

Guidance on Exclusion

September 2012: DfE Extracts and Portsmouth LA Guidance

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Introduction

Exclusions guidance has received various updates on a regular basis since January 2003 when new exclusion guidelines were issued replacing the relevant parts of the Social Inclusion Pupil Support documents. Further guidance came into force from September 2008 and updated and replaced parts of the September 2007 edition. The following guidance issued in its final edition at the end June 2012 should be adhered to from September 2012.

The document is entitled “Exclusion from maintained schools, Academies and pupil referral units in England – A guide for those with legal responsibilities in relation to exclusion” and can be found at the following web address

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/q00210521/statutory-guidance-regs-2012>

The following document will give summary sections of some of the guidance and updates and should be read in conjunction with the aforementioned full guidance. In the following sections, all text that is italicised is Portsmouth LA advice as to its preferred method of the implementation of the guidance and does not form part of the DfE document *per se*

Other government information on managing behaviour in schools and alternatives to exclusion can be found at <http://www.education.gov.uk/schools/pupilsupport/behaviour>

Definitions

- The definition of a parent for the purposes of the Education Act is broadly drawn. In addition to the child's birth parents, references to parents in this guidance include any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives.
- The exclusion regulations give clarity and certainty to schools, local authorities, Academy Trusts and review panels, in terms of how they discharge their obligations to parents. Obligations are to the “relevant person” – a parent or the pupil, where 18 or over. This guidance refers to “parents” throughout and where practicable it is expected that all those with parental responsibility should be engaged with the exclusions process.

What Legislation does this guide relate to?

The principal legislation to which this guidance relates is:

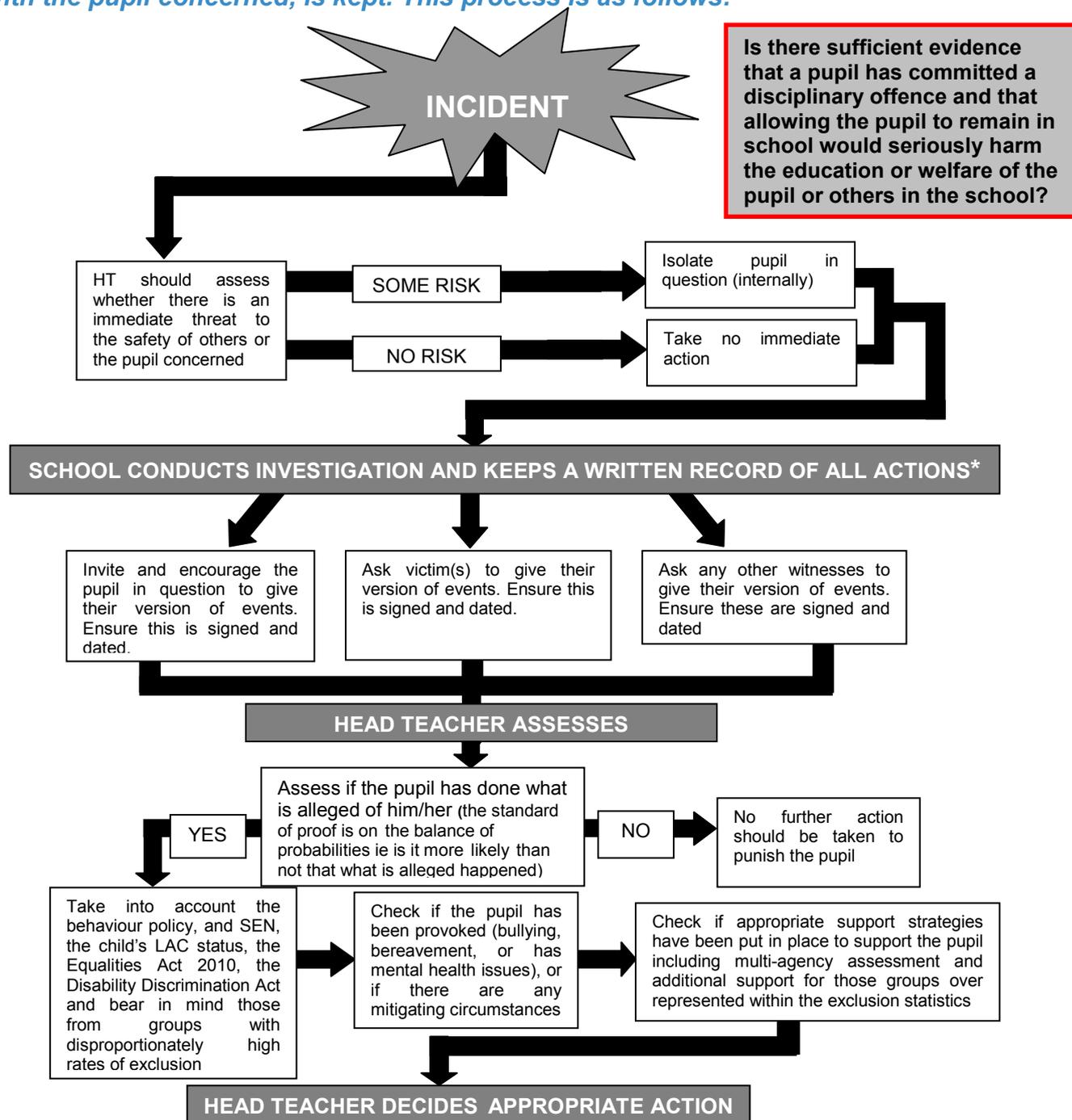
- The Education Act 2002, as amended by the Education Act 2011;
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- The Education and Inspections Act 2006; and
- The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007.

Key Points

- Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. The Government supports head teachers in using exclusion as a sanction where it is warranted. However, permanent exclusion should only be used as a last resort, in response to a serious breach, or persistent breaches, of the school's behaviour policy; and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.
- The decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race. Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.
- Disruptive behaviour can be an indication of unmet needs. Where a school has concerns about a pupil's behaviour it should try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent exclusion. In this situation schools should give consideration to a multi-agency assessment that goes beyond the pupil's educational needs.
- Schools should have a strategy for reintegrating pupils that return to school following a fixed period exclusion, and for managing their future behaviour.
- All children have a right to an education. Schools should take reasonable steps to set and mark work for pupils during the first five school days of an exclusion, and alternative provision must be arranged from the sixth day. There are obvious benefits in arranging alternative provision to begin as soon as possible after an exclusion.
- Where parents (or excluded pupil, if aged 18 or over) dispute the decision of a governing body not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel. Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents can also make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination).
- An independent review panel does not have the power to direct a governing body to reinstate an excluded pupil. However, where a panel decides that a governing body's decision is flawed when considered in the light of the principles applicable on an application for judicial review, it can direct a governing body to reconsider its decision. If the governing body does not subsequently offer to reinstate a pupil, the panel will be expected to order that the school makes an additional payment of £4,000. This payment will go to the local authority towards the costs of providing alternative provision.
- Whether or not a school recognises that a pupil has special educational needs (SEN), all parents (or pupils if aged 18 or over) have the right to request the presence of a SEN expert at an independent review panel. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion; for example, whether the school acted reasonably in relation to its legal duties when excluding the pupil.
- Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and understanding.

Factors to Consider Before Making the Decision to Exclude

This guidance outlines the process that a head teacher should follow, before excluding a pupil and also indicates that a written record of actions taken (and copies of written records made by other members of staff), including any interviews with the pupil concerned, is kept. This process is as follows:



**In order to assist with keeping clear records of actions taken during the process of investigation and decision-making and in the interest of consistency within and across Portsmouth schools, the LA would advise completing the following pro-forma when considering exclusion. This would accompany assessments and a support plan in the documentation provided by a school for a governor or independent review panel.*

Pupil Name		NCY	
Number of previous fixed period exclusions		SEN Status	

Date	Time	Allegation

Date	Time	Action
People involved		

Date	Time	Action
People involved		

Date	Time	Action
People involved		

Date	Time	Action
People involved		

Date	Time	Action
People involved		

Date	Time	Action
People involved		

Date	Time	Action
People involved		

Date	Time	Outcome
HT Signature		

Making sure the action is legal

If a head teacher is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence (see incident investigation) 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.

It is unlawful to exclude or to increase the severity of an exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment / ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated. Pupils who repeatedly disobey their teachers' academic instructions could, however, be subject to exclusion. (para 12)

'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded. (para 13)

Maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour¹. A pupil can also transfer to another school as part of a 'managed move'² where this occurs with the consent of the parties involved, including the parents. However, the threat of exclusion must never be used to influence parents to remove their child from the school *nor must they be advised to educate their child at home whilst a transfer is considered*.

Whilst an excluded pupil's name remains on a school's admissions register the pupil should be marked using the appropriate attendance code. Where alternative provision has been made that meets the requirements of the pupil registration regulations, and the pupil attends it, an appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual Registration), should be used. Where pupils are not attending alternative provision they should be marked absent using Code E. (para 82)

Portsmouth LA is committed to ensuring that all children receive full-time equivalent education. In some exceptional cases pupils may benefit from less than full time attendance as part of a support package for behaviour difficulties or long term non attendance but these must not be imposed as and used as exclusion by another name. It is only with parental agreement and due consideration of the safeguarding risks that anything less than full time education can be considered. The Local Authority must be given specific details of pupils on less than full time equivalent timetables and education other than at school recorded as a "C" in attendance registers. A plan (CAF, PEP, IBPs, PSPs, ILPs or IEP) outlining the arrangements for a child to receive less than full time equivalent education must be submitted to the exclusions and reintegration officer³. The plan must include the start date and the expected date of return to full-time education, as well as hours to be received each day (am and pm). All plans outlining less than full time equivalent education will be reported to and monitored through the Exclusions and Reintegration team and the city's Behaviour and Attendance Group (BAG).

¹ <http://www.education.gov.uk/aboutdfe/statutory/g00211923/alternative-provision>

² See Portsmouth LA's Fair Access Protocol Document for the relevant phase.

³ See Reduced Timetable pro-forma within this document

Common Assessment Framework

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 (*separate guidance available on Risk Assessments*). A CAF may be undertaken as part of Pastoral Support Plan (*separate guidance available*) or at any stage.

Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. Head teachers should also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems (para 18)

Where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed period exclusion in an academic year, head teachers should consider whether exclusion is providing an effective sanction (para 19)

The Behaviour and Attendance Group (BAG) expect that a support plan is in place for any child with more than one fixed period exclusion, a permanent exclusion or who is being considered for referral to the Inclusion Support Panel (ISP)

For further information on carrying out a CAF and for relevant proformas the following websites should be visited

<http://www.portsmouth.gov.uk/learning/18641.html>

<http://www.education.gov.uk/childrenandyoungpeople/strategy/integratedworking/caf/a0068957/the-caf-process>

The CAF is a four-step process whereby practitioners can identify a child's or young person's needs early, assess those needs holistically, deliver coordinated services and review progress. The CAF is designed to be used when

- a practitioner is worried about how well a child or young person is progressing (e.g. concerns about their health, development, welfare, behaviour, progress in learning or any other aspect of their wellbeing)
- a child or young person, or their parent/carer, raises a concern with a practitioner

- a child's or young person's needs are unclear, or broader than the practitioner's service can address.

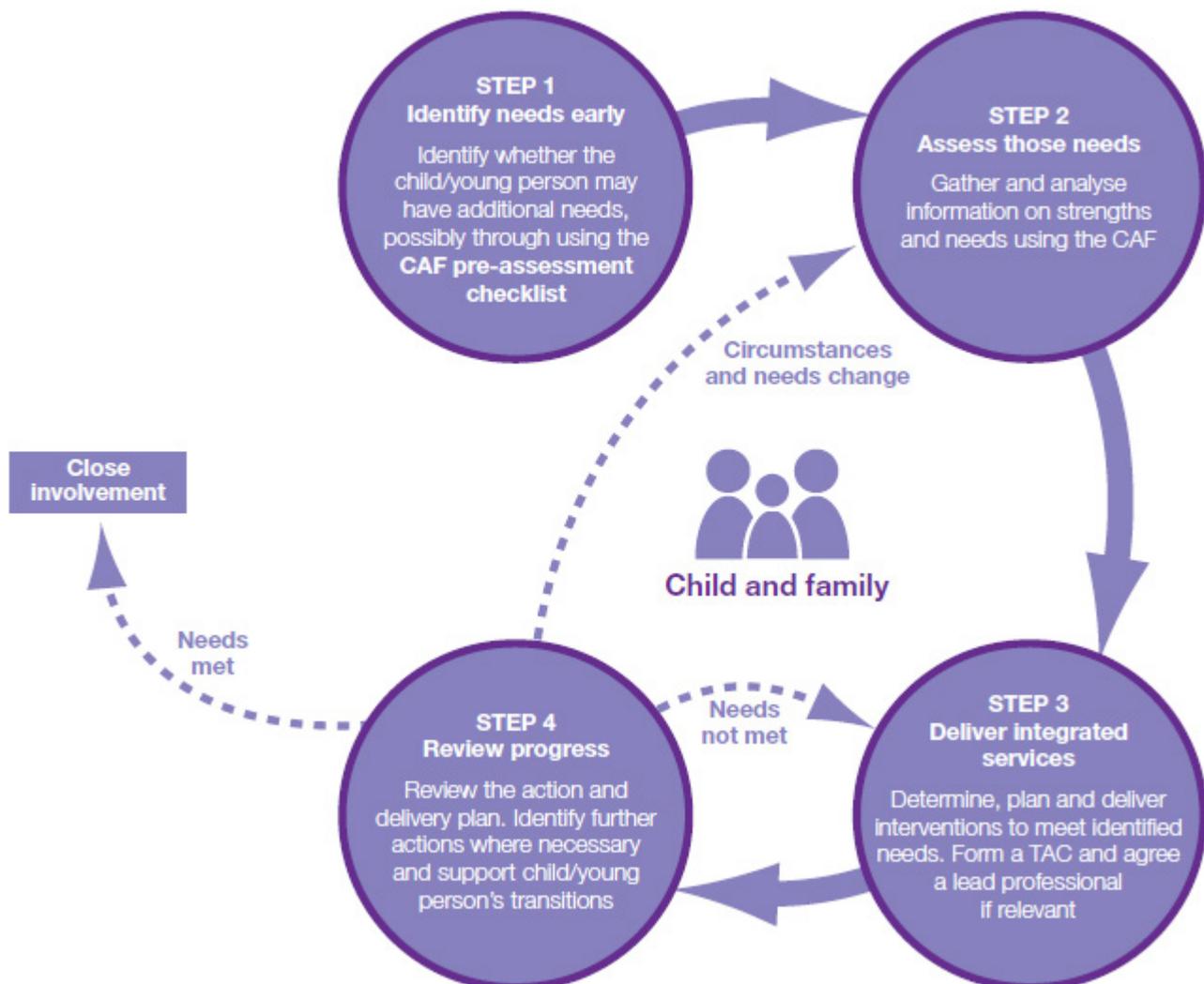
The process is entirely voluntary and informed consent is mandatory, so families do not have to engage and if they do they can choose what information they want to share. Children and families should not feel stigmatised by the CAF; indeed they can ask for a CAF to be initiated.

The CAF process is not a 'referral' process. A CAF is a needs based holistic assessment.

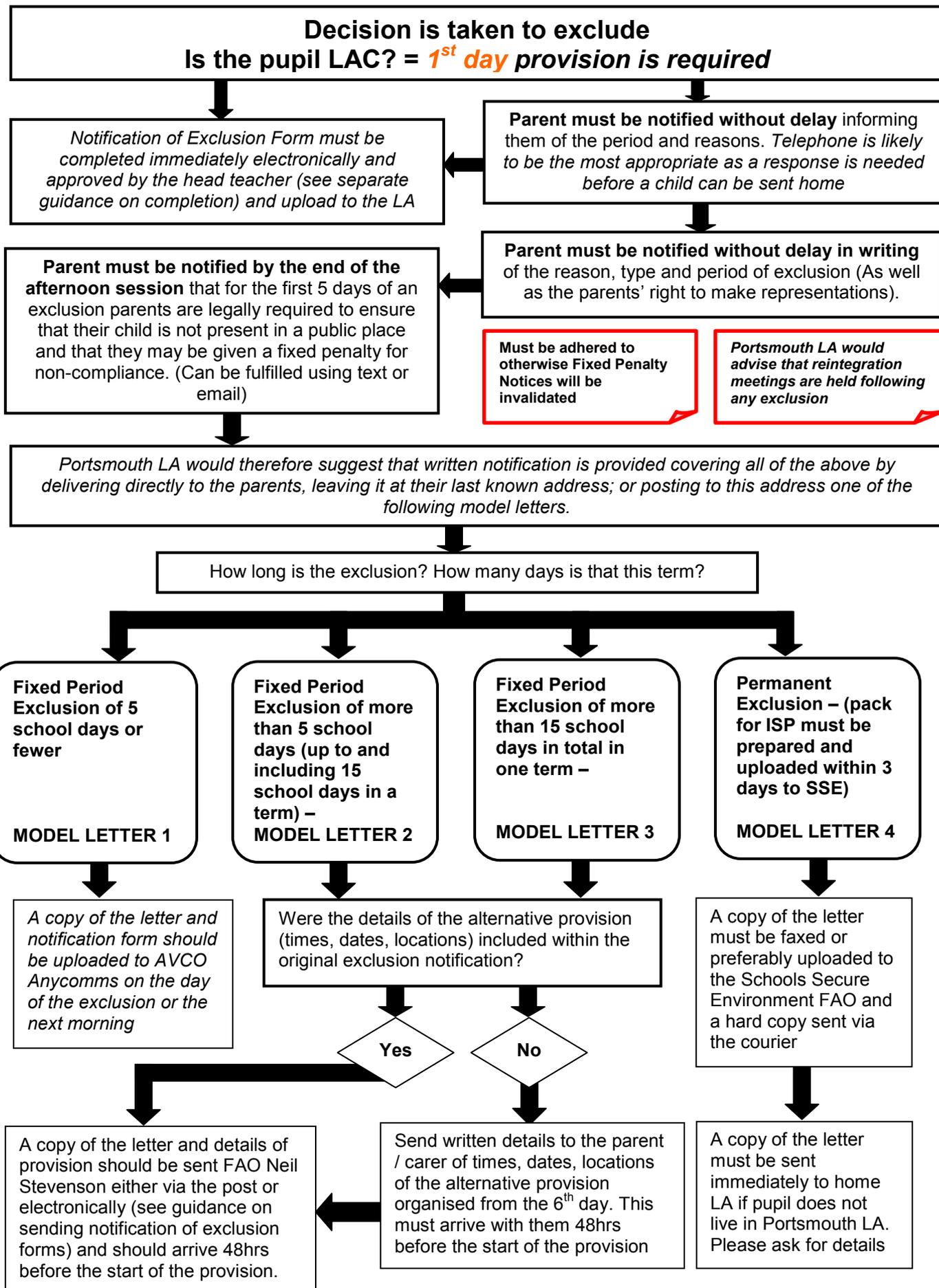
The CAF should be offered to children who have additional needs to those being met by universal services. Unless a child is presenting a need, it is unlikely the CAF will be offered. The practitioner assesses needs using the CAF. The CAF is not a risk assessment.

The CAF completer is responsible for calling a Team Around the Child (TAC) meeting inviting the parent and professionals where 'who is best placed to be the lead professional?' can be decided. A TAC should produce a comprehensive Action Plan which is then reviewed at subsequent TAC meetings

If a child or young person reveals they are at risk, the practitioner should follow the local safeguarding process immediately:



Procedure Following Making the Decision to Exclude



Sixth Day Provision

Where a pupil is given a fixed period exclusion of a duration of six (*one for LAC*) school day(s) 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.

From day one to five - 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 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.

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 standalone 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.

Governing Body's Duty to consider and exclusion

The Governing Body (GB) must review certain exclusions and consider representations made by parents. The Governing Body may delegate their functions with respect to the consideration of an exclusion decision to a designated sub-committee consisting of at least three governors.

The following people should NOT sit on a Discipline Committee:

- Teaching governors
- Governors who know the pupil in question (or any victims)
- Governors who have been involved in the incident for which the pupil was excluded
- Any governor who has taken a part in the decision to exclude the pupil (e.g. the chair of governors if consulted with by the head teacher prior to exclusion)

Timescale and Powers of the Governing Body

If the exclusion would result in the pupil missing a public examination the GB must try and meet before the examination. If this is not possible, in exceptional circumstances, the Chair of the Committee may consider whether the pupil should be reinstated or not. These are the ONLY circumstances in which the Chair can make the decision and if possible, s/he should have the advice of the clerk and the LA Representative.

The Chair of Governors or the chair of the GB will need to establish with the school (possibly through the clerk), how they are going to learn of exclusions which need review. This is the responsibility of the governing body.

The GB must abide by the statutory time limits, however, they are still required to meet and their decision is still valid if, for an exceptional reason, they meet out of time (this should be in full agreement with the parents).

Length of exclusion (aggregated)				
	1 to 5 days	6 to 15 days	16 to 45 days	Permanent
When the GB should meet	No statutory time-limit. Should be "prompt"	Between 1st ¹ and 50 th school day after receipt	Between 1 st and 15 th school day after receipt	Between 1 st and 15 th school day after receipt
Additional Information	Doesn't have to meet unless parents request it	Doesn't have to meet unless parents request it	Must meet irrespective of whether parents request it	Must meet irrespective of whether parents request it
Powers of the GB	Note the findings on pupils record	Can reinstate or uphold decision	Can reinstate or uphold decision	Can reinstate or uphold decision
Further appeal arrangements	None ²	None	None	Parents can request an Independent Review

¹ New guidance indicates that the governing body are no longer prevented from meeting within the first five school day after the exclusion, however, it also says that where possible, circulate any written evidence and information, including a list of those who will be present.

² Claims of discrimination to the First-tier Tribunal or County Court can be made up to six months after the discrimination

It may also be the case that the timescale of meeting means that a DC hasn't met to review an exclusion of a pupil who has left the school (i.e. an exclusion in the summer term of a pupils last year at primary school). The pupil leaving the school does not relieve the DC of its duty to meet and therefore the exclusion should still be reviewed.

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. Below is a table which shows the information which is should form the schools cases.

Type of evidence	Exclusions for a 'one-off' serious incident	Exclusions for cumulative reasons
Details of the incident in question	Must be provided	Must be provided
Statement from the pupil in question	Must be provided	Must be provided
Witness statements (all statements taken - signed and dated)	Must be provided	Must be provided
Behaviour log and details of previous incidents	No, unless there is specific reason to do so	Must be provided
Attendance log	No, unless there is specific reason to do so	Only if relevant
Details of all support provided to pupil	Only if relevant	Must be provided
Reports from any professionals involved with the pupil	Only if relevant	Must be provided
Details of any SEN the pupil may have	Must be provided	Must be provided
Academic reports	No, unless there is specific reason to do so	Only if relevant
Other information	Only if relevant	Only if relevant
Written record of Events leading up to decision to exclude (see Incident investigation section)	Must be provided	Must be provided

If a pupil has a history of challenging behaviour and is then permanently excluded for a one-off incident (which does not follow the pattern of behaviour which the pupil usually presents with) then the head teacher needs to exercise care about what information is provided. If details of prior misconduct are provided in the paperwork, the parent(s) could argue that the Committee have been biased by this information. The pupil's conduct log, in the example here, is irrelevant to the decision to permanently exclude but the committee could build up a negative perception of the pupil that masks their final decision.

Governing body's should identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on his / her own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding (Schools are required to have regard to statutory guidance on pupil voice <https://www.education.gov.uk/publications/standard/Integratedworking/Page1/DCSF-00410-2008>); or how the excluded pupil may feed in his / her views by other means if attending the exclusion meeting is not possible.

The Role of the Clerk

- To set up the committee and invite all relevant parties (allow parent(s) and pupil to be accompanied by a friend or representative), where possible organising this for a mutually convenient time³
- Ask for any written evidence in advance of the meeting (guidance for schools above)
- Circulate any representations **5 school days** in advance of the meeting along with the names of the committee members.
- Ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the governing body. These minutes should be made available to all parties on request. Portsmouth LA request that these are sent to them on all occasions.
- Provide advice to the committee once the other parties have left the room by reference to his / her notes of the meeting and
- Write to all parties after the meeting* (guidance suggests without delay Portsmouth LA advise within 24hrs) notifying of the GB's decision and reasons, in sufficient detail to enable all parties to understand why the decision was made (where the pupil resides in a different local authority from the one that maintains the school, the governing body must also inform the pupil's 'home authority')

***In the case of a permanent exclusion the letter must state (see model letter 4)**

- The fact that it is permanent.
- Notice of parents' right to ask for the decision to be reviewed by an independent review panel and the following information:
 - a) the date by which an application for a review must be made (i.e. 15 school days from the date on which notice in writing of the governing body's decision was given to parents – see paragraph 74);
 - b) the name and address to whom an application for a review (and any written evidence) should be submitted;
 - c) that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's special educational needs are considered to be relevant to the exclusion;
 - d) that, regardless of whether the excluded pupil has recognised special educational needs, parents have a right to require the local authority / Academy Trust to appoint an SEN expert to attend the review;
 - e) details of the role of the SEN expert and that there would be no cost to parents for this appointment;
 - f) that parents must make clear if they wish for a SEN expert to be appointed in any application for a review; and
 - g) that parents may, at their own expense, appoint someone to make written and / or oral representations to the panel and that parents may also bring a friend to the review.
- That, in addition to the right to apply for an independent review panel, if parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the Equality Act 2010 to the First-tier Tribunal (Special Educational Needs and Disability), in the case of disability discrimination, or the County Court, in the case of other forms of discrimination.
- That a claim of discrimination made under these routes should be lodged within six months of the date on which the discrimination is alleged to have taken place, e.g. the day on which the pupil was excluded.

³ A parent may invite a representative of the local authority to attend a meeting of an Academy's governing body as an observer; that representative may only make representations with the governing body's consent.

- Where the governing body decides to uphold an exclusion they should draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision. This information should be included in the letter notifying parents of a decision to uphold an exclusion and should include:
 - a link to this statutory guidance on exclusions: [exclusion guidance](#);
 - a link to guidance on making a claim of discrimination to the First-tier Tribunal <http://www.justice.gov.uk/tribunals/send/appeals>;
 - a link to the Coram Children’s Legal Centre: www.childrenslegalcentre.com 08088 020 008; and,
 - where considered relevant by the governing body, links to local services, such as Traveller Education Services or the local parent partnership (www.parentpartnership.org.uk)
 - advice from the LA

The governing body may provide the information by delivering it directly to parents; leaving it at their last known address; or by posting it to this address.

Notice is deemed to have been given on the same day if it is delivered directly, or on the second working day after posting if it is sent by first class mail.

Advised Agenda for the GB or sub-committee

The Governing Body should identify the steps they will take to ensure all parties will be supported to participate in their consideration and have their views properly heard. This is particularly important where pupils under 18 are speaking about their own exclusion or giving evidence to the governing body.

- 1) The Chair of the Committee should open the meeting by outlining the procedure and what the committee's powers are. The Chair should then perform the introductions
- 2) The Clerk should outline the order in which the parties will be able to state their case and ask questions (in the order outlined below)
- 3) The Chair should invite the head teacher to make their case
- 4) The parent(s) and/or pupil should be given the opportunity to ask the school any questions
- 5) The LA Representative should be given the opportunity to ask the school any questions
- 6) The panel should question the school
- 7) The Chair should invite the parent(s) and/or pupil to make their case
- 8) The head teacher should be given the opportunity to ask the parent(s) and/or pupil any questions
- 9) The LA Representative should be given the opportunity to ask the parent(s) any questions
- 10) The panel should question the parent(s) and/or pupil
- 11) The Chair should invite the LA to make its case
- 12) The parent(s) and/or pupil should be given the opportunity to ask the LA any questions
- 13) The head teacher should be given the opportunity to ask the LA any questions
- 14) The panel should question the LA
- 15) The Chair should invite the head teacher to sum up his/her case
- 16) The Chair should invite the parent(s) and/or pupil to sum up their case
- 17) The head teacher, parent(s) (and pupil if present) and the LA should be asked to leave the room whilst the committee make their decision and be informed that the decision will be sent to all parties within one school day

The committee should make their decision in private. The clerk should be able to advise on procedural issues and draw from his/her notes if needed, but should take no part in the decision.

The governing body must then construct their letter incorporating all of the information found above.

Role of the LA

The role of the LA is purely advisory and does not take a part in the decision of the DC.

The LA can:

- Make a statement about how other schools have responded to similar situations (this can involve statistical comparison)
- Advise on alternative arrangements for the pupil if the exclusion is upheld
- *Draw the attention of governors to issues where:*
 - a) *there is a lack of clarity*
 - b) *more information may be needed*
 - c) *guidance appears to have been ignored*

*The LA's statement **must** be taken into account when the DC reach their decision and this should be noted by the clerk.*

The Governing Body's Decision

Any decision of a school, including exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention of Human Rights); rational; reasonable; fair; and proportionate.

In reaching a decision on whether or not to reinstate a pupil, the governing body should consider whether the decision was **lawful**, **reasonable** and **procedurally fair**, taking account of the head teacher's legal duties.

In considering the exclusion, the GB should answer the following questions:

- 1) Did the pupil do what is accused of them (in the balance of probabilities – i.e. to a high degree of probability)?
- 2) Did the head teacher follow the correct procedure?
- 3) Is the exclusion (in the circumstances outlined) an appropriate response?

In order to uphold a head teacher's decision, the GB must be able to answer 'yes' to ALL of the above questions. If the answer for any of them is 'no', the exclusion should be overturned.

There are only 2 possible outcomes from a GB:

- 1) Uphold the head teacher's decision
- 2) Reinstate the pupil (i.e. overturn the exclusion)

The GB CANNOT:

- Increase or decrease the length of a fixed term exclusion
- Convert a permanent exclusion to a fixed term exclusion (or vice versa)
- Attach conditions to a reinstatement

Independent Review Panels (IRP) and the role of SEN experts

These replace Independent Appeals Panels. If applied for by parents within the legal time frame (15 days), the local authority or the Academy Trust must, at their own expense, arrange for an independent review panel hearing to review the decision of a governing body not to reinstate a permanently excluded pupil.

See full guidance on IRPs in section 8 of the DfE Exclusions Guidance.

The local authority will arrange Independent Review Panel meetings via Democratic Services however it is the expectation that Academy Trusts are responsible for arranging and financing their own Independent Review Panel following a request from the parent/carer.

Anyone wishing to sit on such panels should contact democratic services for further information.

Parents may request an Independent Review panel even if they did not make a case to, or attend, the meeting at which the governing body considered the exclusion.

Independent review panels have three options

- Uphold the exclusion decision;
- Recommend that a governing body reconsider their decision, or
- Quash the decision and direct that the governing body considers the exclusion again

When considering the governing body's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests

- Illegality – did the head teacher and / or governing body act outside the scope of their legal powers in taking the decision to exclude?
- Irrationality – was the decision of the governing body not to reinstate the pupil so unreasonable that it was not one a sensible person could have made?
- Procedural impropriety – was the process of exclusion and the governing body's consideration so unfair or flawed that justice was clearly not done?

Governing bodies should bear in mind that if they are directed by an independent review panel to reconsider their decision and do not offer to reinstate the pupil and adjustment will be made to the schools budget in the sum of £4,000. This payment will be in addition to any funding that would normally follow an excluded pupil.

The panel's decision does not have to be unanimous and can be decided by a majority vote.

New evidence may be presented to the panel, though the school may not introduce new reasons for the exclusion and panels must disregard any new reasons that are introduced.

SEN Expert

For these panels, parents have the right to request an independent SEN expert. If requested that an SEN expert be present the LA or Academy Trust must appoint one and cover the associated costs of this appointment.

Parents have the right to request an SEN expert at a review, regardless of whether the school recognises that their child has SEN.

The SEN expert's role is analogous to an expert witness, providing impartial advice to the panel on how special educational needs might be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel.

The SEN expert should be a professional with first-hand experience of the assessment and support of SEN, as well as an understanding of the legal requirements on schools in relation to SEN and disability.

Statutory guidance to head teachers, governing bodies, independent review panel members and clerks on police involvement and parallel criminal proceeding

Head teachers need not postpone taking a decision on an exclusion solely because a police investigation is underway and / or any criminal proceedings may be brought. In such circumstances, head teachers will need to take a decision on the evidence available to them at the time.

Where the evidence is limited by a police investigation or criminal proceedings, head teachers should give particular consideration to ensuring that the decision to exclude is fair. However, the final decision on whether to exclude is for the head teacher to make.

Where the governing body is required to consider a head teacher's decision in these circumstances they cannot postpone their meeting and must decide whether or not to reinstate the pupil on the evidence available.

The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:

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

Where a panel decides to adjourn, the clerk (or local authority / Academy Trust where a clerk is not appointed) will be responsible for monitoring the progress of any police investigation and / or criminal proceedings, as well as for reconvening the panel at the earliest opportunity. If necessary the panel may adjourn more than once.

Financial Readjustment

Local authorities will be responsible for adjusting the budget share for maintained schools and PRUs with delegated budgets in circumstances where a panel has ordered a financial adjustment

This financial readjustment should be made within 28 days of notification of a direction from the panel. Academies should be expected to make payment within the same timescale. If an Academy fails to comply with its legal requirement to pay following a direction from an independent review panel then the local authority will be responsible for enforcing this requirement. However, the local authority should also inform the Education Funding Agency. If an excluded pupil has been found a place at another school by the time the governing body has reconsidered and decided not to reinstate the pupil, the local authority may, if it chooses, pass the amount of the financial readjustment to the pupil's new school.

Local Agreement through schools' forum

Where a pupil is permanently excluded, the school will passport to the LA the remainder of the age weighted pupil unit (AWPU) for that financial year, based on the calculation set out within the School and Early Years Finance (England) Regulations 2012. Schools' Forum have agreed locally that a school or academy will also pay an additional £4000. Schools' Forum have also agreed that where the exclusion occurs after the October census (the date when schools indicate that they should receive funding for a child for the following financial year) the school or academy will also be required to pay the following year's full year AWPU.

The money from a permanent exclusion will contribute toward the Element 3 Top up funding + transport costs relating to the placement at The Harbour School (THS) Provision.

Where a pupil transfers within the same financial year to another school or academy, the amount that the new school receives, will be calculated in accordance with the School and Early Years Finance (England) Regulations 2012

Under the local arrangements, the new school may also receive additional funding. The funding available will be calculated by deducting the costs of alternative provision (including transport provision), as well as the statutory adjustment in paragraph 6, from the balance removed from the previous school at the time of permanent exclusion

Useful Links

“Exclusion from maintained schools, Academies and pupil referral units in England – A guide for those with legal responsibilities in relation to exclusion” and can be found at the following web address

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/g00210521/statutory-guidance-regs-2012>

Other government information on managing behaviour in schools and alternatives to exclusion can be found at <http://www.education.gov.uk/schools/pupilsupport/behaviour>

<http://www.education.gov.uk/schools/pupilsupport/behaviour/a00204776/taylor-review-of-alternative-provision>

<http://www.education.gov.uk/schools/pupilsupport/behaviour/g00211923/alternative-provision>

<http://www.education.gov.uk/schools/pupilsupport/behaviour/a00199342/getting-the-simple-things-right-charlie-taylors-behaviour-checklists>

<http://www.education.gov.uk/aboutdfe/advice/f0076803/behaviour-and-discipline-in-schools-a-guide-for-headteachers-and-school-staff>