

Consultation on Exclusion Appeal Panels

This paper is about the proposed changes to the legislation governing exclusion appeals (*School Standards and Framework Act 1998*, section 67 and Schedule 18 as amended) which the Secretary of State announced on 9th July. The changes are designed to ensure that appeal panels properly reflect the challenges facing headteachers and the interests of the school community.

The Secretary of State has proposed:

- 1. To make it a statutory requirement for an appeal panel to balance the interests of the excluded pupil against the interests of all the other members of the school community.** This might be by means of a provision similar to that inserted into the previous legislation relating to exclusion appeals by section 7(4) of the *Education Act 1997* which required that: "In deciding whether the pupil in question should be reinstated (and, if so, the time when this should take place) ... an appeal committee shall have regard to both the interests of that pupil and the interests of other pupils at his school and members of its staff." That provision was repealed by the *School Standards and Framework Act 1998*. It was thought sufficient at that time to embody this principle in guidance to which appeal panels must have regard by virtue of section 68 of the 1998 Act when discharging their specified functions. However, there is a case for re-inserting it in legislation for emphasis.

Questions for consultees: Should the principle be formulated in the same way as the 1997 amendment or differently? In practice how can the interests of other members of the school community best be represented before the panel?

- 2. To make it clear in the legislation that an appeal panel's remit is not to review the procedure preceding an appeal hearing but instead to consider afresh the question of whether the pupil should be reinstated.** The reason for proposing this change is that a number of panels have reinstated pupils on 'technicalities' relating to prior procedure, even though they were persuaded on the merits of the case that the exclusion was justified and would not otherwise have directed that the pupil should be reinstated. We want to ensure so far as possible that panels focus on the substantive issues (Was the pupil guilty of the misconduct in question? Were there mitigating or aggravating factors? Was permanent exclusion a reasonable response in the circumstances?) rather than on any procedural irregularity that may have occurred. This might be achieved by including express provision in legislation that an appeal panel may not direct that the pupil in question should be reinstated on the basis of any failure to comply with a procedural requirement in a pupil's permanent exclusion from school by a head teacher and/or the governing body's subsequent review of that decision.

Questions for consultees: Do you agree with this approach?

- 3. To change the constitution requirements relating to the composition of appeal panels so that, whilst they must remain independent, they consist predominantly of people with direct experience of classroom management.** Panels must consist of 3 or 5 members. At present the law requires a mixture of lay members and persons who have experience in education, are acquainted with educational conditions in the authority area or are parents of registered pupils at a school. The proposal is that panel members should comprise a majority of people with direct teaching experience – serving or former heads, deputy heads, members of the senior management team and senior classroom teachers.

Questions for consultees: Should the constitution of appeal panels be changed to require the majority of members to have direct experience of classroom management? What steps will LEAs need to take to ensure that they can assemble panels in a timely fashion?

- 4.** The Secretary of State wishes also to consult on a separate matter relating to exclusions but unrelated to appeals. In a letter dated 21 January 2000 the Department stated that the duty on a governing body (through their discipline committee) to meet to consider all fixed period exclusions of more than 5 school days in total in any one term can be over-burdensome on schools. It was proposed to change the legislation (section 66 of the *School Standards and Framework Act 1998*) so that, although the head teacher's duty to inform the governing body of all such exclusions and the parent's right to make representations should continue, the governing body's duty to meet to consider the circumstances will arise only where the total of fixed period exclusions would be more than 15 school days in total in any one term.

There has been no suitable legislative vehicle in which to bring this change before Parliament. The Secretary of State is minded to use the forthcoming Education Bill to introduce the proposed change but welcomes views on this subject.

Questions for consultees: What fixed period exclusions should be reported by the headteacher to the governing body? If the governing body is no longer automatically to meet to consider all fixed period exclusions totalling between 6 and 15 school days in any one term, how should any parents' representations about such exclusions be dealt with? Should such representations be allowed orally or in writing, or just in writing?

The background and context for the consultation is concern about the quality and consistency of panels decision-making. This concern has led the Department to produce jointly with *ISCG* (Information for School and College Governors) a training pack for use by local authorities in training panel members. The pack was issued in August 2001. It is based on the current legislation as amended on 7th June 2001.

Action required

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