

Guidance on Fixed Period Exclusions

Who can exclude?

Only the Headteacher has the power to exclude your child. If the Headteacher is not on site then the decision can be made by the Acting Head. Other members of staff such as Heads of Year cannot exclude, though they may provide information to support the Headteacher's decision.

Reasons for exclusion

All exclusions must be for disciplinary reasons only. All schools must have a Behaviour Policy setting out what the school rules are.

Standard of proof

The Headteacher's decision to exclude must be taken on the 'balance of probabilities'. That means that it is more likely than not that the pupil did what they are accused of. This is not the same as the 'beyond reasonable doubt' standard required in a criminal case.

When exclusion is not allowed

It is unlawful to exclude or to lengthen an exclusion for a non-disciplinary reason, some examples are below:

- if a child has Special Educational Needs and the school say it can't meet those needs. It should look at putting more or different support in place instead;
- because of something a parent has done eg. made a complaint or not going to a meeting at school;
- not allowing a child back into school after a Fixed Period Exclusion unless they meet particular conditions. Once the exclusion is ended a child must be allowed back into school.

Behaviour outside school

Pupils can be excluded for behaviour outside school but this should be in line with the school's Behaviour Policy. This can include behaviour on school trips, behaviour when in uniform, or on the way to and from school, and behaviour which may bring the school into disrepute.

Having a say

Where practical, a Headteacher should allow a child to present their case before deciding whether to exclude.

Unofficial exclusions

Sometimes schools may ask parents to keep their child at home without excluding them. This is often portrayed as doing the parents/carers and child a favour by not making it official. This is not lawful, even if parents/carers agree to it. If the Headteacher does not want a child in school for disciplinary reasons they must go through the formal exclusions process.

Unofficial exclusions can easily lead to a child missing considerable amounts of education or even dropping out of the system altogether. It also means that parents/carers lose the rights to make representations to the Governors or to attend a meeting.

Children should not be asked to stay at home because the school can't provide for their Special Educational Needs.

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Vulnerable groups

These include children with SEN, children eligible for free school meals, children from particular racial groups and Looked After Children.

Children with SEN or disabilities

Children with Special Educational Needs may have behavioural and emotional difficulties or a disability which affects the way they behave. Before excluding a child with SEN, the school should look first at what additional support is needed or whether a different school would be more suitable. If a child has a statement of SEN then the school should consider bringing forward the annual review or holding an emergency review.

Looked After Children

Schools should work together with foster carers, children's homes and the Local Authority that looks after the child to try to avoid exclusion. This might include putting in additional support or looking at whether a different school would be more suitable. Foster carers have the same rights in Education Law as other parents if a Looked After Child is excluded.

Other factors affecting the exclusion

Before deciding to exclude Headteachers should take account of factors that may have affected the child's behaviour. These might be:

- bullying;
- mental health issues;
- bereavement; and
- unidentified SEN.

Alternatives to exclusion and early intervention

Where children are at risk of exclusion, schools should look at early intervention to address the underlying causes of the poor behaviour. A multidisciplinary assessment may be carried out following the Common Assessment Framework. This is commonly known as a CAF assessment and it will be a chance for everyone involved with a child to share information and identify needs. The CAF is entirely voluntary and parents/carers can request a CAF.

Pastoral support

Many schools will put into place a Pastoral Support Programme for children and young people at risk of exclusion.

<http://www.devon.gov.uk/index/learningschools/attendance/inclusion/inclusion-infoforschools.htm>

This should set manageable short-term goals for improving the child's behaviour with support to help achieve them. Parents/carers should be involved in this along with everyone working with the child in school. It's also important that the child's views are taken into account. The following interventions could be part of a PSP:

- mentoring – a trusted person such as a learning mentor to meet regularly with the child;
- counselling – many schools have a school counsellor on site or links to outside organisations; and
- behaviour support – advice from a specialist behaviour support teacher.

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Flexible learning at key stage 4

If your child is aged 14-16, some schools offer a different curriculum, which could help to involve a child and improve behaviour. This could include:

- dropping some subjects;
- studying vocational subjects;
- extended work experience or work-related learning;
- going to a further education college for part of the week; and
- practical or outdoor activities with an alternative education provider.

Any package should still be full-time and should not lead to lengthy periods at home without education. 'Late School' and reduced timetables, if used, should only be short term, time limited strategies as there are safeguarding issues involved.

Exclusion

What the school must tell you

If a child is given a Fixed Period Exclusion, parents/carers must be notified in writing without delay

<http://www.devon.gov.uk/index/learningschools/attendance/inclusion/inclusion-inforschools.htm>

The letter must state:

- the reason for the exclusion;
- the length of the exclusion;
- the right to put parents/carers views in writing to the governing body; and
- for longer exclusions , parents/carers right to go to a meeting of the governing body.

If a child is of compulsory school age, parents/carers must be told about their responsibilities for the child during the first five days of the exclusion.

The first five days

Schools should take reasonable steps to set and mark work for the first five days of any exclusion. During these five days, parents/carers are responsible for the child. They must make sure they are not in a public place without reasonable justification during school hours. This duty is similar to that on school attendance and could be fined if in breach of it, the fine is £60 and goes up to £120 pounds if not paid within 28 days. Failure to pay within 42 days could lead to prosecution.

Day six and beyond

If the child has been given a long Fixed Period Exclusion of more than 5 days, the school has a duty to provide suitable full-time alternative education no later than day 6.

Reintegration meetings

All schools should have a strategy for reintegrating pupils after exclusion. In many cases there will be a reintegration meeting when a child goes back. Parents/carers should be invited to the meeting but the exclusion cannot be extended if the parents/carers are unable to attend.

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Making representations to the Governors

Responsibility for reviewing exclusions lies with the Governors of the school. This may be delegated to a subcommittee which may be called the Behaviour or Discipline Committee. The subcommittee must have at least 3 members. Governors are no longer prevented from meeting within 5 days after an exclusion.

Up to 5 days exclusion in a term

Parents/carers have a right to make representations to the Governors. The Governors must consider their representations but there is no set time limit for this. They do not have to arrange a meeting though many governing bodies may choose to do so if requested. They must consider written representations. The Governors do not have the power to reinstate a child and it is likely that the child will be back in school anyway. As the exclusion will have happened, it cannot be deleted from the school record, however, if the Governors agree that it was not justified, they may put a note on the school record.

Between 5.5 - 15 days exclusion in a term

The Governors must meet to consider the exclusion if the parents/carers request it. The meeting must take place within 50 school days. The Governors can reinstate a pupil either immediately or on a specified date.

More than 15 days exclusion in a term

The Governors will automatically meet to consider the exclusion. This must be within 15 school days. The Governors can reinstate a pupil either immediately or on a specified date.

Meeting the Governors - summary table

No of days exclusion in term	5 or fewer	5.5 - 15	more than 15	pupil will miss public exam
Right to make written representations	Yes	Yes	Yes	Yes
Right to meet with Governors	No – the meeting is entirely at Governors' discretion	Yes - if parents request	Yes - Governors must meet	Yes - Governors must meet
Timescale for meeting	None	50 school days	15 school days	15 school days
Reinstatement possible	No	Yes	Yes	Yes

The Governors' meeting

The procedures set out here only apply if the Governors have a duty to meet. If a child has had a short exclusion (5 days or fewer in a term) and the Governors decide to meet, that meeting can take whatever form the Governors think appropriate.

Who will be there?

- the panel of Governors -there must be at least three and none of them should have any involvement in the case that might lead them to favour one side above another;
- a clerk to take minutes and advise on procedure. It is normal practice to have a clerk but is not a legal requirement.

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The following people must be invited to the meeting:

- the Headteacher;
- Parents/carers. They are allowed to bring a friend or representative to support at the meeting; and
- a representative of the Local Authority.

If the school is an Academy, parents/carers may ask for a Local Authority representative to be present. The Governors will decide if they can make representations at the meeting. When the Governors send the papers, they should include a list of everyone who will be present at the meeting.

Time and date

There are strict timescales for when the Governors have to meet. The Governors must try to arrange the meeting at a time that is convenient to everyone.

Papers

The Governors should ask for written material to be sent in before the meeting. They should try to circulate these before the meeting so parents/carers/ Local Authority representative have the opportunity to read them. If any new papers are brought up at the hearing, time should be given in order to read them. The following documents should be available to all parties involved in the Governors' meeting:

- Government guidance on exclusions;
www.education.gov.uk/schools/pupilsupport/behaviour/exclusion
- the school behaviour policy;
- the school SEN policy (if a child has SEN which may be relevant to the exclusion);
- a child's school record;
- incident report and witness statements – the school should have compiled a report of the incident and may have taken witness statements from the pupils involved.

A fair hearing

The Governors should not discuss the exclusion with any of the parties outside the meeting. If parents/carers have a disability, the Governors must take steps for an accessible venue or materials in alternative formats or extra time to present a case. All parties should be supported to participate and have their views heard. Requests should be made for any other support such as an interpreter. A child's views are important and they should be encouraged to go to the meeting if possible.

What will happen at the hearing?

The order of the hearing is not set out in guidance. A typical order of proceedings might be as set out below.

When the Headteacher, parents and Local Authority representative join the meeting, the Chair should:

- ensure that the meeting is carried out in 'Part 2' procedure (this applies to confidential business) and the clerk should minute this;
- introduce everyone present;
- explain the purpose of the meeting;
- explain that the papers circulated for the meeting should be returned to the clerk at the end to be destroyed; the original set will be kept on the child's record in a confidential file. The parents/carers and local authority representative may keep their copies;
- remind everyone that information must only be given in the presence of all parties;

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- explain the procedure to be followed;
- the Headteacher gives the school's case for excluding the child
- the parents/carers/child put their case;
- opportunities for all parties to ask questions; and
- summing up by the Headteacher and the parents/carers/child.

The parents/carers/child/Local Authority representative and the Headteacher will then be asked to leave, as the Governors must make the decision on their own. A clerk may stay with them to help by referring to minutes of the meeting.

The Governors' decision

When making their decision, the Governors must:

- consider the interests and circumstances of the excluded pupil; and
- have regard to the interests of other pupils and people working at the school.

They will look at the facts on balance of probabilities and consider whether the Headteachers's decision was lawful, reasonable and procedurally fair. The clerk must record a formal minute of the decision and include a statement of the reasons for it. The Governors should log the outcome on the child's school record along with copies of the relevant papers. The parents/carers/child/Local Authority representative and Headteacher then rejoin the meeting to be told the Governors' decision. The possible outcomes vary according to the length of the exclusion or exclusions.

Exclusions of 5 days or fewer in a term

- no power to reinstate;
- must consider parents' written representations; and
- should consider putting note of their findings on the pupil's school record.

Exclusions of more than 5 days in a term

- uphold;
- reinstate immediately or on a specified date; and
- if the pupil is already back in school, consider whether the Headteacher's decision to exclude was justified based on the evidence.

After the meeting

The Governors must let parents/carers know the outcome and the reasons for their decision in writing without delay. If your child has a disability which affected the exclusion and parents/carers feel that the Governors did not take this into account, they may make a disability discrimination claim to SEND.

Useful contacts for advice and support

Inclusion Officers

- For schools in Torrington, Mid & North Devon, tel 01271 388559 or email david.archer@devon.gov.uk
- For schools in East Devon & Exeter, tel 01392 383000 and ask for Marc Kastner or email marc.kastner@devon.gov.uk
- For schools in South & West Devon, tel 01392 383000 and ask for Ian Hemelik or email ian.hemelik@devon.gov.uk

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Devon Parent Partnership provide impartial and independent advice for parents and carers of children with additional needs from birth to 19 years and can be contacted on tel: 01392 383080 or visit www.parentpartnershipdevon.org.uk or email parentpartnershipservice-mailbox@devon.gov.uk

ACE - Education Advice <http://www.ace-ed.org.uk/>

Confidential telephone adviceline on **0300 0115 142**. Normal opening hours:

Monday to Wednesday from 10am to 1pm. Term time only.

Email enquiries@ace-ed.org.uk

Contact a Family - SEN National Advice Service

Advice and information for families whose child may have special educational needs.

Telephone helpline: 0808 808 3555. Opening hours: Monday to Friday 9.30am to 5.00pm

Coram Children's Legal Centre - Family, Child & Education Legal Advice Line

Free legal advice on english law and policy affecting children and families.

Telephone advice line: 08088 020 008. Opening hours: Monday to Friday 8.00am to 8.00pm www.childrenslegalcentre.com