

Southend-on-Sea Exclusions

Part 1 – General Guidance and Essential Information



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1. Introduction

Southend-on-Sea Exclusions Guidance has been updated in line with the latest DfE guidance that replaces the 2012 guidance, and came into force in January 2015. Southend-on-Sea's guidance should be read in conjunction with that guidance.

2. Who this guidance applies to

This guidance applies to all Southend-on-Sea maintained schools, including sixth forms which are part of a maintained school, and Pupil Referral Units (or Short Stay Schools) 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.

3. Who this guidance is not intended for

Academies are subject to statutory guidance, so may find much of Southend-on-Sea guidance relevant and helpful. However this guidance is not primarily intended for academies, they will be advised by Academy Trusts. It is not intended for independent schools, sixth form colleges or 16-19 Academies, which have separate exclusion procedures. Southend-on-Sea Council, however, is required to arrange educational provision for Southend resident pupils who are permanently excluded from all institutions from the sixth day of a permanent exclusion.

4. Head teacher's power to exclude

Only the head teacher, or teacher in charge of a Pupil Referral Unit (Short Stay School) (or, in the absence of the head teacher or teacher in charge, the acting head teacher or teacher in charge) can exclude a pupil.

All exclusions must be on disciplinary grounds and must be lawful, reasonable and fair.

Exclusion can either be a fixed term exclusion for a set number of days or a permanent exclusion. Fixed term exclusions cannot exceed a cumulative total of 45 school days in any one academic year. Lunchtime exclusions may be imposed and are counted as half a school day. The limit of 45 days applies to the pupil and not the institution. It is unlawful to impose a fixed period exclusion for an indefinite period.

In exceptional cases, usually where further evidence has come to light, a fixed period exclusion may be extended or converted to permanent. In these circumstances a new exclusion letter must be sent outlining the reasons.

The behaviour of a pupil outside school can be considered as grounds for exclusion. This will be a matter of judgement for the head teacher in accordance with the school's published behaviour policy.

The head teacher has the right to withdraw an exclusion that has not been reviewed by the governing body.



Head teachers must take account of their legal duty of care when sending a pupil home following an exclusion.

The threat of exclusion must never be used to influence parents to remove their child from school.

Any decision of a school, including exclusion, must be made in line with the principles of administrative law, ie 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.

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

It is unlawful to exclude or increase the severity of an exclusion for a non-disciplinary reason. It would be unlawful for instance to exclude a pupil simply because they have additional needs or a disability the schools feels it is unable to meet, or for a reason such as academic attainment/ability; the action of a pupil's parents; or for 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.

Under the Equality Act 2010 schools must not discriminate against ,harass, or victimise pupils because of their: sex, race, disability, religion or belief, sexual orientation, because of a pregnancy/maternity, or because of a gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices.

The Equality Act requires schools to have due regard for the need to:

- eliminate discrimination and other conduct prohibited under the Equality Act,
- advance equality of opportunity between people who share a protected characteristic and people who do not share it, and
- foster good relations across all characteristics – between people who share a protected characteristic and people who do not.
- These duties need to be taken into account when deciding whether to exclude a pupil. Schools must ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act 2010 allow schools to take positive action to deal with particular disadvantages affecting one group, where this can be shown to be a proportionate way of dealing with such issues.

Head teachers and governing bodies must take account of their statutory duties in relation to special educational needs when administering the exclusion process. This includes having regard to the SEN Code of Practice.



Maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour. When using this power of direction schools must have regard to the DfE's statutory guidance on 'Alternative Provision'. A school must::

- Ensure that parents (and the local authority where the pupil has a statement of special educational needs) are given clear information about the placement: why, when, where, and how it will be reviewed;
- Keep the placement under review and involve parents in the review. The regulations specify regular reviews but do not specify how often reviews must take place (that should be decided on a case-by-case basis). Reviews should be frequent enough to provide assurance that the off-site education is achieving its objectives and that the pupil is benefitting from it;
- Parents and, where the pupil has a statement of special educational needs, the local authority, can request, in writing, that the governing body review the placement. When this happens, governing bodies must comply with the request as soon as reasonably practicable, unless there has already been a review in the previous 10 weeks.

A pupil at risk of permanent exclusion can also transfer to another school as part of a managed move where this occurs with the consent of the parties involved, including the parents. Please see further guidance on Fair Access and Managed Moves.

5. Factors a head teacher should take into account before taking the decision to exclude

The guidance states that, 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 consider requesting a multi-agency assessment that goes beyond the pupil's educational needs. They should also consider whether alternative provision would help improve the pupil's behaviour.

A decision to exclude a pupil permanently should be taken only as a last resort and headteachers should weigh up the circumstances. Exclusion should be:

- in response to a serious breach or persistent breaches of the school's behaviour policy;

and

- where a pupil's behaviour means allowing the pupil to remain in school would be detrimental to the education or welfare of the pupil or others in the school.

The standard of proof is the civil standard – 'on the balance of probabilities'. The more serious the offence the more convincing the evidence should be.

Before making the decision to exclude, either permanently or for a fixed term, head teacher should give pupils the opportunity to present their case.

Whilst an exclusion may still be deemed appropriate, head teachers should take account of any contributing factors that are identified following an incident of poor behaviour – for example, when it comes to light that a pupil has suffered bereavement, has mental health issues or has been subject to bullying.



Guidance stresses the importance of early, proactive intervention to analyse and alleviate any underlying causes of poor behaviour in school, particularly in relation to pupils with statements of SEN and looked after children. Guidance is that head teachers should, as far as possible, avoid permanently excluding any pupil with a statement of SEN or a Looked After Child.

Schools should engage proactively with parents in supporting the behaviour of a pupil with additional needs. In relation to looked after children, schools should co-operate proactively with foster carers or children's home workers and the local authority that looks after the child.

Early intervention to address any underlying causes should include an assessment of whether appropriate provision is in place to support any SEN or disability a pupil may have. Head teachers should also consider the use of a multi-agency assessment (Early Help Family Support 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.

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 has suggested 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 and teachers in charge should consider alternative strategies for addressing that behaviour.

A decision to exclude a child permanently is a serious one and should only be taken where the facts have been established on the balance of probabilities. It will usually be the final step in a process for dealing with disciplinary offences after a wide range of other strategies, including multi agency involvement, have been tried without success.

6. When is exclusion not appropriate?

Exclusion should not be used or extended for non-disciplinary reasons such as:

- truancy or lateness
- pregnancy
- minor incidents such as failing to do homework
- simply because the school feels a student has additional needs or a disability it is unable to meet
- poor academic performance, except where pupils repeatedly disobey academic instructions



- breaches of school rules on uniform and appearance, except where such breaches are so persistent they constitute open defiance of school rules
- punishing pupils for the behaviour of their parents, for example where parents refuse or are unable to attend a meeting
- The failure of a pupil to meet specific conditions before they are reinstated.

Even if there is parental agreement with the exclusion, exclusion for these reasons remains unlawful.

7. Vulnerable learners – students for whom guidance gives particular protection

Statutory guidance identifies a number of groups of pupils for whom the exclusion rate is consistently higher than average. This includes: pupils with SEN, pupils eligible for Free School Meals, Looked After Children, and pupils from certain ethnic groups. The groups with the highest national rates of exclusion are: Gypsy/Roma, Travellers of Irish Heritage, and Black Caribbean communities.

Statutory guidance stresses the importance of early intervention in addressing underlying causes of all disruptive behaviour. For students with SEN or a disability the intervention should include an assessment of whether appropriate provision is in place. Head teachers are advised to also consider the use of a multi agency approach for all students who demonstrate persistent disruptive behaviour.

For pupils in the groups identified above, in addition to early intervention, head teachers should consider what extra support might be needed to identify and address their needs in order to reduce their risk of exclusion.

The stipulations of the Equality Act 2010 detail the factors and duties, for which schools should have due regard. As stated, schools must ensure their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act allow schools to take positive action to deal with particular disadvantages affecting one group, where this can be shown to be a proportionate way of dealing with such issues. Such guidance clearly has particular relevance for the following:

Pupils with special educational needs. Guidance is that schools should as far as possible avoid permanently excluding statemented students. Where a school has concerns about a pupil with additional needs, a statement of SEN or Education Health and Care Plan, it should engage proactively with parents in supporting positive behaviour. A school should also consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN. Where a pupil has a statement of SEN or EHCP, schools should consider requesting an early annual review or interim/emergency review. Where the school reaches the view that a pupil with a statement of SEN or EHCP is at the point of permanent exclusion, an emergency annual review should be initiated, ensuring that the Educational Psychologist and the SEN Manager are invited.

Looked after children. As far as possible, schools should avoid permanently excluding looked after children. Where a school does have concerns about the



behaviour of a looked after child, it should co-operate proactively with foster carers or children's home workers and the local authority that looks after the child. It should also consider what additional support or alternative placement may be required. The Personal Education Plan should be reviewed. Full-time education should be put in place from day 1.

Disabled pupils. Schools have a statutory duty under the Equality Act 2010 not to discriminate against pupils on the basis of protected characteristics, such as disability. For disabled children this includes a duty to make reasonable adjustments to policies and practices. See part 2 of the guidance.

Students from ethnic minorities. Schools have a statutory duty under the Equality Act 2010 not to discriminate against pupils on the basis of protected characteristics, such as race. The law places specific schools to ensure they do not discriminate against pupils on racial grounds.) Schools should monitor and analyse exclusions by ethnicity to ensure they do not treat some groups of pupils more harshly than others. Schools are required to assess whether policies that lead to sanctions, including exclusion, have a disproportionately adverse impact on pupils from particular racial groups. If an adverse impact is identified that cannot be justified, then the policy and practice should be reviewed.



8. Apart from exclusion, in what circumstances can a pupil be required to leave the school site?

In the vast majority of cases a pupil will only be asked to leave the school when excluded. There are however three special sets of circumstances when a school can legally ask a pupil to leave the school site without imposing an exclusion:

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 both of the pupil and the school for the pupil to be educated off site for a certain period, subject to review at regular intervals. This would not constitute an exclusion. It would be the school's responsibility to ensure the pupil's full time education continues while off site, and arrangements would have to be in place before the absence began. The arrangements should be kept under periodic review involving the parents. Code B should be recorded in the attendance register – 'educated off site'.

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. Head teachers and 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 special educational needs (SEN), with conditions such as attention deficit hyperactivity disorder (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.

The pupil is given permission to leave the school premises briefly to remedy breaches of the school's rules on behaviour or uniform. This is not an exclusion but an authorised absence. If the pupil continues to breach uniform rules as a way to be sent home to avoid school, the pupil's absence can be recorded as an unauthorised absence.

9. Who is responsible for an excluded pupil's continued education?

Exclusions of five days or under where a public examination is not missed. It is the responsibility of the school to set and mark work for exclusions of five days or under. The work should be accessible and achievable by pupils outside of school. It is the responsibility of the parent to ensure work sent home is completed and returned to school. The parent has particular responsibility to ensure that the student is not present in a public place during school hours without justification for the first 5 days and may be prosecuted or given a fixed penalty notice if they fail to do so.



Exclusions of six days or over. When a school or Pupil Referral Unit (Short Stay School) imposes a fixed term exclusion of over six days it is the responsibility of the governing body of the school(or LA in the case of a pupil excluded from a Pupil Referral Unit) to ensure that the appropriate full time provision is made off site for the excluded student. While this provision must be made from day six onwards statutory guidance stresses the obvious benefit in starting it as soon as possible. In particular, in the case of a Looked After Child, schools and local authorities should work together to arrange alternative provision from the first day following the exclusion.

Permanent exclusion. When a student is permanently excluded, it is the responsibility of the school to set and mark work for the first five days. From the sixth day onward it is the responsibility of the pupil's home local authority to make full time provision. For Southend resident pupils sixth day and beyond provision is provided by Victory Park Academy. Headteachers should notify Victory Park Academy immediately in order to plan for the provision of full time education from Day 6 of the exclusion. Where a pupil has a statement of SEN or EHCP, an appropriate full time placement should be identified in consultation between the local authority and the parents, who retain their rights to express a preference for a school they wish their child to attend, or make representations for a placement in any other school.

10. Contacts

1. Advice re exclusions and alternative options, (acting on behalf of the Local Authority)

Mark Aspel, Victory Park Academy 01702 904644
maspel@victorypark.org.uk

2. Information Advice and Support Services
01702 534793

iass@southend.gov.uk

3. Headteacher for the Virtual School for Looked After Children

Sarah Greeves 01702 212415
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4. Group Manager Access and Inclusion

Cathy Braun 01702 215066
cathybraun@southend.gov.uk

5. Group Manager Special Educational Needs

Gary Bloom 01702 534548
garybloom@southend.gov.uk

6. Coram Legal Advice

www.childrenslegalcentre.com
0808 802 0008

7. Independent Review Panel

Colin Gamble (Democratic Services), Southend Borough Council
Colingamble@southend.gov.uk
01702 534820

