work is set for the pupil to complete during the first five school days of exclusion and that it is marked, unless during that time the pupil will be attending alternative provision;
 - c) to ensure that the parent is fully informed of their duties in the first five days and of the school days on which the pupil will be provided with suitable full-time education and must attend that provision and of any sanctions that may be imposed for non-attendance (please see model letters 1-3);
 - d) how the time might be used to address the pupil's problems; and
 - e) what support will best help with the pupil's reintegration into the school at the end of the exclusion. This will include arrangements for a reintegration interview with a parent of the pupil.
- 39.** Well planned ICT provision may be an effective way of meeting the educational needs of pupils not in school, e.g. those with medical problems or those who have been excluded. This type of provision, however, is usually the hardest to supervise and it is critical that appropriate supervisory arrangements are put in place. Where stand-alone on-line learning is provided someone

will need to supervise the pupil. Some on-line learning packages involve interactive on-line supervision. Where there are reliable measures in place to monitor this type of provision, schools could use it as part of their package of provision. It is important to note that this type of provision for excluded pupils will not be appropriate for everyone. We would not expect parents to have to "supervise" their child when the school is providing full-time education through ICT from day six.

Reintegration interview

- 40.** The head teacher/teacher in charge of a PRU must arrange a reintegration interview with parents during or following the expiry of any fixed period exclusion of a primary-aged pupil, or of a fixed period exclusion of six or more school days of a secondary-aged pupil. An interview is not necessary where the pupil is leaving school within the period of the exclusion for a reason unconnected with his or her behaviour or where the first day of exclusion falls within the last ten school days in the school year. The pupil should normally attend all or part of the interview. The interview should be conducted by the head teacher/teacher in charge or a senior member of staff. In some circumstances it may be helpful for another person to be present such as the designated teacher or governor for Looked After Children or children with SEN.
- 41.** The purpose of the reintegration interview is to assist the reintegration of the pupil and

promote the improvement of his or her behaviour. It provides an opportunity to:

- a) emphasise the importance of parents working with the school to take joint responsibility for their child's behaviour;
- b) discuss how behaviour problems can be addressed;
- c) explore wider issues and any circumstances that may be affecting the child's behaviour;
- d) reach agreement on how the child's education should continue, how best they can be reintegrated and what measures could be put in place to prevent further misbehaviour; and
- e) create a useful forum to consider with parents the possibility of a parenting contract (see paragraph 44 below).

- 42.** The interview must be held during the period beginning with the first school day to which the exclusion relates and ending with the fifteenth school day following the day on which the pupil returns to school. The head teacher/teacher in charge must try to arrange the interview for a date and time that is convenient to the parent. If possible the interview should be held on the day the pupil returns to school. The interview date suggested by the head teacher/teacher in charge should be a school day, but the interview can be held on a non-school day if the head teacher/teacher in charge and parent agree. At least one of the child's parents is expected to attend the meeting. A parent's failure to attend will be one factor

taken into account by a magistrates' court when deciding whether to impose a parenting order, if at any future date a parenting order has been applied for by the school or local authority. Schools must keep records of the failure to attend a reintegration interview, and of any explanation given by the parent for failure to attend, as the court may need to see them. However, a fixed period exclusion must not be extended if such an interview cannot be arranged in time or the parents do not attend. The interview must be conducted on school premises. The notice relating to a reintegration interview can be combined with the notice informing the parent of the exclusion or relating to the alternative educational provision that the pupil must attend whilst excluded (see the Education (Reintegration Interview) (England) Regulations 2007). The notice must be given no later than six school days before the date of the reintegration interview.

Penalty notice for excluded pupils

- 43.** During the initial period of up to five school days of any exclusion, whether fixed period or permanent, the parents of the excluded pupil must ensure that he or she is not present in a public place during normal school hours without reasonable justification. This requirement applies whether or not the pupil is in the company of the parent. A failure to comply with this requirement is an offence. Parents can be given a fixed penalty notice of £50 if they fail to do this. The

penalty payable increases to £100 if unpaid after 28 calendar days, and if this is still unpaid after 42 days the parent will be subject to prosecution for the original offence. Schools can only issue a penalty notice if their LA have put in place a scheme for administering this and published a local code of conduct (see *Guidance on Education-related Parenting Contracts, Parenting Orders and Penalty Notices 2007* at: <http://www.dcsf.gov.uk/behaviourandattendance/uploads/7150-DCSF-Guidance%20on%20Education%20Related%20Parenting.pdf>). The pupil may also be removed from the public place by the police and taken to designated premises. Further implementation and good practice guidance on school attendance and exclusions sweeps, for schools and local authorities, can be found at www.dcsf.gov.uk/schoolattendance.

Parenting contracts and orders

44. If the school or local authority considers that parental influence could be better brought to bear in improving the behaviour of the pupil, a parenting contract may be offered. It may help parents take responsibility for their children and strengthen their ability to do so. This can engender a productive relationship with parents and provide individualised support. It provides an early intervention to deal with emerging behaviour problems or after an exclusion of any duration. A parenting contract is a written voluntary agreement between the school governing body or the local authority and the parent under which the parent agrees to comply with certain requirements and the school or local authority agrees to provide, or help the parent access, the support that they need. Parenting contracts are appropriate where the parent is willing to engage with the school or local authority but is in need of (and will accept) support in order to help improve their child's behaviour. A school cannot require a parent to sign a parenting contract as a condition of his or her child being reinstated, being admitted to a school or not being excluded from it.
45. If the parent refuses or fails to engage with the school or local authority in attempting to improve his or her child's behaviour and the requisite standard of misbehaviour is met, the school or LA may consider applying to the magistrates' court for a parenting order to compel the parent to comply with certain requirements including attendance at parenting classes. The kind of misbehaviour that can trigger a parenting order is behaviour that has or could have resulted in exclusion.
46. For further information on parenting contracts or orders, please refer to the *Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices* (see web link above) which also contains copies of the Regulations.

Parental co-operation

47. If a parent does not comply with an exclusion, for example by sending the excluded child to school, or by refusing to collect, or arrange collection of, him or her, including at lunchtime, the school must have due regard for the pupil's safety in deciding what action to take. An exclusion should not be enforced if doing so may put the safety of the pupil at risk. If efforts to resolve the issue with the parents are unsuccessful the school should consider whether to contact the Education Welfare Service and seek the advice of the local authority. In some circumstances, police or community support officers could become involved. Where there is a persistent lack of parental co-operation and this is affecting the child's behaviour, the school or local authority may consider applying for a parenting order as described in paragraph 45 and 46.

Procedures for review and appeal

48. The head teacher/teacher in charge must notify the governing body, or management committee in the case of a PRU, and LA of the types of exclusion listed in paragraph 90. Where governing bodies and management committees of PRUs are notified of an exclusion, they must (whether or not the parent requests) review any exclusion which is a permanent exclusion from their school, or a fixed period exclusions that would result in a pupil being excluded for more than 15 school days in any one term, or missing a public examination.

49. Further details, including those for shorter fixed period exclusions, are as set out in paragraphs 103-105. The governing body/ management committee must decide whether or not to reinstate the pupil, if appropriate, or whether the head teacher's/ teacher in charge's decision to exclude the pupil was justified/appropriate. The governing body or management committee (for PRUs) can delegate the function of reviewing exclusions to a committee consisting of at least three governors/ members, which may be called the Discipline Committee. Procedures (including those for PRUs) are set out in Part 4 of this guidance.
50. The LA must make arrangements for Independent Appeal Panels to hear appeals against permanent exclusions where the governing body or management committee upholds the exclusion. Procedures are set out in Part 5 of this guidance.

Procedures following permanent exclusion

51. In the case of a permanent exclusion the pupil remains on the roll of the school or PRU until any appeal is determined; until the time limit for the parents to lodge an appeal has expired without an appeal being brought; or the parent has informed the LA in writing that no appeal is to be brought. During the first five school days of a permanent exclusion the school/PRU should send work home for the pupil to complete. During these initial five school days of exclusion parents must ensure that their child is not present in

a public place during school hours without reasonable justification (see paragraph 43 for further information).

52. During the first five days of a permanent exclusion the LA should arrange to assess the pupil's needs and how to meet them including any special educational needs the pupil may have. This should involve undertaking a Common Assessment Framework (CAF) process where one has not already been carried out. The LA should also arrange a meeting with the parents to discuss options within the first week of the exclusion, and where appropriate involve them in the CAF process. From the sixth school day of a permanent exclusion, the LA is statutorily responsible for ensuring that suitable full-time education is provided to pupils of compulsory school age. This will be the pupil's home LA in cases where the school is maintained by a different LA. For a definition of full-time education, please see paragraph 57. Local authorities are no longer expected to provide full-time education from the first day for every pupil permanently excluded from a school that was in the Behaviour Improvement Programme. However, because they continue to benefit from additional resources they are strongly encouraged to make provision for vulnerable pupils as quickly as possible and must make provision for every pupil no later than the sixth school day. Such provision does not have to be made for pupils in the final year of compulsory education who have already

taken (or missed) their public examinations. For a pupil with a statement of special educational needs, suitable full-time provision must be appropriate to their special educational needs as set out on the statement. Also see paragraph 83 on looked after children.

53. If the school or LA considers that parenting is a factor in the behaviour of the pupil who has been excluded, they should consider whether it may be appropriate to offer a parenting contract or apply to the magistrates' court for a parenting order. Schools and LAs can also do this before the pupil's behaviour deteriorates to the point where exclusion is the only appropriate response. These measures are outlined at paragraphs 44 to 46. In accordance with the law on admissions, a school may not require a parent to sign a parenting contract as a condition of their child being admitted following permanent exclusion. For further information on parenting contracts or orders, please refer to the *Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices* at <http://www.dcsf.gov.uk/schoolattendance>.

Exclusions from pupil referral units

54. Teachers in charge of Pupil Referral Units (PRUs) have the same powers as head teachers of maintained schools to exclude pupils for a fixed period or permanently.

- Fixed Period Exclusions: The teacher in charge must inform the management committee as well as the LA when they exclude a pupil for a fixed period exclusion in circumstances where:
 - the pupil would be excluded for a total of more than 5 school days in any one term, or
 - would lose an opportunity to take any public examination;
 - Permanent Exclusions: The teacher in charge must inform the management committee as well as the parents/carers and LA (including the pupil's home LA when the pupil lives outside the LA in which the PRU is located) if they exclude a pupil permanently or decide that a fixed period exclusion should be made permanent.
- 55.** Management committees have similar duties in regard to exclusions from PRUs to those which apply to the governing bodies of mainstream schools. The management committee must review any decision by the teacher in charge of a PRU to exclude a pupil where:
- The exclusion is a permanent one;
 - The exclusion was for a fixed period but has been made permanent;
 - As a result of the exclusion, the pupil would:
 1. be excluded for a total of more than 15 school days in any one term;
 2. lose an opportunity to take a public examination; or
 3. the pupil would be excluded for a total of more than 5 school days in any one term and the parent/carer wishes to make representations about that exclusion.
- 56.** Local authorities must ensure that all permanently excluded pupils, including those in PRUs, are provided with full-time education from the sixth school day after exclusion. Local authorities have a similar duty in relation to pupils excluded for fixed periods from a PRU. Some local authorities seek to minimise the number of exclusions of pupils from PRUs. In doing so they must ensure that the PRU provision meets the particular needs of the pupils and they must have regard to their duty of care to other pupils and the health, safety and welfare of the workforce. Where a local authority has more than one PRU, it may be possible to place a pupil in a different PRU from the one from which the pupil was excluded. However, where this is not possible or appropriate, local authorities should ensure that they maintain, and have access to, a wide range of suitable alternative educational provision to meet the needs of excluded pupils.
- Definition of full-time education**
- 57.** The Department's view is that ordinarily suitable full-time education should equate with the number of hours of education the pupil would expect to receive in school (from 21 to 25 hours depending on the pupil's age,

as set out in DfES Circular 7/90: Management of the School Day). The provision needs to be generally recognised as education, though it must also be suitable to the pupil's ability, aptitude and any special educational needs. Where possible LAs and schools should ensure that full-time education for excluded pupils covers core National Curriculum subjects (outlined in the National Curriculum handbooks). Such education might be provided in another school or in a shared unit, a PRU, or educational provision made by a private or voluntary sector provider. The recommended minimum hours per week of taught time are as follows:

KS1	21 hours
KS2	23.5 hours
KS3/4	24 hours
KS4 (Y11)	25 hours

Reintegration

58. "Reintegration" refers to longer term planning for the pupil's reintegration back into school or other suitable full time education, and is in addition to the LA's legal responsibility for making suitable full time educational provision for all permanently excluded pupils from and including the sixth school day of their exclusion. Pupils who have been permanently excluded from school need to be placed in a new school or other long term provision as quickly as possible for their full education to continue. Often, this will be following a period in alternative provision, addressing their individual needs and the underlying issues which led to their exclusion.

However, for some pupils, an early start in a new school is the best solution. Reintegration needs to be pupil-focused. While school is the best outcome for most pupils, for older pupils an early start in a further education college may be a better outcome.

- 59.** In order to ensure the pupil, parents, LA and school staff agree to and are clear about next steps, individual reintegration plans should be drawn up within one month of a permanent exclusion being upheld by the governing body. Plans should be agreed by and issued to all relevant parties. Each plan should contain all agreed actions, including interim as well as long-term arrangements:
- the name of the new school or other educational establishment;
 - a date for the pupil to start (this can be revised later, if necessary);
 - steps towards reintegration in the new school or other educational establishment;
 - a named LA officer responsible for supporting pupil, parents and teachers; and
 - monthly review dates for all activities detailed in the plan.
- 60.** The plan should cover pastoral and educational objectives for reintegration, with appropriate targets. At a review the LA should amend the reintegration plan to include action by a PRU or other provider to address the pupil's problems and ease

transition to school or other educational establishment.

Behaviour outside school

61. A school/PRU's behaviour policy may regulate pupils' behaviour where the pupils are neither on school/PRU premises nor in the charge of school/PRU staff, where it is reasonable to do so. The school's/PRU's behaviour policy should provide for the circumstances where the school's/PRU may discipline pupils for poor behaviour outside school/PRU. Pupils' behaviour outside school/PRU on school business – for example, on school trips, away school sports fixtures, or work experience placements – may be subject to the school's behaviour policy. Poor behaviour in such circumstances should be dealt with as if it had taken place in school/PRU. For behaviour outside school, but not on school business, a head teacher/teacher in charge may exclude a pupil if there is a clear link between that behaviour and maintaining good behaviour and discipline among the pupil body as a whole. This will be a matter of judgment for the head teacher/teacher in charge (please see further advice in the Department's guidance on school discipline and behaviour policies at: <http://www.teachernet.gov.uk/wholeschool/behaviour/schooldisciplinepupilbehaviourpolicies/>). Pupils' behaviour in the immediate vicinity of the school/PRU, or on a journey to or from school/PRU, can be grounds for exclusion.

62. School staff who intervene to control the behaviour of pupils on public transport or in public places should be mindful of the fact that unless they have lawful charge or control of the pupil concerned they are not empowered to use measures beyond their normal common law powers as citizens.

Pupils with special educational needs (SEN)

63. Although in recent years there has been a reduction in the number of children with SEN who have been excluded, it is still disproportionately high and over two-thirds of all permanently excluded pupils have been identified as having SEN. Statutory guidance on identifying, assessing and making provision for pupils with SEN, including those with behavioural, social and emotional needs, is given in the Special Educational Needs Code of Practice. Schools must have regard to this guidance. School governing bodies have a statutory duty to do their best to ensure that the necessary provision is made for any pupil who has SEN. Early identification and intervention, accurate assessment and the arrangement of appropriate provision to meet pupils' SEN usually leads to better outcomes. Further advice about addressing behavioural problems in children with special educational needs can be found in both the Department's guidance on school discipline and pupil behaviour policies and the guidance on *The Education of Children and Young People with Behavioural, Emotional and Social Difficulties as a Special Educational*

Need: <http://www.teachernet.gov.uk/wholeschool/behaviour/schooldisciplinepupilbehaviourpolicies/besdguidance/>

64. Other than in the most exceptional circumstances, schools should avoid permanently excluding pupils with statements. They should also make every effort to avoid excluding pupils who are being supported at *School Action* or *School Action Plus* under the Special Educational Needs Code of Practice, including those at *School Action Plus* who are being assessed for a statement. In most cases, the head teacher/teacher in charge will be aware that the school is having difficulty managing a pupil's behaviour well before the situation has escalated. Schools should try every practicable means to maintain the pupil in school, including seeking LA and other professional advice and support at *School Action Plus* or, where appropriate, asking the LA to consider carrying out a statutory assessment. For a pupil with a statement, the school should liaise with their LA about initiating an interim review of the pupil's statement.
65. Where a child is permanently excluded, the head teacher/teacher in charge should use the period between his or her initial decision and the meeting of the governing body to work with the LA to see whether more support can be made available or whether the statement can be changed to name a new school. If either of these options is possible, the head teacher/teacher in charge should normally withdraw the exclusion.
66. It is extremely important that parents of children with SEN who are excluded from school receive advice on the options available for their child's future education. Schools might usefully advise parents that advice and information on SEN is available through their local SEN Parent Partnership. The Parent Partnership should also be able to provide details of voluntary agencies that offer support to parents, including those that can offer advice concerning exclusions.
67. Permanently excluded pupils with statements of SEN must receive suitable full-time provision like any other excluded pupils. In some cases, a pupil's statement will specify fewer or more teaching hours than required for their key stage, for example because of an associated medical condition. In such cases, LAs should provide the number of hours set out in the statement.

Disabled pupils

68. Schools/PRUs have a legal duty under the Disability Discrimination Act 1995 not to discriminate against disabled pupils by excluding them from school because of behaviour related to their disability. This applies to both permanent and fixed period exclusions. A disabled person is defined as someone who has a physical or mental impairment which has a substantial adverse effect on his or her ability to carry out normal day to day activities. The effect must be:
- substantial (that is, more than minor or trivial);

- long term (that is, have lasted or is likely to last for at least a year, or for the rest of the life of the person affected);
- and adverse.

The definition includes people with sensory impairments, and also hidden impairments (for example, mental illness or mental health problems, learning difficulties, dyslexia and conditions such as diabetes or epilepsy).

People who have had a disability as defined by the DDA in the past continue to be protected from discrimination even if they no longer have the disability. People with severe disfigurements are also covered. The definition of disability is not the same as the definition of special educational needs but there is likely to be a large overlap between those pupils who have SEN and those who are disabled. Further guidance on the definition of disability is included in *Guidance on matters to be taken into account in determining questions relating to the definition of disability* (<http://www.dwp.gov.uk/consultations/2005/disability.asp>).

Paragraphs D13 to D14 deal specifically with children and provide useful examples involving school pupils.

69. Discrimination occurs where a person treats a disabled pupil less favourably than other pupils for a reason which relates to their disability, without justification. It also occurs when a school fails to take reasonable steps to ensure that disabled pupils are not placed at a substantial disadvantage compared to their non-disabled peers. What constitutes a reasonable step will depend on the

circumstances of each case. It must also be remembered that the reasonable adjustments duty requires schools/PRUs to think ahead, anticipate the barriers that disabled pupils might face and remove or minimise them before a disabled pupil is placed at a substantial disadvantage. The Disability Rights Commission (DRC, a precursor to the Equality and Human Rights Commission (EHRC)) has published a Code of Practice which explains and illustrates schools'/PRUs' duties to disabled pupils, including in relation to exclusions. Schools, PRUs, and those involved in exclusion decisions or appeals, should read the Code of Practice for Schools available from the EHRC or on their website, <http://www.equalityhumanrights.com>. The Department has published a training resource *Implementing the Disability Discrimination Act in Schools and Early Years Settings* (see related documents section and <http://www.teachernet.gov.uk/wholeschool/sen/disabilityandthedda/ddapart0>) for schools and local authorities. Section 1 of the resource provides a guide to the duties schools/PRUs have under Part 4 of the DDA and provides more detail on the definition of disability in the DDA. Section 2 illustrates the process of making reasonable adjustments.

70. It is unlawful to exclude a disabled pupil for a reason related to their disability without justification. When considering whether or not it is appropriate to exclude a pupil who may be disabled within the meaning of the Disability Discrimination Act 1995, head

teachers/teachers in charge should consider four questions:

a. Is the pupil disabled?

The Act covers pupils whose physical or mental impairment has a long term and substantial adverse effect on their ability to carry out normal day-to-day activities.

b. Is the exclusion for a reason related to the pupil's disability?

If there is a connection between the pupil's disability and the behaviour resulting in the exclusion, this may be considered less favourable treatment for a reason related to the pupil's disability.

c. Would another pupil, to whom the reason did not apply, be excluded?

Following the decision of the House of Lords in *London Borough of Lewisham v. Malcolm* (25 June 2008), a comparison has to be made between the disabled child who has been excluded for a reason allegedly relating to their disability and a child who is not disabled but has behaved in the same way. In other words, if the reason for the exclusion is the pupil's disability-related behaviour, then it is necessary to consider whether or not another pupil without that disability who behaved in that way would be excluded. The comparison should be with a pupil who is not disabled and who has behaved in the same way.

d. Can the exclusion be justified?

An exclusion of a disabled pupil for a reason related to their disability can only

be justified if there is a 'material' and 'substantial' reason for it. Maintaining order and discipline in the school may be a material and substantial reason.

However, it may not be possible to justify the less favourable treatment if there are reasonable adjustments that should have been made but were not. Reasonable adjustments could include developing strategies to prevent or manage the pupil's behaviour; drawing on external advice on effective approaches with a pupil and staff training. If reasonable steps could have been taken but were not, it may not be possible to justify the pupil's exclusion. If reasonable steps were taken, but the incident still happened, then the school is likely to be able to justify the exclusion.

Examples of what may and may not amount to discrimination, as set out by the Disability Rights Commission (a precursor to the EHRC) are available at http://83.137.212.42/sitearchive/DRC/library/publications/education/code_of_practice_for_schools.html

71. Appeals against permanent exclusion, where discrimination is alleged to have taken place, or the disabled pupil has allegedly been placed at a substantial disadvantage by the exclusion procedures, will be heard by the Independent Appeal Panel. Claims alleging discrimination in respect of fixed period exclusions will be heard by the SEN and Disability Tribunal (SENDIST, which is scheduled to become part of the Health,

Education and Social Care Chamber of the First Tier Tribunal from 3 November 2008 under the new tribunal arrangements). Schools/PRUs will be required, in disability discrimination claims, to demonstrate that their actions are justified and that there are no reasonable adjustments to their policies and practice they might have made to prevent the incident which led to the exclusion. Since many disabled pupils will also have special educational needs, schools may wish to consider the action they have taken to address those needs in this context.

72. The Disability Equality Duty, introduced by the Disability Discrimination Act 2005, requires schools to have due regard to the need to promote equality of opportunity for disabled people when they are carrying out their functions. Schools need to monitor the exclusion of disabled pupils and consider how to address any systematic disadvantage disabled pupils may face. Schools must show, in their disability equality scheme, what steps they are taking to address any such disadvantage. Schools are required to involve disabled people (staff, pupils, parents, carers and others) in developing their scheme. Disabled pupils themselves are well-placed to provide insights into effective ways of addressing problems that may give rise to exclusions. The sixth section of the Department's training resource, *Implementing the Disability Discrimination Act in Schools and Early Years Settings* (<http://www.teachernet.gov.uk/wholeschool/sen/disabilityandthedda/ddapart0/>), provides

guidance on the disability equality duty for schools. The EHRC provides a Code of Practice on the disability equality duty, *The Duty to Promote Disability Equality: Statutory Code of Practice* (<http://www.equalityhumanrights.com/en/forbusinessesandorganisation/publicauthorities/disabilityequalityd/Pages/Disabilitye.aspx>).

Race relations

73. The law places a general duty on all maintained schools to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between people of different racial groups. The law also places a number of specific duties on schools, including duties to assess the impact of policies and to monitor the operation of those policies on pupils, parents and staff from different racial groups.
74. This legislation requires schools/PRUs to take steps to ensure that they will not discriminate against pupils on racial grounds when making a decision about whether to exclude a pupil. For example, schools/PRUs should monitor and analyse exclusions by ethnicity to ensure that they do not treat some groups of pupils more harshly than others. Schools/PRUs are required to assess whether policies that lead to sanctions, including exclusion, have a disproportionately adverse impact on pupils from particular racial groups. Local authorities will wish to monitor their schools'

exclusion data for similar reasons. If adverse impact is identified and this cannot be justified, then the policy and practice should be revised. If it is apparent that there is a pattern of higher exclusions among a particular racial group, then where appropriate, in addition to or as part of a revision of the school's policy and practice, an action plan should be drawn up to address the behaviour of pupils in that group and any other predisposing factors, such as staff perceptions of pupil behaviour, that may be giving rise to this pattern.

75. Although rates of permanent exclusion among most Black and minority ethnic pupils have fallen in recent years, there is still a disproportionately high rate for Black Caribbean and Mixed Black/White Caribbean pupils, especially boys. Given this, schools/PRUs should ensure that all school/PRU staff and governors/management committees are fully trained to understand how their own perceptions, values and beliefs affect their behaviour and therefore their interaction with pupils from Black and minority ethnic backgrounds. Good connections between schools/PRUs and community groups and open discussion within schools/PRUs can greatly help to facilitate this.
76. The Commission for Racial Equality (a precursor to the EHRC) has prepared a *Code of Practice on the Duty to Promote Race Equality* and a non-statutory guide *The Duty to Promote Race Equality: A Guide for Schools*. It is strongly recommended that schools/PRUs and all those involved in exclusion

decisions or appeals read the Code of Practice or non-statutory guide. These can be obtained from the Stationery Office. See the EHRC's website (<http://www.equalityhumanrights.com/>) for further information.

Looked after children

77. Looked after children are no less able than other children. Many looked after children have unmet social and emotional needs and, as a group, are more likely to be at risk of exclusion. Schools are expected to proactively support and co-operate with foster carers and the local authority as a corporate parent in doing everything possible to avoid excluding a looked after child. Exclusion from school/PRUs, and permanent exclusion in particular, can place great strain on care placements and lead to even more disruption in a child's life if the care placement breaks down as a result. Local authorities, schools/PRUs, social workers and carers all share the responsibility for reducing exclusions of looked after children. Schools/PRUs, supported by their local authority, should put in place strategies to reduce the need for exclusion for looked after children. Virtual school heads, who are senior figures within a LA, are being introduced to help support schools and local authorities to raise the attainment and ensure progression of all looked after children and young people within their authority.
78. Exclusion of looked after children should be an absolute last resort. It is vital that schools/PRUs and social workers work together in

partnership with other professionals and try every practicable means to maintain them in school/PRUs (where that is where they are placed) and to exclude them only in the most exceptional circumstances. Before excluding, schools/PRUs, in conjunction with the local authority, should first consider alternative options for supporting the looked after child or young person. No looked after child should be excluded from a school/PRU without discussion with the local authority to ensure that there is suitable alternative provision available elsewhere.

- 79.** The document *Supporting Looked After Learners – a practical guide for school governors* (www.dfes.gov.uk/educationprotects/) provides information on what effective schools do to help staff understand and manage challenging behaviour where it occurs. Those schools which are most successful in preventing exclusion have policies which tackle underlying causes of poor behaviour with strategies such as pastoral support programmes and intervention from behaviour support specialists.
- 80.** The child's social workers should be involved at the earliest opportunity to work with the school to avoid the need for exclusion. The role of designated teacher for looked after children in a school is central to involving other children's services and, where appropriate, securing additional support.
- 81.** In cases where a looked after child or young person is excluded, anyone who is legally defined as a parent will have the right to make representations and to appeal. The definition of a parent for the purposes of the Education Acts is broadly drawn and includes any person who has parental responsibility (which includes the local authority where they have a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives. These are in addition to the child's birth parent(s). This means that there could be a number of people who will have the right to make representations and appeal. At any exclusion hearings, especially where support for the child may not be consistent or robust, the school should ensure that children and young people have a voice and that they feel they are being listened to. The hearing should take place in an atmosphere where they feel comfortable and able to speak openly.
- 82.** Even where the local authority does not have parental responsibility, (i.e. where the child is accommodated under section 20 of the Children Act 1989 but is not the subject of a care order) the child's social worker should be involved at the earliest opportunity about the possibility of any exclusion. The designated teacher for looked after children will be able to advise on the legal status of looked after children in the school.
- 83.** Although the Education and Inspections Act 2006 only requires full time education to be provided from the sixth day of an exclusion, such a break in education will have an impact on the education of looked after children. To ensure there is minimal disruption to their

education, where a looked after child or young person is excluded, it is the Government's view that schools and local authorities as appropriate should arrange alternative provision from the first day of the exclusion.

intervene. He has no power to consider complaints about the decision of an Independent Appeal Panel.

Role of the Secretary of State

84. The Secretary of State issues guidance on exclusion to which head teachers, teachers in charge of a Pupil Referral Unit, governing bodies, LAs and Independent Appeal Panels must have regard. Complaints should be dealt with locally first, directly with those involved and then to the governing body/management committee and LA. Complaints can also be made to the Local Government Ombudsman about maladministration of the Independent Appeal Panel – see paragraph 175. In the case of Academies, complaints about the maladministration of an Independent Appeal Panel should be made to the Secretary of State. The Secretary of State can consider complaints about governing bodies' and management committees' operation of the exclusion process, however he would not normally intervene in the decision of a governing body or management committee and does not have the power to substitute his judgment for that of the head/teacher in charge or governing body/management committee. In very exceptional circumstances, for example, where there has been a clear breach of legal duty and it would be expedient for him to do so, he may

Part 3: Procedure for excluding a pupil: role of head teacher/teacher in charge

Informing parents about the exclusion

85. Head teachers/teachers in charge should follow carefully the procedures set out in law and in this statutory guidance which are designed to ensure fairness and openness in the handling of exclusions. Following this guidance will also reduce the chance of any successful legal challenge to the exclusion at a later stage.
86. All exclusion cases should be treated in the strictest confidence. Only those who need to know the details of an exclusion should be informed of them.
87. In exceptional cases – usually where further evidence has come to light – a fixed period exclusion may be extended, or converted to a permanent exclusion. In such cases the head teacher/teacher in charge must write again to the parents explaining the reasons for the change. The head teacher/teacher in charge may withdraw an exclusion that has not yet been reviewed by the governing body.
88. Whenever a head teacher/teacher in charge excludes a pupil, the parent (or pupil if aged 18) must be notified immediately, ideally by telephone followed up by a letter. When the

parent must be notified in writing depends on when the pupil is excluded.

- Where the pupil is excluded at the end of the afternoon session and the exclusion takes effect from the next school day, notice must be given before the start of that day;
- Where the pupil is excluded in the morning session and the exclusion takes effect from that afternoon, notice must be given before the start of the afternoon session;
- Where the pupil is excluded in the afternoon session and the exclusion takes effect that afternoon, the notice must be given by the end of the afternoon session.

Notices must be in writing and must state:

- a) for a fixed period exclusion, the precise period of the exclusion;
- b) for a permanent exclusion, the fact that it is a permanent exclusion;
- c) the reasons for the exclusion;
- d) the parent's right to make representations about the exclusion to the governing

body/management committee and how the pupil may be involved in this;

- e) the person whom the parent should contact if they wish to make such representations (this will usually be the Clerk to the governing body/management committee);
- f) the school days on which the parent is required to ensure that their child is not present in a public place during school hours without justification; and that the parent may be prosecuted, or may be given a fixed penalty notice, if they do not do so;
- g) the arrangements made by the school/PRU for enabling the pupil to continue his or her education during the first five school days of an exclusion, including the setting and marking of work. It is the parent's responsibility to ensure that work sent home is completed and returned to school;
- h) the school days on (or school day from) which the pupil will be provided with alternative suitable full time educational provision and will be required to attend such alternative provision, if the parent is not otherwise notified of this information (the teacher in charge of a PRU should liaise with the LA about this, as the LA has the duty to provide education from the 6th day of exclusion); separate notification of these details can be sent later if more time is needed by the school or LA to make arrangements; in the case

of a fixed period exclusion the parent must be given this information in writing at least 48 hours before the education is to be provided. In the case of a permanent exclusion, on receiving details of the provision, its location, start times and transport arrangements if appropriate, from the relevant local authority, the head teacher should advise the parents in writing and confirm to the local authority that these details have been passed on;

- i) that, if appropriate (see paragraph 40), the parent will be invited to attend a reintegration interview and that the parent's failure to attend will be a factor taken into account by a magistrates' court when deciding whether to impose a parenting order, if this is applied for. Details of time, date and location of the interview should be included in the letter for exclusions of up to five days (which will affect parents of primary-aged pupils). For longer exclusions separate notification of these details can be sent nearer to the date of the proposed interview. Any proposed interview should be held no later than the fifteenth school day, following the pupil's return to school.

Letters may need to be translated into other languages, where parents' first language is not English.

89. Letters should also mention:

- a) the latest date by which the governing body/management committee must meet to consider the circumstances in which the pupil was excluded (except where the exclusion is for a total of not more than 5 school days in any one term, and would not result in the pupil missing a public examination);
- b) the parent's right to see and have a copy of his or her child's school record upon written request to the school;
- c) in the case of a **fixed period** exclusion, the date and time when the pupil should return to school/PRU (in the case of a **lunchtime** exclusion, the number of lunchtimes for which the pupil is being excluded, and if applicable the arrangements for the child to receive free school meals);
- d) if the exclusion is **permanent**, the date it takes effect and any relevant previous history;
- e) the name and telephone number of an officer of the LA who can provide advice; and
- f) the telephone number for the Advisory Centre for Education (ACE) exclusions information line – 020 7704 9822, their website address: www.ace-ed.org.uk, and the fact that a text 'AskACE' can be sent to 68808. ACE is a long established independent national charity providing advice to parents.

Informing the governing body/management committee and the LA

90. Within one school day the head teacher/teacher in charge must inform the governing body/management committee and the LA of:
 - a) permanent exclusions;
 - b) exclusions which would result in the pupil being excluded for more than five school days (or more than 10 lunchtimes) in any one term; and
 - c) exclusions which would result in the pupil missing a public examination.
91. For a permanent exclusion, if the pupil lives outside the LA in which the school is located, the head teacher/teacher in charge must also advise the home LA of the exclusion, so that they can make arrangements for the pupil's full-time education from and including the sixth school day of exclusion. It is essential that the home LA is speedily and fully informed of the details of the exclusion so that they are in a good position to ensure that appropriate provision is in place within the statutory time limits. A database of exclusions officers in England and their email addresses can be found at <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion>.
92. For schools/PRUs with three terms in a school year, fixed period exclusions totalling five or fewer school days, or 10 or fewer lunchtimes or half days, in any one term must be reported for monitoring purposes to the governing body/management committee

and LA once a term. For schools/PRUs with more than three terms in a school year, this information must be reported in a term in which 31 December, Easter Monday or 31 July falls or the term immediately preceding one of those dates. The school should also at the same time report this information in respect of any previous terms, if it has not already done so.

- 93.** Detailed exclusion reports should be sent to the LA and the governing body/management committee. Reports should include the following:
- a) the pupil's name;
 - b) the length of the exclusion;
 - c) the reason for the exclusion;
 - d) the pupil's age, gender and ethnicity;
 - e) whether the pupil has a statement of SEN, is being assessed for such a statement, or is on School Action or School Action Plus;
 - f) whether the pupil is looked after as defined in section 22 of the Children Act 1989; and
 - g) for fixed period exclusions of pupils of compulsory school age, where the exclusion is for more than five school days, what alternative provision has been put in place for the pupil.

Marking attendance registers following exclusion

- 94.** Where pupils are excluded for a fixed period and no alternative provision is made before the sixth day of exclusion for them to continue their education, they should be marked absent in the attendance register using Code E. Where alternative provision is made, and it meets the requirements of the pupil registration regulations and pupils attend it, they should be marked using the appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual Registration).
- 95.** Pupils who are permanently excluded must not be deleted from either the admission register or the attendance register until the appeal process has been completed. If no alternative provision is made before the sixth day of exclusion for them to continue their education whilst excluded but still on the school roll, they should be marked absent in the attendance register using Code E. Where alternative provision is made, and it meets the requirements of the pupil registration regulations, they should be marked using the appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual registration). Further information on the attendance codes and pupil registration regulations is available on the DCSF website at www.dcsf.gov.uk/schoolattendance/

Part 4: Responsibilities of the governing body/management committee

The governing body/management committee

96. The governing body and, for PRUs, the management committee, must review certain exclusions and must consider any representations about an exclusion made by the parents of the excluded pupil. The governing body/management committee can delegate some or all of its functions in respect of exclusions to a committee consisting of at least three governors/management committee members and such a committee may be called the Discipline Committee. References throughout this guidance to the governing body/management committee should be taken to include a reference to the Discipline Committee where one has been established. It is very important that governors/committee members who are called upon to review exclusions receive training to equip them to discharge their duties properly. We expect the LA to organise training sessions for governors/members on exclusion issues, which governors/members should make every effort to attend. Training materials for clerks and chairs are available at: www.teachernet.gov.uk/wholeschool/behaviour/exclusion/gettingitright/. The Administrative
- Justice & Tribunals Council has emphasised the importance of training for all those involved in the exclusion process. Where the governing body/management committee establishes a Discipline Committee it should appoint a Clerk to the Committee. The quorum for a Discipline Committee meeting is three members. If any governor/member has a connection with the pupil, or knowledge of the incident that led to the exclusion, which could affect his or her ability to act impartially, he or she should step down. The Chair has the casting vote in all cases where an even number of governors are considering the case.
97. At one meeting the governing body/management committee may consider more than one exclusion so long as it complies with the statutory time limits relating to each one.
98. If any exclusion would result in the pupil missing a public examination, the governing body/management committee should try to meet before the date of the examination. If, exceptionally, it is not practical for the governing body/management committee to meet before the time when the pupil is due to take the public examination, the Chair of

Governors/Chair of the management committee – using his or her powers to act in an emergency – may consider the exclusion and decide whether or not to reinstate the pupil (these are the only circumstances in which the Chair of Governors or the Chair of the management committee can alone review an exclusion).

99. In such cases the parent has the right to make oral representations to the governing body/management committee or, as the case may be, the Chair. If possible, the Chair should have the advice of the Clerk and an LA officer. In some cases, depending on the nature and seriousness of the exclusion, the governing body/management committee may exercise its discretion to allow an excluded pupil on the premises for the sole purpose of taking a public examination. There is no automatic right for any excluded pupil to take a public examination on the excluding school's/PRU's premises – this is entirely at the governors'/management committee's discretion. Nor do excluded pupils have an automatic right to enter the school premises to take National Curriculum Tests – this is also at the governors' discretion.

Governing body's/management committee's role in reviewing exclusions

100. There is no legal requirement for the head teacher/teacher in charge to inform the governing body/management committee of short fixed period exclusions (i.e. those of up to and including 5 school days in total in any one term) as they occur, with the exception of such an exclusion which would result in the pupil missing a public examination. The law requires the head teacher/teacher in charge to report short fixed period exclusions once a term to the governing body/management committee and LA (but please see paragraph 92 regarding schools with more than three terms).
101. But the governing body/management committee must, in the case of a fixed period exclusion of 5 school days or fewer in one term (and which does not bring the pupil's total number of days of exclusion to more than 5 in one term), consider any representations made by the parent. If representations from the parent are received the governing body/management committee must consider them, but they cannot direct reinstatement (model letter 1), although they can place a copy of their findings on the pupil's school record. In such cases the governing body/management committee has discretion to agree to a meeting if the parent requests a meeting to discuss the exclusion. No statutory time-limits apply to the consideration of such exclusions, but the governing body/management committee should consider responding promptly to any request from the parent.
102. An excluded pupil under the age of 18 should be allowed and encouraged to attend the hearing and to speak on his or her own behalf, if he or she wishes to do so, subject to their age and understanding.

103. On receiving notice of an exclusion from the head teacher/teacher in charge, the governing body/management committee:

- a) must, in the case of a fixed period exclusion of more than 5, but not more than 15 school days in one term (which does not bring the pupil's total number of days of exclusion to more than 15 in one term), convene a meeting between the 6th and the 50th school day after receiving notice of the exclusion, to consider the exclusion, **but only if the parent (or pupil aged 18 or over) requests such a meeting** (model letter 2);
- b) must, in the case of a permanent exclusion, or a fixed period exclusion of more than 15 school days in one term (or which brings the pupil's total number of days of exclusion to more than 15 in one term) convene a meeting between the 6th and the 15th school day after the date of receipt of notice to consider the exclusion (model letters 3 and 4). If a pupil's total number of days of fixed period exclusion exceeds 15 school days in one term, any subsequent fixed period exclusion(s) of the pupil in the same term would again trigger the governing body's/management committee's duty to consider the circumstances of the exclusion;
- c) must invite the parent (or the pupil if aged 18 or over), head teacher/teacher in charge and an LA officer to the meeting at a time and place convenient to all

parties (but in compliance with the relevant statutory time limits);

- d) should ask for any written statements (including witness statements) in advance of the meeting; and
- e) should circulate, at least five days in advance of the governing body/management committee meeting, any written statements (including witness statements) and a list of those who will be present at the meeting to all parties, including the pupil if it is known that they are to attend the meeting.

Note: the legislation deems a lunchtime exclusion to be a fixed period exclusion equivalent to half a school day. This should be taken into account for the purposes of a) and b) above. For example, if a pupil were to be excluded at lunchtime for 15 school days in the same term this would be the equivalent of seven and a half full days and a) above would apply.

- 104.** The governing body/management committee must comply with the statutory time limits but are not relieved of their obligation to carry out the relevant duty if they fail to comply. Accordingly their decision will not be invalid simply on the grounds that it was made out of time.
- 105.** It should be noted that the governing body's/management committee's role is to review exclusions imposed by the head teacher/teacher in charge, who alone has the power to exclude. It follows that the governing body/management committee

cannot increase the severity of an exclusion, for example by extending the period of a fixed period exclusion or by imposing a permanent exclusion in substitution for a fixed period exclusion. The governing body/management committee can uphold an exclusion; or direct the pupil's reinstatement, either immediately or by a particular date. If the governing body/management committee cannot direct reinstatement because the period of exclusion has expired and the pupil has returned to school, they can place a copy of their findings on his or her school record. Governors/committee members should bear in mind that, in the case of a permanent exclusion, if an appeal is lodged the independent appeal panel will not just review the governors'/committee's decision, it will rehear all the facts of the case including any fresh evidence.

Procedure at the governing body/management committee meeting

106. The governing body/management committee should conduct the meeting along the lines of the principles laid out in paragraphs 146 and 147 and, as appropriate, in paragraphs 149–154 in Part 5. Where an allegation of misconduct against the pupil is in dispute the governing body/management committee should apply the balance of probabilities standard of proof, i.e. whether it is more probable than not that the pupil did what he is accused of. However, the more serious the allegation and thus the possible sanction, the more convincing the evidence

substantiating the allegation needs to be. This is not the same as requiring the criminal standard of beyond reasonable doubt to be applied, but it does mean that when investigating more serious allegations head teachers/teachers in charge will need to gather and take account of a wider range of evidence (extending in some instances to evidence of the pupil's past behaviour, if relevant to the allegation) in determining whether it is distinctly more probable than not that the pupil has committed the offence. The governing body/management committee should allow and encourage the excluded pupil to attend the meeting and speak, subject to their age and understanding. They should allow the parent to be accompanied by a friend or legal representative at their request. A pupil aged 18 or over has the right to attend and to make representations in their own right.

107. The LA is not required (and it may not be practical) to send a representative to all governing body/management committee exclusion meetings in its area. The LA should send a representative to all permanent exclusion meetings and to longer fixed period exclusion meetings if possible. The LA's role at the governing body/management committee meeting is not to give its view on the merits of the particular exclusion. But it can make a statement to the governing body/management committee in general terms, for example about how other schools in the area (and the LA itself, if applicable) have dealt with similar incidents.

The LA representative should also draw the attention of governors/committee members to issues where there is a lack of clarity or where more information may be needed or where guidance appears to have been ignored. The head teacher/teacher in charge should attend the meeting to clarify points and answer any questions relating to the incident or events leading to the exclusion. No party to the review should be alone with the governors at any point before, during or after the meeting.

- 108.** The governing body/management committee may ask the LA officer for advice. However, it should make its decision alone, asking the other parties, including the LA officer, to withdraw. The clerk may stay with the governing body/management committee to help it by reference to the notes and with the wording of the decision letter.
- 109.** Where the exclusion is for more than 5 school days in total in one term and where reinstatement is practical, the governing body/management committee should decide whether to direct reinstatement. In reaching its decision the governing body/management committee should consider:
- a. any representations made by the parent, the pupil and the LA;
 - b. whether on a balance of probabilities the pupil did what he or she is alleged to have done; and
 - c. whether the head teacher/teacher in charge has complied with the law on

exclusion and has had regard to this guidance on exclusion.

- 110.** In considering whether to direct reinstatement, the governing body/management committee should seek the LA's views as to what support could be made available to assist with reintegrating the pupil.
- 111.** Parents' right to make representations to the governing body/management committee is not affected in any way by the new requirement for suitable full-time education to be provided from the sixth day of exclusion.

Governing body's/management committee's decision

- 112.** Where reinstatement is not practical, because, for example, the pupil has returned to school following the expiry of a fixed period exclusion, or because the parent makes clear he or she does not want their child reinstated, the governing body/management committee must consider whether the head teacher's/teacher in charge's decision to exclude the child was justified, based on the evidence. The outcome of its review should be added to the pupil's school record for future reference. There are only two decisions open to the governing body/management committee – to uphold the exclusion or to direct the pupil's reinstatement, either immediately or by a particular date. It may not decide that because of exceptional circumstances or for other reasons it is not practical to give a

direction for reinstatement, but that it would otherwise have been appropriate to give such a direction. Such a decision is reserved for the Independent Appeal Panel. If the governing body/management committee cannot direct reinstatement because the period of exclusion has expired and the pupil has returned to school, they should annotate his or her school record with their findings.

113. The governing body/management committee must inform the parent (or the pupil if aged 18 or over), the head teacher/teacher in charge and the LA of its decision in writing within one school day of the hearing, stating the reasons. Where the pupil resides in a different LA from the one that maintains the school/PRU, the governing body/management committee must also inform that LA – the pupil’s ‘home’ LA. The governing body/management committee may not attach conditions to any direction it may give to the head teacher/teacher in charge to reinstate the pupil. This does not prevent a school/PRU from following good practice in reintegrating the pupil.

114. Where the governing body/management committee decides to uphold a permanent exclusion, its letter to the parent (or pupil if aged 18 or over) should also include the following information:

- a) the reason for the decision;
- b) their right to appeal to an Independent Appeal Panel, together with the name and address of the person to whom any

notice of appeal should be sent (normally the clerk to the appeal panel);

- c) the date by which any notice of appeal should be lodged (15 school days after the day on which notice in writing was given of the governing body’s decision. Where the notice is sent by first class post it is treated as having been given on the second working day after it was posted);
- d) that any notice of appeal must set out the grounds on which the appeal is made; and
- e) that any claim on grounds of disability discrimination should also be set out in the notice of appeal.

115. A model letter (model letter 5) for notifying parents of a decision to uphold a permanent exclusion is provided at the end of this guidance.

After the meeting

116. A copy of the governing body’s/management committee’s decision letter should normally be placed on the pupil’s school record with copies of relevant papers. Exclusions can only be expunged from the pupil’s school record through direction from the courts or rectification of personal data. In deciding how long to retain school records schools must comply with Freedom of Information and data protection legislation. Guidance on this is available at: <http://www.teachernet.gov.uk/management/atoz/f/freedomofinformationforschools/>

Part 5: Independent appeal panels

Notifying parents

117. When a permanent exclusion is upheld by the governing body/management committee, its decision letter (model letter 5) to the parent (or the pupil, if aged 18 or over) must:

- state the reasons for the decision;
- give the last day for lodging an appeal; and
- explain that the grounds for the appeal should be set out in writing.

118. The LA should also write to the parent (or pupil if aged 18 or over) within 3 working days of the governors'/management committee's meeting indicating the latest date by which an appeal may be lodged, the name and contact details for the clerk to the appeal panel, and explain that the notice of appeal must be in writing setting out the grounds on which it is made. LAs may wish to have a leaflet available on the appeal process, which they can send to parents. Parents have a right to an independent appeal panel hearing even if they did not make a case to, or attend, the governors'/committee's meeting.

119. Any appeal made after the latest date for lodging an appeal will be out of time and must be rejected by the LA. Generally, it is the local authority's Democratic Services department, rather than the Children's Services department, which administers the parent's appeal. It is important, therefore, that the Democratic Services department keeps the Children's Services department informed of the progress of the appeal, particularly where the parent lodges an appeal, but then withdraws it or fails to attend the appeal hearing without explanation. In the case of a pupil who lives outside the authority area, if the parent withdraws or abandons their appeal, the clerk to the appeal panel must notify the 'home' LA.

The timing of the hearing

120. An appeal panel must meet to consider an appeal no later than the 15th school day after the day on which the appeal was lodged. However, if necessary, the panel may decide to adjourn the hearing if, having regard to the particular circumstances of the case, it considers that it would not be appropriate for it to proceed to determine the appeal. This might include circumstances

where more information is awaited. If the parent requests a hearing date later than the 15th school day, the clerk may consult the panel members by telephone or email about the request and, if the members agree, a later hearing date may be set and the panel will be deemed to have adjourned the hearing. The panel may adjourn on more than one occasion if necessary.

Combined appeals

- 121.** If the issues raised by two or more appeals are the same or connected, the panel may decide to combine the hearings if they consider it is expedient to do so. In such cases the panel must consult the parties, and in particular check whether any party objects to this approach. The panel must be aware of possible conflicts between the parties involved. The panel has a discretion to combine the appeals or refuse a request for combination, but must take all the relevant considerations into account, including the views expressed by the parties.
- 122.** In particular, where pupils have been permanently excluded as a result of their participation in the same incident, and their participation and mitigation are not substantially different, the appeal panel may consider it is appropriate to combine all the appeals arising out of the incident. The panel should consult the parties (including the governing body/management committee as well as the parents/pupil) before deciding to combine appeals. Where the panel decides not to combine appeals, or it is impracticable

to do so, then to avoid unfairness and inconsistency, it is recommended that the same panel members hear the appeals. A panel which has decided to combine or not to combine hearings arising out of the same incident must be prepared to justify the way that it has reached that decision, and should record its reasons for doing so. Such a decision is subject to judicial review. Where a decision is made to hear appeals separately and the same panel members are not available, the panel should take practical steps to ensure that similarities or differences in the cases can be taken into account by different panels considering the cases arising from the incident. Decisions about combining appeals should be taken by the panel, and not by the clerk to the panel or by the local authority which set up the panel. A panel is not required to tell legally represented parties, who do not ask for combining, that appeals may be combined.

Composition of appeal panels

- 123.** The LA must constitute the appeal panel and appoint a clerk. The panel must have three or five members (as decided by the LA) made up of three categories:
- a) the chair must be a lay member, defined as someone who has not worked in a school in any paid capacity, although they may be (or have been) a school governor or work (or have worked) in a school as a volunteer. The chair could, but need not be, someone with a legal qualification;

- b) one (or, on a five member panel, two) must be, or have been, a governor of a maintained school **or a member of a management committee of a PRU**, provided they have served in this capacity for at least 12 consecutive months in the last 6 years (but they must not be, or have been in the last 5 years, a teacher, head teacher or teacher in charge of a PRU); and
- c) one (or, on a five member panel, two) must be, or have been within the last 5 years, a head teacher of a maintained school **or a teacher in charge of a PRU**. If the exclusion is from a PRU then this representative can be either a head teacher of a maintained school, or a teacher in charge of a PRU.
- 124.** It is important that in all cases the governor/management committee member and head teacher/teacher in charge panel members should be from the same phase of education as the school to which the case refers and wherever possible should reflect the type of school. For example, governor/management committee member and head teacher/teacher in charge panel members considering a primary school exclusion should have experience of that phase of education, those considering a secondary school exclusion should have experience of secondary education, and those considering an exclusion from a special or boarding school should have experience of that area of education. The lay member should have the necessary skills, qualities and training to chair the panel effectively.
- 125.** A person may not serve as a member of an appeal panel if they:
- are a member of the local authority or of the governing body of the excluding school or of the management committee of the PRU;
 - are an employee of the local authority or of the governing body/management committee, unless they are employed as a head teacher in another school in the same LA or as a teacher in charge of a PRU in the same LA where the exclusion is from a PRU;
 - have, or at any time have had, any connection with an interested party, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially; or
 - are the head teacher of the excluding school/teacher in charge of the excluding PRU or have been such in the last five years.
- 126.** Every care must be taken to avoid bias or an appearance of bias. Doubts about impartiality may arise from a panel member having worked closely with the head teacher, or governing body of the excluding school, or the teacher in charge of or management committee of the excluding PRU, or from being the head teacher or governor/management committee of a school/PRU to which the pupil might be admitted if the

exclusion is confirmed. Prospective panel members should declare any such conflict of interest at the earliest opportunity. Small LAs may have difficulty finding serving head teachers/teachers in charge and governors/management committee members who feel they are able to act impartially and may need to recruit panel members from a neighbouring LA if they cannot find retired head teachers/teachers in charge and governors/management committee members to take on the role.

Guidance on training for clerks and panel members

- 127.** Local authorities must ensure that all panel members receive suitable training (as set out in Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002, as amended). It is mandatory that new clerks and new panel members satisfy the training requirements before they serve.
- 128.** The training requirements are that, within the two years preceding the date of the hearing, the panel member or clerk has been given sufficient training and received such information and instruction as is suitable and sufficient for him or her to know:
- a) the requirements of the regulations governing exclusions (and statutory guidance);
 - b) the role of the chair of an appeal panel;
 - c) the role of the clerk to an appeal panel;
 - d) the duties of the appeal panel under the Race Relations Act 1976;
 - e) the duties of the appeal panel under the Disability Discrimination Act 1995;
 - f) the duties the appeal panel may have under Part 4 of the Equality Act 2006;
 - g) the effect of section 6 of the Human Rights Act 1998 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act compatibly with human rights protected by that Act; and
 - h) the need for the appeal panel to observe procedural fairness and the rules of natural justice.
- 129.** The Department expects that training will last for at least half a day, although some training programmes may require a full day. Training for clerks and panel members could be combined or separate. The trainer should be aware that whilst some of the duties and responsibilities for clerks and panel members are similar, there are differences and this should be pointed out. The chair should be trained in the specific chairing skills that the panel requires. The training should be delivered by someone who has knowledge, and possibly experience, of exclusion appeals. Training should be prepared in advance with time allocated for people to ask questions and clarify any issues.
- 130.** Once panel members and clerks have received training they will be required to undergo refresher training at least once every two years in order to continue to satisfy the training requirements. Local authorities will need to identify and train all

panel members to ensure they can arrange hearings within the necessary timescale.

- 131.** The Department has issued a training pack for exclusion appeal panel members (for details of how to obtain a copy see the related documents section). Further training materials specifically for chairs and clerks are available : <http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/gettingitright/>. The Judicial Studies Board also produces materials that may be helpful for training purposes: http://www.jsboard.co.uk/tribunals/ttp/2007/ttp_08_07.htm.

Role of the clerk

- 132.** The clerk provides an independent source of advice on procedure for all parties. The clerk should not have served as clerk to the governing body/management committee hearing. Further information on the role of the clerk can be found in Checklist 9 of the Information for School and College Governors training pack, <http://www.teachernet.gov.uk/docbank/index.cfm?id=3814>.
- 133.** Clerks will need to keep up to date with developments in case law and changes in legislation and guidance. Over time clerks are likely to develop experience in the conduct of both exclusion and admission appeals. The authority may wish to consider whether the panel should have an independent source of legal advice, for example a solicitor from the authority's legal services department. In any event this is desirable where the appellant

(the parent) and/or the school is legally represented.

In advance of the hearing

- 134.** The LA must take reasonable steps to find out when the parent and others entitled to attend the hearing would be available in order to ensure that all parties are able to attend. They must also arrange a suitable venue for hearing the appeal in private. It should be neutral, accessible, and have good access for people with disabilities. Appeal hearings should never be held at the excluding school/PRU.
- 135.** The following are entitled to make written representations, appear and make oral representations, and to be represented (including legally):
- the parent (or, if aged over 18, the pupil);
 - the head teacher/teacher in charge of a PRU; (where an excluding head teacher has left the school, the appeal panel may use its discretion in deciding whether to invite him/her to make representations);
 - the governing body/management committee of a PRU; and
 - the LA. (Also see paragraph 107)
- 136.** A member of the Administrative Justice & Tribunals Council is entitled to attend as an observer and can be present at the panel's post-hearing deliberations. The Council would be grateful if LAs would notify them of forthcoming appeals (their address is: 81 Chancery Lane, London, WC2A 1BQ). Further

information about the Council is available at: <http://www.ajtc.gov.uk/>

- 137.** The Department would normally expect either the head teacher/teacher in charge or the governing body/management committee to be represented, or both to be jointly represented, rather than the head teacher/teacher in charge and governing body/management committee being separately represented. If either the head teacher/teacher in charge or the governing body/management committee wish to bring more representatives (or friends) than one each, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on the numbers attending the hearing.
- 138.** The clerk should advise the parent of his or her right to be accompanied by a friend or representative, including a legal representative or advocate. If the parent wishes to bring more than one friend or representative, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the hearing. However both parents may attend if they wish to do so, and each can exercise this right.
- 139.** An excluded pupil under the age of 18 should be encouraged to attend the hearing and to speak on his or her own behalf, if he or she wishes to do so and subject to their age and understanding.
- 140.** The panel cannot compel witnesses to attend the hearing.
- 141.** The clerk should also ascertain whether an alleged victim, if there is one, wishes to be given a voice at the hearing either in person, through a representative or by submitting a written statement. Their role would be that of a witness and they would not be able to question any of the parties.
- 142.** When the position is clear, the clerk must give all parties details of those attending and their role and notify them of the order of hearing.
- 143.** The clerk should circulate all written evidence to all parties at least 5 school days before the hearing. This must include the statement of decision by the governing body/management committee and the notice of appeal from the parent which gives the grounds for the appeal and any disability discrimination claim. A locally prepared summary of this exclusions guidance should also be circulated. The head teacher/teacher in charge, governing body/management committee and LA may also make written representations. If any of the parties intend to raise matters or produce documents at the hearing that are not covered by the statement of decision or the notice of appeal, they should be asked to submit these to the clerk in good time before the hearing, although there is no statutory time limit for submitting evidence.

Conduct of the appeal hearing

- 144.** It is for the appeal panel to decide how to conduct the proceedings which should be reasonably informal so that all parties can

present their case effectively. Tape-recording of the hearing should be avoided unless there is good reason and all parties agree.

- 145.** In opening the appeal hearing the chair should outline the procedure to be followed and explain to all parties that the panel is independent of the school/PRU and the LA. The chair should explain that the panel must have regard to this guidance in its conduct and in reaching its decision.
- 146.** Following introductions, the clerk should explain the order in which the parties entitled to be heard will state their case (as previously notified to them) and that there will be an opportunity for questioning by the other parties after each presentation. The chair should then lead the panel in establishing the relevant facts. Panel members may wish to ask questions to clarify an issue or to elicit more information. Questions from the panel should generally be taken at the end of each party's statement and following questioning by the other parties.
- 147.** Sufficient time must be allowed for each party to put their case. The panel should ensure that the parent (or, if aged over 18, the pupil) is given the opportunity to comment on relevant information obtained from the LA or governing body. Care must be taken to ensure that no party attending the hearing is present alone with the appeal panel in the absence of any other party.
- 148.** An appeal cannot continue if the number of panel members drops below three at any

stage. In this event, the panel may need to adjourn until its quorum is restored. Once an appeal has begun, no panel member may be substituted by a new member for any reason. Accordingly, where a member cannot continue as a result of illness or death a new panel will have to be constituted. In the case of a five-member panel, however, the panel may continue in the event of the death or illness of one (or even two) of its members, provided all three categories of member are still represented. In the case of a panel being reduced to four members, the chair has the casting vote in the event of a tied vote.

Evidence and witnesses

- 149.** Where the school's case rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the panel. Where there are difficulties in retaining physical evidence, photographs or signed witness statements are acceptable.
- 150.** All parties may put forward new evidence about the event that led to the exclusion, including evidence that was not available to the head teacher/teacher in charge or the governing body/management committee. All parties should be given the opportunity to respond to any such new evidence which has been put forward. However, the school may not introduce new reasons for the exclusion.
- 151.** To reach a decision, the panel will generally need to hear from those directly or indirectly involved. At the hearing the governing body/

management committee may wish to call witnesses who saw the incident that gave rise to the exclusion. These may include any alleged victim or any teacher, other than the head teacher/teacher in charge, who investigated the incident and interviewed pupils. A teacher may be accompanied by a friend or representative.

- 152.** In the case of witnesses who are pupils of the school/PRU, it will normally be more appropriate for the panel to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and with their parent's consent. Panels should be sensitive to the needs of child witnesses to ensure that the child's view is properly heard.
- 153.** All written witness statements must be attributed and signed and dated, unless the school has good reason to wish to protect the anonymity of pupils, in which case they should at least be dated. The general principle remains that an accused person is entitled to know the substance and the source of the accusation. The panel must consider what weight to attach to written statements, whether made by adults or pupils, as against oral evidence. They should bear in mind that a written statement may not encompass all the relevant issues, nor can the author be interrogated.
- 154.** The calling of character witnesses is at the discretion of the panel, but should be allowed unless there is good reason to refuse. It is for the panel to decide whether any witnesses should stay for the rest of the

hearing, but they should not be present before giving evidence.

Reaching a decision

- 155.** In considering an appeal, the panel should decide, on the balance of probabilities, whether the pupil did what he or she is alleged to have done. However, the more serious the allegation and thus the possible sanction, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard of 'beyond reasonable doubt' to be applied, but it does mean that when investigating more serious allegations, head teachers/teachers in charge will need to gather and take account of a wider range of evidence (extending in some instances to evidence of the pupil's past behaviour if relevant to the allegation), in determining whether it is more probable than not that the pupil has committed the offence. If the pupil is specifically excluded for more than one incident of misconduct, the panel should decide in relation to each one.
- 156.** The panel should consider the basis of the head teacher's/teacher in charge's decision and the procedures followed having regard to the following:
- a) whether the head teacher/teacher in charge and governing body/management committee complied with the law and had regard to this guidance in deciding, respectively, to exclude the pupil and not to direct that he or she should be reinstated. While the law states that the

panel must not decide to reinstate a pupil solely on the basis of technical defects in procedure prior to the appeal, procedural issues would be relevant if there were evidence that the process was so flawed that important factors were not considered or justice was clearly not done;

- b) the school's/PRU's published behaviour policy, equal opportunities policy and, if appropriate, anti-bullying policy, Special Educational Needs policy, and race and disability equality policies; and
 - c) the fairness of the exclusion in relation to the treatment of any other pupils involved in the same incident.
- 157.** Where panels accept that the individual committed the offence in question, they must consider whether the response is proportionate and also be satisfied that the disciplinary process has been carried out without any procedural irregularities of a kind that affect the fairness of the procedure or the governors'/management committee's findings. Once satisfied on all these points, it would be unusual for the panel to vary the governing body's decision. In particular, the panel should not reinstate the pupil without good reasons.
- 158.** If a school's/PRU's exclusion policy is at variance with this guidance, and the appeal panel decides to give the local policy more weight, it must be clear about its reasons for doing so and explain them in its decision letter. A school/PRU must have regard to the

Secretary of State's guidance when developing and reviewing its policies on behaviour and exclusion. These policies can vary from those set out in the Secretary of State's guidance but there must be good and properly justified reasons for departing from it.

159. In deciding on:

- whether or not to uphold an exclusion and then
- whether or not to direct reinstatement if the exclusion is not upheld

the panel must balance the interests of the excluded pupil, taking into account the seriousness of the incident leading to the exclusion, the pupil's past behaviour and the consequences for him or her of the exclusion, against the interests of all the other members of the school/PRU community including the risk of undermining the head teacher's/teacher in charge's authority and the general climate of discipline within the school/PRU.

160. Where a parent appeals against permanent exclusion and makes a claim alleging racial discrimination, the appeal panel must consider whether there has been discrimination in relation to the Race Relations Act 1976 as amended (also see paragraphs 73-76).

161. Where a parent appeals against permanent exclusion and makes a claim alleging disability discrimination, the appeal panel must consider whether the pupil is disabled and whether there has been discrimination within the meaning of the Disability

Discrimination Act 1995 as amended (see paragraphs 68-72). Appeal panels must consider the Disability Rights Commission's Schools Code of Practice which provides guidance on the Disability Discrimination Act.

The decision

162. An appeal panel may:

- uphold the decision to exclude; or
- direct immediate reinstatement or reinstatement at some future date; or
- decide that because of exceptional circumstances or other reasons it is not practical to give a direction requiring reinstatement, but that it would otherwise have been appropriate to give such a direction.

163. If the panel directs reinstatement, the date specified must be reasonable in the circumstances. The panel may not attach conditions to the reinstatement of a pupil.

164. In some cases it will not be practical for the panel to direct reinstatement because the parent has made clear he or she does not want it, or because the child has become too old to return to the school/PRU.

165. There may also be exceptional cases where the panel considers that the permanent exclusion should not have taken place, but that reinstatement in the excluding school/PRU is not a practical way forward in the best interests of all concerned. This could include situations where there has been an

irretrievable breakdown in relations between pupil and teachers; or between the pupil and other pupils involved in the exclusion or appeal process. Before deciding that there are exceptional circumstances the panel should try to establish what efforts have been made to address a possible breakdown in relations. Balancing the interests of the pupil and the whole school/PRU community may suggest that reinstatement would not be the most sensible outcome in such cases. In considering whether such exceptional circumstances exist the panel should consider representations from the governors/management committee, the head teacher/teacher in charge and from the parent (or pupil if 18 or over).

166. Following the Court of Appeal's judgment in the Bromley case in 2007, when the IAP has to make two separate decisions on whether to (a) uphold the exclusion and (b) direct reinstatement, the IAP needs to have evidence from the school/PRU as to why the pupil was excluded AND as to why reinstatement should not be directed. It is contrary to the rules of natural justice for the parents to be unaware of the arguments put by the school/PRU against reinstatement and so be unable to address them specifically. If the school/PRU's reasons for excluding and objecting to reinstatement are the same, and the exclusion is not upheld, then an IAP is likely to direct reinstatement. Therefore, any representation from the head teacher/teacher in charge objecting to reinstatement should usually be different from that

advanced in support of the decision to permanently exclude.

- 167.** In any case where the panel decides that reinstatement would have been justified but is not practical, it must indicate this in its decision letter and give details of the circumstances that made it decide not to direct reinstatement. Such a letter should be added to the pupil's school record for future reference.

Record of the proceedings of an appeal panel

- 168.** The clerk to an appeal panel should ensure that minutes of the proceedings are taken, including details of the attendance, the voting and the decision, in a format approved by the LA. The minutes are not public documents but should be retained by the LA for a period of at least five years, as they may need to be seen by a court or by the Local Government Ombudsman and need to be in line with the Freedom of Information Act 2000 and the Data Protection Act 1998 (also see School Admissions Appeals Code, Jan 08 paragraphs 2.37-2.40 for useful guidance on 'Notes and records of admission appeal hearings': www.dcsf.gov.uk/sacode)
- 170.** The panel must let all parties know its decision by the end of the second working day after the hearing. Model letter 6, provided at the end of this guidance, is for notifying the parent of the decision of the panel. The decision letter must give the panel's reasons for its decision in as much detail as possible, including clear information about the offences or behaviour for which the pupil has been excluded, so that the parties can understand why the decision was made. If a school's/PRU's exclusion policy was at variance with the Department's guidance, and the appeal panel considered it appropriate to give the local policy more weight, it must in its decision letter explain why. Where the panel overturns the exclusion but does not direct reinstatement, the panel must explain their reasoning for reaching this decision.
- 171.** If the appeal panel upholds the permanent exclusion, the clerk should immediately report this to the LA that maintains the school/PRU, and if the pupil lives outside the area of the LA maintaining the school, the clerk should make sure that the home LA is also informed immediately of the position.
- 172.** If the pupil is of compulsory school age, it is for the LA in whose area the pupil lives to continue to make arrangements for the pupil to receive suitable full-time education. That LA should by law already have been doing this from the sixth day of exclusion. Where the exclusion is upheld the clerk should also advise the parent to contact the appropriate person at the home LA about arrangements

After the hearing

- 169.** The panel is independent. Its decision is binding on the parent, the governing body/management committee, the head teacher/teacher in charge and the LA. The panel cannot revisit its decision once made.

for their child's continuing education. The head teacher/teacher in charge may legally remove the pupil's name from the school/PRU roll the day after the conclusion of the appeal.

- 173.** Where the panel directs reinstatement it should immediately inform the head teacher/teacher in charge of its decision and specify the date on which the pupil must be readmitted.
- 174.** Details of an exclusion may not be deleted from the pupil's record, even where reinstatement is directed. The governing body/management committee must, however, comply with any parental request to place their appeal statement on the pupil's record. It will be for the governing body/management committee to decide what details of the exclusion are included in the pupil's school record: copies of the principal correspondence might be included and possibly the minutes of the governing body/management committee and appeal panel hearings, if the governing body/management committee and appeal panel respectively agree to this.

Remedies after the appeal hearing: complaint to the commissioner for local administration (the local government ombudsman)

- 175.** A parent can complain to the Local Government Ombudsman about maladministration by the appeal panel. The Ombudsman can make recommendations if he or she finds that there has been

maladministration. He or she might recommend a fresh hearing, if this were practical, and the LA would normally be expected to comply.

Judicial review

- 176.** If either the parent or the governing body/management committee considers that the panel's decision is unlawful, or not a decision which a reasonable panel could have reached, they may apply to the High Court for a judicial review. This must be done promptly and no later than three months from the date of the decision. If a judicial review were granted, the court would consider the lawfulness of the panel's decision. If it found the panel's decision to be unlawful or unreasonable as above it could quash the decision and direct the LA to hold a fresh appeal hearing before a newly constituted panel.

Part 6: Police involvement and parallel criminal proceedings

Introduction

177. A school-related incident may sometimes also be the subject of a police investigation which may subsequently result in criminal proceedings. This can mean that the evidence available to head teachers/teachers in charge, governing bodies/management committees and Independent Appeal Panels is very limited. They may not, for example, be able to hear relevant witnesses or to consider relevant material; it may not be known whether a criminal charge is to be brought; if a charge has been brought, the eventual outcome of any court proceedings may be uncertain. It should be remembered that the police and the courts will be applying the criminal standard of proof – beyond reasonable doubt – whereas the head teacher/teacher in charge, governing body/management committee and Independent Appeal Panel must apply the civil standard of proof (the balance of probabilities).

Head teacher's/teacher in charge's decision to exclude and consideration of the circumstances by the governing body/management committee

178. A head teacher/teacher in charge need not postpone his or her decision to exclude a pupil simply because of the possibility that criminal proceedings may be brought in respect of the same incident, but the critical factor in any such case will be the evidence that is available to the head teacher/teacher in charge. In such circumstances, a judgment must be made on the basis of the evidence available. If, having considered the evidence, on a balance of probabilities the head teacher/teacher in charge concludes that it is distinctly more likely that the pupil committed the alleged offence, then the head teacher/teacher in charge may proceed to take a decision on exclusion. The head teacher/teacher in charge should apply the normal principles having regard to the school's behaviour policy, and consider whether exclusion is a proportionate response. Normally we would expect the head teacher/teacher in charge to exclude the pupil at that stage if it would be appropriate to do so, for example if he represented a danger to other persons at the

school. It may be advisable, where the evidence is not clear cut or is still coming to light, to make alternative provision, or where it is clear on balance of probabilities that the pupil committed the disciplinary offence, but the full circumstances and the seriousness have not yet been established, first to exclude the pupil for a fixed period.

Paragraphs 31-33 provide head teachers/teachers in charge with alternatives where exclusion on disciplinary grounds is inappropriate. Relevant considerations include the fact that:

- a) a serious allegation has been made against the pupil by another pupil or member of staff at the school/PRU which is the subject of a police investigation which may result in criminal proceedings being brought; and
- b) pending the conclusion of any such criminal proceedings, the pupil's continued presence in the school/PRU may have an adverse effect on the complainant and other potential witnesses, and on the promotion of good order and discipline at the school generally.

179. Where a head teacher/teacher in charge excludes a pupil in circumstances such as those outlined in the preceding paragraph, the school's governing body/PRU's management committee has no power to postpone their meeting to consider the pupil's exclusion beyond the statutory time limit. In deciding whether to direct the head teacher/teacher in charge to reinstate the

pupil, therefore, they too may be subject to the same constraints as regards the availability of witnesses and other relevant information and will have to consider the case on the same basis, which includes applying the balance of probabilities standard of proof.

Arrangements for appeal hearings in parallel with criminal proceedings

180. Where the governing body/management committee decide not to direct the head teacher/teacher in charge to reinstate a permanently excluded pupil in the circumstances described in the preceding paragraph, the parent (or, if aged over 18, the pupil) must be notified of their decision and of their right to appeal in accordance with Part 5 of this guidance. Any appeal must be lodged no later than 15 school days after the day on which notification of the governing body's/management committee's decision was received and the appeal panel must meet to consider the appeal no later than 15 school days after the day on which the appeal was lodged.

181. Upon first meeting, the appeal panel must consider, taking into consideration any representations made by the parties and on the advice of the clerk, whether it can proceed to determine the appeal or whether instead to adjourn the hearing pending the outcome of any police investigation and/or any criminal proceedings that may be brought. The mere fact that parallel criminal proceedings are in progress will not of itself

determine whether the hearing should be adjourned. Relevant factors for the panel to consider will include:

- a) whether any charge has been brought against the pupil and, if so, what the charge is;
- b) whether relevant witnesses and documents are available;
- c) the likelihood of delay if the hearing were adjourned and the effect it may have on any victim, the excluded pupil or the school itself; and
- d) whether an adjournment or, as the case may be, declining to adjourn, might result in injustice.

182. If the panel does decide to adjourn, the LA will already have taken steps to ensure the pupil is provided with suitable full-time education, and it must continue to do so pending the hearing. The clerk will be responsible for monitoring the progress of any police investigation and/or criminal proceedings and for reconvening the panel at the earliest opportunity when the hearing can proceed to final determination.

183. If necessary the panel may adjourn more than once. The same panel members should reconvene on each occasion (subject to the considerations referred to in paragraph 148). Where the panel reconvenes following the disposal of any criminal proceedings it should have regard to any information about them relevant to the issues it has to determine.

Part 7: Arrangements for money to follow pupils who have been permanently excluded from school

Introduction

184. This part explains the revised legal and administrative arrangements to ensure that funding promptly follows a permanently excluded pupil from the excluding school to the new school. These arrangements apply to pupils permanently excluded on or after 1 September 2007. This part also applies to pupils who have been permanently excluded and where the independent appeal panel has decided that because of exceptional circumstances or other reasons it is not practical to give a direction requiring reinstatement, but that it would otherwise have been appropriate to have given such a direction. They do not apply in cases of exclusions for a fixed period. Regulations have changed the 'relevant date' to provide local authorities with funding so that they can arrange education for permanently excluded pupils from the sixth school day following the head teacher's decision to permanently exclude the pupil (for more detail see paragraph 52).

Types of school covered by this part of the guidance

185. 'Schools' referred to in this part include maintained Community, Foundation, Voluntary, Community Special and Foundation Special schools. From 1 April 2009 academies will normally be covered by local agreements with their local authority to pay or receive payments for permanently excluded pupils, calculated in the same way as for maintained schools. If there is no such agreement the LA will be able to seek abatement of Standards Fund grants payable to the academy by DCSF. Detailed letters will be sent to Academies to explain the process following an initial letter of 12 March 2008. In all cases, the amount is transferred via the local authority (LA). City Technology Colleges (CTCs) are not covered by any arrangements for money following pupils. Details for funding arrangements for Academies can be found at: www.dcsf.gov.uk/foischeme/subPage.cfm?action=disclosures.display&i_subcategoryID=27&i_collectionID=190.

186. For an exclusion from a Special School, the amount should be the same as that for a pupil of the same age and characteristics as

an excluded pupil in a mainstream secondary or primary school.

Mechanism for deducting and allocating money

187. The LA should ensure that the correct funding moves with the pupil. There are different processes depending on whether the pupil attends school in the LA where they live or attend school in another LA. These processes are:

- a) Determination and redetermination of schools' budget share:

The LA is responsible for reducing the budget share of any excluding school it maintains. The amount to be reduced is the appropriate proportion of the school's funding for that pupil. The new school will receive the amount deducted from the excluding school or a proportion of that amount if the LA makes educational provision out of school;

- b) Inter-LA recoupment:

For transfers between LAs, where a pupil lives in one area but attends a school maintained by another LA, the funding formula of the LA where the excluding school is situated determines the amount. Where this is subsequently passed to a different LA and on to a school in that or a third LA's area, neither of these LAs' funding schemes impact on the calculation.

Amount of funding attributed to the pupil (see box below)

188. The amount is determined by the funding formula used by the LA for maintained primary or secondary (not special) schools for the financial year in which the relevant date falls, taking account of the pupil's age and characteristics. 'Characteristics' is a catch-all term for any pupil-specific factor used in the LA funding formula, such as free school meal entitlement. This allows the LA, if they wish, to deduct more than just the age weighted pupil unit (AWPU). The LA may decide that to recalculate the budget share on this basis is inefficient and opt to deduct just the AWPU.

Date from which excluding school loses money

189. The excluding school loses funding from the 'relevant date' of exclusion. The allocation to the new school is made from the date of entry to the new school. The LA keeps the difference between these two amounts to contribute towards any time the pupil is educated out of school. If no school place is found, the home LA keeps the entire amount deducted for education out of school.

190. When a permanently excluded pupil starts at a new school before the relevant date (e.g. the parent does not appeal but immediately arranges entry to a new school) funding cannot be transferred until the day after the relevant date.

The relevant date

- 191.** From 1 September 2007, the relevant date is the sixth school day following the head teacher's decision to exclude the pupil permanently. The definition of relevant date has been amended for exclusions purposes to provide LAs with funding so that they can arrange education for permanently excluded pupils from the sixth school day following exclusion (for more detail see paragraph 52)
- 192.** For transfers between LAs, the relevant date for allocating funds to the intermediate or new LA is the date on which the new LA provides education for that pupil. The relevant date is the same whether this is provided at a school maintained by that LA or out of school.

Reinstatement of excluded pupils

- 193.** Where a pupil has been reinstated by the governing body of a school or by an independent appeal panel, a proportion of the funding deducted from the school's budget in respect of that pupil will have to be reallocated to the school. In such circumstances the school's budget share will have to be increased in accordance with Calculation 3 as set out in the Annex.

The need for prompt payments

- 194.** Transfers between LAs must be completed within three months of the relevant date.

Complete weeks (see box below)

- 195.** The formulae use complete weeks as the basis of the calculation. This represents the proportion of the whole financial year the pupil spent in the school. The number of complete calendar weeks is calculated out of 52, i.e. including school holidays, banks holidays and weekends. Complete weeks are counted from the relevant date to the last day of the financial year, i.e. to 31 March.

Exception

- 196.** If the excluded pupil is in a transfer year and the relevant date falls between 1 April and the beginning of the new school year, then funding is removed until the end of the school year rather than the end of the financial year.
- A transfer year is the school year before a pupil starts at secondary or middle school, generally Year 6. The last year of compulsory schooling (i.e. Year 11) does not count as a transfer year. This means that if a child is excluded in their last term of school, money for the entire financial year is removed from the school's budget.
 - The end of the school year is the last calendar day before the first term after July, so for example if the new school year begins on 1 September, the end of the school year will be 31 August.

Pupil numbers for the next year's funding

197. The LA may adjust actual pupil numbers to reflect exclusions taking place after a pupil count date that determines funding. This includes numbers due to permanent exclusions or increasing numbers due to the admission of a pupil permanently excluded from another school. This is most likely to arise if a pupil is excluded between the schools' census date in January and 31 March. LAs may adjust actual and estimated pupil numbers when determining schools' initial budget shares for the following financial year, as well as an in-year re-determinations of budget shares.

Related documents

*The School Finance (England) Regulations 2008*¹

The Education (Amount To Follow The Permanently Excluded Pupil) Regulations 1999

Sections 494 and 569(4) of the Education Act 1996

How to work out how much money should follow the pupil

LA re-determining the budget share of one of its own maintained schools

Deduction from the excluding school

Calculation 1

$A \times (B/52)$

A is the amount attributable for the full financial year to a registered pupil of the same age and characteristics as the pupil in question. If the registered pupil is a pupil in respect of whom grant is payable to the authority by the LSC the amount attributable to that pupil must be £3,131 for 2007-08.²

B is the number of complete weeks remaining in the financial year calculated from the relevant date (EXCEPT that where the permanent exclusion takes effect on or after 1 April in a school year at the end of which pupils of the same age or age group as the pupil in question normally leave that school prior to being admitted to another school with a different pupil age range, B is the number of complete weeks remaining in that school year calculated from the relevant date).

*Allocation to the admitting school***Calculation 2**

$$D \times (E/F)$$

D is the amount by which the LA reduces the budget share of the school from which the pupil was permanently excluded or would have been reduced had that school been maintained by the LA.

E is the number of complete weeks remaining in the financial year during which the pupil is a registered pupil at the admitting school.

F is the number of complete weeks remaining in the financial year calculated from the relevant date.

Where the pupil is reinstated by the governing body or the LA

Calculation 3

$$G \times (H/I)$$

G¹ is the amount by which the authority has reduced the budget share of the excluding school.

H is the number of complete weeks remaining in the funding period during which the pupil is reinstated.

I is the number of complete weeks remaining in the funding period calculated from the relevant date.

Inter-LEA transfers – maximum 3 LAs*Deduction and allocation***Calculation 4**

$$(J + K) \times L/52$$

J is the amount by which the authority has reduced the budget share of the excluding school.

K is the amount from the excluding LA's local schools budget attributable to that pupil but not delegated to the individual school (the amount held by the LA).

L is the number of complete weeks remaining in the financial year calculated from the relevant date.

1. These regulations are generally made annually. Authorities and schools must refer to the most up to date regulations which specify the calculations shown in the box.
2. The amount specified for post 16 pupils is defined in the Schools Finance Regulations for the relevant year.
11. The lettering here follows the same lettering specified in the regulations.

Part 8: Model letters

Model letter 1

From head teacher (or teacher in charge of a PRU) notifying parent of a fixed period exclusion of 5 school days or fewer in one term, and where a public examination is not missed (paragraph 101).

Dear **[Parent's name]**

I am writing to inform you of my decision to exclude **[Child's Name]** for a fixed period of **[specify period]**. This means that he/she will not be allowed in school for this period. The exclusion begins/began on **[date]** and ends on **[date]**.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded for this fixed period because **[reason for exclusion]**.

[for pupils of compulsory school age]

You have a duty to ensure that your child is not present in a public place in school hours during this exclusion on **[specify dates]** unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the local authority if your child is present in a public place during school hours on the specified dates. If so, it will be for you to show reasonable justification.

We will set work for **[Child's Name]** to be completed on the days specified in the previous paragraph as school days during the period of his/her exclusion when you must ensure that he/she is not present in a public place without reasonable justification. **[detail the arrangements for this]**. Please ensure that work set by the school is completed and returned to us promptly for marking.

[School/PRU] You have the right to make representations about this decision to the governing body/management committee. If you wish to make representations please contact **[Name of Contact]** on/at **[contact details – address, phone number, email]**, as soon as possible. Whilst the governing body/management committee has no power to direct reinstatement, they must consider any representations you make and may place a copy of their findings on your child's school record.

You should also be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal, and/or make a claim, to the

Special Educational Needs and Disability Tribunal (SENDIST, which is scheduled to become part of the Health, Education and Social Care Chamber of the First Tier Tribunal from November 3 2008 under the new tribunal arrangements). The address to which appeals should be sent is SENDIST, Mowden Hall, Staindrop Road, Darlington DL3 9DN.

[This paragraph applies to all fixed period exclusions of primary-aged pupils and may be used for fixed period exclusions of up to 5 days of secondary aged pupils if the head teacher chooses to hold a reintegration interview.]

You **[and your child or pupil's name]** are requested to attend a reintegration interview with me **[alternatively, specify the name of another staff member]** at **[place]** on **[date]** at **[time]**. If that is not convenient, please contact the school **[within the next ten days]** to arrange a suitable alternative date and time. The purpose of the reintegration interview is to discuss how best your child's return to school can be managed **[not for parents of secondary aged pupils]**. Failure to attend a reintegration interview will be a factor taken into account by a magistrates' court if, on future application, they consider whether to impose a parenting order on you.

You also have the right to see a copy of **[Child's Name]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of **[Child's Name]**'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may wish to contact **[Name]** at **[LA name]** LA on/at **[contact details – address, phone number, email]**, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE) – an independent national advice centre for parents of children in state schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or text 'AskACE' to 68808 **[insert reference to local sources of independent advice if known.]**

[Child's Name]'s exclusion expires on **[date]** and we expect **[Child's Name]** to be back in school on **[date]** at **[time]**.

Yours sincerely

[Name]

Headteacher

Model letter 2

From head teacher (or teacher in charge of a PRU) notifying parent(s) of a pupil of that pupil's fixed period exclusion of more than 5 school days (up to and including 15 school days) in a term (paragraph 103a).

Dear **[Parent's name]**

I am writing to inform you of my decision to exclude **[Child's Name]** for a fixed period of **[specify period]**. This means that **[Child's Name]** will not be allowed in school for this period. The exclusion start date is **[date]** and the end date is **[date]**. Your child should return to school on **[date]**.

I realise that this exclusion may well be upsetting for you and your family, but my decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded for this fixed period because **[specify reasons for exclusion]**.

[for pupils of compulsory school age – next 3 paragraphs]

You have a duty to ensure that your child is not present in a public place in school hours during the first 5 school days **[or specify dates if exclusion is for fewer than 5 days]** of this exclusion, that is on **[specify dates]**. I must advise you that you may be prosecuted or receive a penalty notice from the local authority if your child is present in a public place on the specified dates without reasonable justification. It will be for you to show that there is reasonable justification for this.

We will set work for **[Child's Name]** during the **[first 5 or specify other number as appropriate]** school days of his **[or her]** exclusion **[specify the arrangements for this]**. Please ensure that work set by the school is completed and returned to us promptly for marking.

[if the individual exclusion is for more than 5 days]

From the **[6th school day of the pupil's exclusion [specify date] until the expiry of his exclusion we [For PRUs the local authority] – set out the arrangements if known at time of writing, if not known say that the arrangements will be notified shortly by a further letter.]** will provide suitable full-time education. On **[date]** he should attend at **[give name and address of the alternative provider if not the home school]** at **[specify the time – this may not be identical to the start time of the home school]** and report to **[staff member's name]**. **[If applicable – say something about transport arrangements from home to the alternative provider. If not known, say that the arrangements for suitable full time education will be notified by a further letter].**

[School/PRU] You have the right to request a meeting of the school's discipline committee/PRU's management committee to whom you may make representations, and my decision to exclude can be reviewed. As the period of this exclusion is more than 5 school days in a term the discipline committee/management committee must meet if you request it to do so. The latest date by which the discipline

committee/management committee must meet, if you request a meeting, is **[specify date – no later than the 50th school day after the date on which the discipline committee were notified of this exclusion]**. If you do wish to make representations to the discipline committee/management committee, and wish to be accompanied by a friend or representative, please contact **[Name of Contact]** on/at **[contact details – address, phone number, email]**, as soon as possible. Please advise if you have a disability or special needs which would affect your ability to attend or take part in a meeting at the school. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

You should be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you may make a claim to the Special Educational Needs and Disability Tribunal (SENDIST, which is scheduled to become part of the Health, Education and Social Care Chamber of the First Tier Tribunal from November 3 2008 under the new tribunal arrangements). The address to which claims should be sent is: SENDIST, Mowden Hall, Staindrop Road, Darlington DL3 9DN. Making a claim would not affect your right to make representations to the discipline committee.

[not mandatory for fixed period exclusions of five days or fewer of secondary aged pupils]

You **[and your child or pupil's name]** are requested to attend a reintegration interview with me **[alternatively, specify the name of another staff member]** at **[place]** on **[date]** at **[time]**. If that is not convenient, please contact the school before your child is due to return to arrange a suitable alternative date and time. The purpose of the reintegration interview is to discuss how best your child's return to school can be managed. Failure to attend a reintegration interview will be a factor taken into account by a magistrates' court if, on future application, they consider whether to impose a parenting order on you.

You have the right to see and have a copy of, your child's school record. Due to confidentiality restrictions, you must notify me in writing if you wish to be supplied with a copy of your child's school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may wish to contact **[Name]** at **[LA name]** LA on/at **[contact details – address, phone number, email]**, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE) – an independent national advice centre for parents of children in state schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or text 'AskACE' to 68808 **[Insert reference to local sources of independent advice if known]**.

[Child's Name]'s exclusion expires on **[date]** and we expect **[Child's Name]** to be back in school on **[date]** at **[time]**.

Yours sincerely

[Name]

Headteacher

Model letter 3

From head teacher (or teacher in charge of a PRU) notifying parent of a fixed period exclusion of more than 15 school days in total in one term (paragraph 103b).

Dear **[Parent's name]**

I am writing to inform you of my decision to exclude **[Child's Name]** for a fixed period of **[specify period]**. This means that **[Child's Name]** will not be allowed in school for this period. The exclusion begins/began on **[date]** and ends on **[date]**.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded for this fixed period because **[reason for exclusion]**.

[for pupils of compulsory school age – next 3 paragraphs]

You have a duty to ensure that your child is not present in a public place in school hours during **[the first five school days of exclusion or specify dates]**, unless there is reasonable justification for this. I must advise you that you may be prosecuted or receive a penalty notice from the local authority if your child is present in a public place on the specified dates. It will be for you to show that there is reasonable justification.

We will set work for **[Child's Name]** during the **[first five school days or specify dates]** of his/her exclusion **[specify the arrangements for this]**. Please ensure that work set by the school is completed and returned to us promptly for marking.

[if the individual exclusion is for more than 5 days]

From the **[6th school day of the pupil's exclusion] [specify date]** until the expiry of his exclusion we **[For PRUs the local authority – set out the arrangements if known at time of writing, if not known say that the arrangements will be notified shortly by a further letter.]** will provide suitable full-time education. **[Set out the arrangements if known at the time of writing, e.g.]** On **[date]** he should attend **[give name and address of the alternative provider]** at **[specify the time – this may not be identical to the start time of the home school]** and report to **[staff member's name]**. **[If applicable – say something about transport arrangements from home to the alternative provider] [if not known say that the arrangements for suitable full time education will be notified shortly by a further letter]**

[School and PRU] As the length of the exclusion is more than 15 school days in total in one term the governing body/management committee must meet to consider the exclusion. At the review meeting you may make representations to the governing body/management committee if you wish. The latest date on which the governing body/management committee can meet is **[date here – no later than 15 school days from the date the governing body is notified]**. If you wish to make representations to the governing body/management committee and wish to be accompanied by a friend or representative please

contact **[Name of Contact]** on/at **[contact details – address, phone number, email]**, as soon as possible. You will, whether you choose to make representations or not, be notified by the Clerk to the governing body/management committee of the time, date and location of the meeting. Please advise if you have a disability or special needs which would affect your ability to attend or take part in a meeting at the school. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

You should also be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal to the Special Educational Needs and Disability Tribunal (SENDIST, which is scheduled to become part of the Health, Education and Social Care Chamber of the First Tier Tribunal from November 3 2008 under the new tribunal arrangements). The address to which appeals should be sent is SENDIST, Mowden Hall, Staindrop Road, Darlington DL3 9DN. Making a claim would not affect your right to make representations to the governing body/management committee.

[mandatory for all exclusions of primary-aged pupils and those of more than 5 days of secondary-aged pupils]

You **[and your child or name of pupil]** are invited to attend a reintegration interview with me **[alternatively, specify the name of another staff member]** at **[place]** on **[date]** at **[time]**. If that is not convenient, please contact the school before your child is due to return to arrange a suitable alternative date and time. The purpose of the reintegration interview is to discuss how best your child's return to school can be managed. Failure to attend a reintegration interview will be a factor taken into account by a magistrates' court if, on future application, they consider whether to impose a parenting order on you.

You also have the right to see and have a copy of **[Child's Name]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of **[Child's Name]**'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may want to contact **[Name]** at **[LA name]** LA on/at **[contact details – address, phone number, email]**, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE), which is an independent national advice centre for parents of children in state maintained schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or text 'AskACE' to 68808. **[Insert reference to source of local independent advice if known.]**

[Name of Child]'s exclusion expires on **[date]** and we expect **[Name of Child]** to be back in school on **[date]** at **[time]**.

Yours sincerely

[Name]

Headteacher

Model letter 4

From the headteacher of a primary, secondary or special school (or the teacher in charge of a PRU) notifying the parent(s) of that pupil's permanent exclusion (paragraph 103b).

Dear **[Parent's name]**

I regret to inform you of my decision to permanently exclude **[Child's Name]** with effect from **[date]**. This means that **[Child's Name]** will not be allowed in this school/this PRU unless he/she is reinstated by the governing body/the discipline committee (management committee in case of a PRU) or by an appeal panel.

I realise that this exclusion may well be upsetting for you and your family, but the decision to permanently exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded because **[reasons for the exclusion – include any other relevant previous history]**.

[For pupils of compulsory school age]

You have a duty to ensure that your child is not present in a public place in school hours during the first 5 school days of this exclusion, i.e. on **[specify the precise dates]** unless there is reasonable justification. You could be prosecuted or receive a penalty notice if your child is present in a public place during school hours on those dates. It will be for you to show reasonable justification.

[For pupils of compulsory school age]

Alternative arrangements for **[Child's Name]**'s education to continue will be made. For the first five school days of the exclusion we will set work for **[Child's Name]** and would ask you to ensure this work is completed and returned promptly to school for marking **[this may be different if supervised education is being provided earlier than the sixth day]**. From the sixth school day of the exclusion onwards – i.e. from **[specify the date]** the local authority **[give the name of the authority]** will provide suitable full-time education. **[set out the arrangements if known at time of writing, if not known say that the arrangements will be notified shortly by a further letter.]**

[For pupils of compulsory school age]

[Where pupil lives in a local authority other than the excluding school's local authority] I have also today informed **[name of officer]** at **[name of local authority]** of your child's exclusion and they will be in touch with you about arrangements for **[his/her]** education from the sixth school day of exclusion. You can contact them at **[give contact details]**.

As this is a permanent exclusion the governing body (or management committee in case of a PRU) must meet to consider it. At the review meeting you may make representations to the governing body/PRU management committee if you wish and ask them to reinstate your child in school. The governing body/PRU management committee have the power to reinstate your child immediately or from a specified

date, or, alternatively, they have the power to uphold the exclusion in which case you may appeal against their decision to an Independent Appeal Panel. The latest date by which the governing body/PRU management committee must meet is **[specify the date – the 15th school day after the date on which the governing body/PRU management committee was notified of the exclusion]**. If you wish to make representations to the governing body/PRU management committee and wish to be accompanied by a friend or representative please contact **[Name of Contact]** on/at **[contact details – address, phone number, email]**, as soon as possible. You will, whether you choose to make representations or not, be notified by the Clerk to the governing body/PRU management committee of the time, date and location of the meeting. Please let us know if you have a disability or special needs which would affect your ability to attend the meeting. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

[If you think this exclusion relates to a disability your child has, and you think discrimination has occurred, you may raise the issue with the governing body/PRU management committee.]

You have the right to see a copy of **[Name of Child]**'s school record. Due to confidentiality restrictions, you must notify me in writing if you wish to be supplied with a copy of **[Name of Child]**'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may also wish to contact **[Name]** at **[LA name]** on/at **[contact details – address, phone number, email]**, who can provide advice on what options are available to you. Additionally, you may find it useful to contact the Advisory Centre for Education (ACE)– an independent national advice centre for parents of children in state schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or text 'AskACE' to 68808.

[Insert reference to sources of local independent advice if known.]

Yours sincerely

[Name]

Headteacher (teacher in charge in case of a PRU)

Model letter 5

From the clerk to the governing body (management committee in case of a PRU) to parent upholding a permanent exclusion (paragraph 115).

Dear **[Parent's name]**

The meeting of the governing body/management committee at **[school]** on **[date]** considered the decision by **[head teacher/teacher in charge]** to permanently exclude your son/daughter **[name of pupil]**. The governing body/PRU management committee, after carefully considering the representations made and all the available evidence, has decided to uphold **[name of pupil]**'s exclusion.

The reasons for the governing body/management committee's decision are as follows: **[give the reasons in as much detail as possible, explaining how they were arrived at.]**

You have the right to appeal against this decision. If you wish to appeal, please notify **[name of the clerk to the appeal panel]** of your wish to appeal. You must set out the reasons for your appeal in writing, and if appropriate may also include reference to any disability discrimination claim you may wish to make, and send this notice of appeal to **[address]** by no later than **[specify the latest date – the 15th school day after receipt of this letter]**. If you have not lodged an appeal by [repeat latest date], you will lose your right to appeal. Please advise if you have a disability or special needs which would affect your ability to attend the hearing. Also, please inform **[name of the clerk to the appeal panel]** if it would be helpful for you to have an interpreter present at the hearing.

Your appeal will be heard by an Independent Appeal Panel, which can also hear disability discrimination claims. A three-member panel will comprise one serving, or recently retired (within the last five years), head teacher, one serving, or recently serving, experienced governor/management committee members and one lay member who will be the Chairman. **[Use the following if there is a possibility that a five-member panel may sit: A five-member panel will comprise two serving, or recently retired (within the last 5 years), head teachers, two serving, or recently serving, experienced governors/management committee members and one lay member who will be the Chairman.]** The appeal panel will rehear all the facts of the case – if you have fresh evidence to present to the panel you may do so. The panel must meet no later than the 15th school day after the date on which your appeal is lodged. In exceptional circumstances panels may adjourn the hearing until a later date.

In determining your appeal the panel can make one of three decisions: they may uphold your child's exclusion; they may direct your child's reinstatement in school, either immediately or by a particular date; or they may decide that the exclusion should not have taken place, but that reinstatement in the school is not in the best interests of all concerned.

I would advise you of the following sources of advice: **[repeat details from the original exclusion letter, i.e. a named LA officer and the Advisory Centre for Education and any local sources of independent advice]**

The arrangements currently being made for **[pupil's name]**'s education will continue. **[specify details here]**.

Yours sincerely

[Name]

Clerk to the Governing Body (or clerk to the Management Committee in case of a PRU)

Model letter 6

From the clerk to the Independent Appeal Panel notifying parent (or pupil if aged 18 or over) of the outcome of the appeal.

Dear **[Parent's name]**

Following the hearing of your appeal by the Independent Appeal Panel constituted by **[Name]** Authority on **[date]** at **[location]** against the decision of the governing body of **[Name]** School/the teacher in charge **[Name]** of **[Name]** Pupil Referral Unit not to reinstate **[Child's Name]**, I am writing to advise you of the panel's decision.

After careful consideration of your representations both oral and written and those of the **[School/PRU]** and **[Name]** LA **[and of others if applicable, for example any victim]** and in the light of the available evidence, the panel has decided:

Either

- (i) to uphold the exclusion;
or
- (ii) to direct **[pupil's name]**'s reinstatement in **[name of school/PRU]** with effect from **[date and time]**. **[Pupil's name]** should report to **[name of staff member]** at that time;
or
- (iii) that it is not practical to direct **[pupil's name]**'s reinstatement **[here give reasons, for example because this is an exceptional case where reinstatement would not be in the pupil's best interests or those of the whole school/PRU community]** although otherwise reinstatement would have been appropriate. Your child's school record will show that the permanent exclusion was overturned on appeal even though reinstatement was not directed.

[Give reasons in as much detail as possible for the panel's decision: the decision may be challenged by judicial review; or be the subject of a complaint of maladministration to the Local Government Ombudsman]

The panel's decision is binding on you, the governing body and the head teacher of **[Name]** School/the teacher in charge of **[Name]** PRU and **[Name]** Local Authority.

For decisions (i) and (iii) above: The alternative arrangements put in place for **[pupil's name]**'s full-time education will continue for the time being; but **[LA officer's name]** will/may be in touch with you to discuss future provision.

If you think that the appeal panel's decision was unlawful or not a decision which a reasonable panel could have reached and you wish to challenge it, the only way of doing so is to apply to the High Court for a judicial review. This must be done as soon as possible and in any event within three months of the date of the panel's decision. You can complain to the Local Government Ombudsman about maladministration by the appeal panel, but not about its decision.

A copy of this letter will be added to **[pupil's name]**'s school record for future reference.

Yours sincerely

[Name]

Clerk to the Independent Appeal Panel

Related documents and websites

Legislation

The Office of Public Sector Information publishes the text of legislation online:

<http://www.opsi.gov.uk/>

- The Education Act 2002 section 52
- The Education and Inspections Act 2006 sections 97-108
- The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 SI 2002/3178
- The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 SI 2002/3179
- The Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004 SI 2004/402
- The Education (Pupil Exclusions and Appeals) (Miscellaneous Amendments) (England) Regulations 2006 SI 2006/2189
- The Education (Provision of Full Time Education for Excluded Pupils) (England) Regulations 2007 SI 2007/1870
- The Education (Reintegration Interview) (England) Regulations 2007 SI 2007/1868
- The Education (Penalty Notices) (England) Regulations 2007 SI 2007/1867

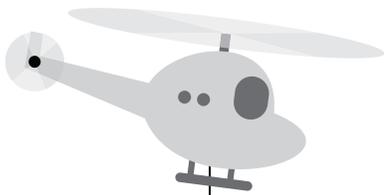
- The Education (Parenting Contracts and Parenting Orders) (England) Regulations 2007 SI 2007/1869
- Disability Discrimination Act 1995 as amended
- Race Relations Act 1976 as amended
- The Race Relations (Statutory Duties) Order 2001 SI 2001/3458
- The Education (Pupil Registration) (England) Regulations 2006 SI 2006/1751

Guidance and other sources of help

- The Department's guidance on school discipline and pupil behaviour policies: <http://www.teachernet.gov.uk/wholeschool/behaviour/schooldisciplinepupilbehaviourpolicies/>
- National Strategy for School Improvement: Behaviour and Attendance Strand Toolkit for secondary behaviour management strategies: http://www.standards.dcsf.gov.uk/keystage3/respub/ba_toolu
- National Strategy for School Improvement: Behaviour and Attendance Strand publications for primary behaviour management strategies: <http://www.standards.dcsf.gov.uk/primary/publications/?>

- Guidance on Pastoral Support Programmes: <http://www.dcsf.gov.uk/behaviourandattendance/guidance/IBAGuidance/index.cfm>
- Youth Justice Board guidance on restorative justice: <http://www.yjb.gov.uk/en-gb/practitioners/WorkingwithVictims/RestorativeJustice/RJinSchools.htm>
- School Security — Dealing with Troublemakers — Chapter 6: http://dcsf.gov.uk/schoolsecurity/dwt6offensive_weapons.shtml
- Screening and searching pupils for weapons: <http://www.teachernet.gov.uk/wholeschool/healthandsafety/schoolsecurity/>
- Guidance on school uniform: <http://www.teachernet.gov.uk/management/atoz/u/uniform/>
- Exclusion Appeal Panels Training Pack [http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/appealtrainingpack_/Getting it Right](http://www.teachernet.gov.uk/wholeschool/behaviour/exclusion/appealtrainingpack_/Getting%20it%20Right) — available from ISCG (telephone 020 7229 0200) or by email: iscg@governors.fsnet.co.uk
- Legal Toolkit for Schools - available from DCSF Publications (telephone 0845 602 2260)
- Guidance on education-related Parenting Contracts, Parenting Orders and Penalty Notices 2007: <http://www.dcsf.gov.uk/behaviourandattendance/uploads/7150-DCSF-Guidance%20on%20Education%20Related%20Parenting.pdf>
- Guidance on the education-related provisions of the Anti-social Behaviour Act — also available from Prolog (telephone 0845 602 2260) <http://www.dcsf.gov.uk/behaviourandattendance>
- Guidance on Drugs in Schools: <http://www.teachernet.gov.uk/wholeschool/behaviour/drugs/>
- The education of children and young people in public care: <http://www.dcsf.gov.uk/incare>
- Care Matters: Time for Change: <http://www.dcsf.gov.uk/publications/timeforchange>
- Supporting Looked After Learners: A Practical Guide for School Governors: <http://www.dcsf.gov.uk/educationprotects/>
- Circular 7/90 Management of the School Day: <http://www.teachernet.gov.uk/docbank/index.cfm?id=11389>
- School Admissions Code: <http://www.dcsf.gov.uk/sacode>
- Special Educational Needs Code of Practice (Reference: DfES/58 1/2001): <http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DfES+0581+2001&>
- School Admission Appeals Code of Practice: <http://www.dcsf.gov.uk/sacode>
- Online guidance about school partnerships to improve behaviour and tackle persistent absence: <http://www.teachernet.gov.uk/wholeschool/behaviour/collaboration/>

- Online guidance about Learning Support Units:
<http://www.teachernet.gov.uk/wholeschool/behaviour/learningsupportunits/>
- Disability Discrimination Act: Guidance on matters to be taken into account in determining questions relating to the definition of disability (in particular paragraphs D 13-D 14):<http://www.dwp.gov.uk/consultations/2005/disability.asp>
- Implementing the Disability Discrimination Act in schools and early-years settings (DfES 0160 2006): <http://publications.teachernet.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DfES+0160+2006>
- Equality and Human Rights Commission website: <http://www.equalityhumanrights.com>
- Online guidance about alternative provision
<http://www.dcsf.gov.uk/behaviourandattendance/guidance/LEA%20Guidance/Alt%20Provision%20.cfm>
- White Paper on improving the quality of alternative education provision “Back on Track”:
<http://www.dfes.gov.uk/publications/backontrack/>

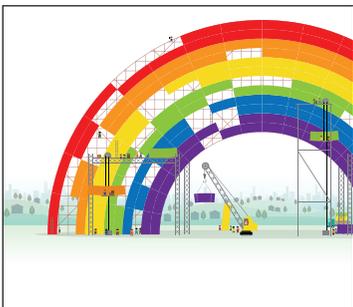


75% recycled

This leaflet is printed
on 75% recycled paper



When you have finished with
this leaflet please recycle it



You can download this publication or order copies online at
www.teachernet.gov.uk/publications

Copies of this publication can be obtained from:

DCSF Publications
PO Box 5050
Sherwood Park
Annesley
Nottingham NG15 0DJ
Tel: 0845 60 222 60
Fax: 0845 60 333 60
Textphone: 0845 60 555 60

Please quote the ref: 00573-2008DOM-EN

ISBN: 978-1-84775-160-7

© Crown copyright 2008

Extracts from this document may be reproduced for non-commercial research, education or training purposes on the condition that the source is acknowledged. For any other use please contact hmsolicensing@opsi.gsi.x.gov.uk