

Southend-on-Sea Exclusions
Part 2 – Procedures and Protocols



September 2016

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1. The head teacher's decision to exclude – the investigation

Exclusions whether fixed term or permanent can only be imposed by a head teacher or in his/her absence a designated representative, normally the deputy head. Statutory guidance says that a headteacher should only take the decision to exclude a pupil permanently :

- 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

Key points for a head teacher to bear in mind at this point include:

The investigation. Exclusion should not be carried out in the heat of the moment, but only after a full investigation and a careful assessment of the facts, including wherever possible the version of events given by both witnesses and, importantly, the pupil. The school's behaviour and equal opportunities policies should also be taken into account, as should the implications of the Equality Act 2010.

Witness statements. All witness statements should be verbatim and signed and dated. Where multiple witness statements are taken, care should be taken that collusion does not take place. If it is the view of the head teacher that statements should be anonymised before inclusion in the exclusion pack sent to all parties, then copies must be kept, and kept available for the Discipline Committee meeting. It is recommended that a standard format is used for all statements. In relation to anonymising them, this should only be done with good reason and there may be a need to justify the reason to the Discipline Committee meeting or Independent Review Panel. Experience has shown that an Independent Appeal (now Review) Panel will give less weight to a non-attributed statement. The rules of natural justice dictate that one should know the identity of one's accuser unless there are compelling reasons such as repercussions for the witness or their family such as bullying.

Photographs and physical evidence. Witness statements will usually form the bulk of a school's evidence; photographs and/or film can also be used. An object such as a weapon may be retained as evidence. CCTV footage where only the excluded student is shown should be shown to a family or carer in advance of the Discipline Committee meeting or Independent Review Panel if requested. Where footage includes other students consideration should be given, or legal advice taken, whether it should not be released to a family or carer, in case of a breach of The Data Protection Act 1998.

The pupil's statement. All practical efforts should be made to include the pupil at all stages of the exclusion. The pupil's statement should be taken before any decision to exclude and later included in the exclusion paperwork. While exclusion may still be justified, head teachers should take into account any contributing factors to poor behaviour, such as recent bereavement, mental health issues, racial or sexual harassment or bullying. If the pupil has left the school premises without giving a statement, then, before any decision to exclude, efforts should be made to contact the parents for either a statement to be written at home, or for an oral version to be given on the phone. If none of the above proves practical before an exclusion decision is reached, then an opportunity should still be provided for the pupil to come into school and give a statement, that could be included in paperwork for a Discipline Committee.



Parallel police investigation. Where a police investigation leading to possible police proceedings is taking place, evidence may be very limited. However the head teacher should still make a decision on the balance of probabilities, while giving particular attention that the exclusion is fair. While 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.

Prior intervention. In deciding whether to exclude a head teacher should take into account the substance and scope of any early intervention to address underlying causes of disruptive behaviour, including whether appropriate provision has been made to support any SEN or disability that a pupil may have. A multi-agency approach should have been adopted for pupils demonstrating 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.

Where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed term exclusion in an academic year, head teachers should consider whether exclusion is an effective sanction.

Consultation. Frequently a head teacher will consult either or both members of the Senior Leadership Team or the chair of Governors. However no one should be consulted who might play a role in reviewing the decision to exclude, such as a member of the Governors Discipline Committee. All maintained schools may seek advice from the Local Authority Behaviour Support Service.

Record keeping. A written record of all actions taken should be kept. This has proved helpful in any subsequent appeal/review. Head teachers should also keep a contemporaneous log of all actions taken in their investigation

2. Reporting of exclusion

The head teacher must, without delay, notify the governing body and the local authority of:

- A permanent exclusion (including where a fixed period exclusion is made permanent),
- Exclusions which would result in the pupil being excluded for more than five school days (or more than ten lunchtimes) in a term; and
- Exclusions which would result in the pupil missing a public examination or national curriculum test.
- If a pupil is resident in another local authority area then the home local authority should also be notified.
- Schools must contact Victory Park Academy immediately when taking the decision to exclude permanently and a copy of the letter to parents must be sent to Mark Aspel preferably by email to maspel@victorypark.org.uk

For all other exclusions the head teacher must notify the local authority and governing body once a term and all fixed term exclusions should be recorded on SIMS immediately.

In addition, within 14 days of a request, governing bodies must provide to the Secretary of State and (in the case of maintained schools and PRUs) the Local Authority information about any exclusions within the last 12 months.



Southend-on-Sea administration procedures

The Local Authority has a duty to monitor and report on exclusions. Therefore all fixed term exclusions should be recorded within SIMS as soon as possible- for advice telephone ICT Schools Service Desk on 01702 212005. As a minimum, schools should update SIMS on a weekly basis prior to the upload to the Local Authority via Base to Base.

Schools not using Base to Base should report the full details of all fixed term exclusions to cathybraun@southend.gov.uk at the end of every term.

All permanent exclusions should also be recorded electronically on SIMS. Permanent exclusions do not become final till the end of the appeal period (Independent Review Panel) and may be subject to change or reinstatement. It is important that Victory Park Academy is notified immediately in order to plan for the provision of full time education from Day 6 of the exclusion. Victory Park Academy delivers the Local Authority's statutory duty to provide full time education from day 6 of a permanent exclusion. Where a pupil is resident in another local authority the home authority will be responsible for providing full time education from Day 6 of a permanent exclusion.

Coding

It is important that the correct coding of the reasons for exclusions is used and only one category should be ticked. It is NOT recommended that schools use the OTHER category but to use a category that best fits the reasons. This enables better analysis of data both for the local authority and for schools.

3. Exclusion procedures and considerations relating to vulnerable learners

Pupils with a statement of SEN/Education Health and Care Plan

Guidance is that schools should **as far as possible** avoid permanently excluding pupils with a statement of SEN or Education Health and Care Plan.

Where a school reaches the view that a pupil with a statement or EHCP is in danger of permanent exclusion, the school should initiate an Emergency Review, ensuring that both the Educational Psychologist and SEN Case Officer are invited. The support of the Information Advice and Support Service Manager is available for pupils with statements/EHCP.

Where a pupil with a statement or EHCP is permanently excluded the head teacher should use the time between the imposition of exclusion and the meeting of the Discipline Committee to hold an interim annual review. If the terms of the statement/EHCP have not been fully met and there are still strategies the school needs to put in place, it would be expected that the head teacher would withdraw the exclusion. The meeting could also recommend a change of placement or mainstream school and agree interim support and timescales.

Disabled pupils. Schools have a duty under the Equality Act 2010 not to discriminate against pupils by excluding them from school because of behaviour caused by their disability. Discrimination is seen as occurring where a disabled pupil is treated less favourably than other pupils for a reason relating to their disability, without justification. Discrimination can also occur where a school fails to take reasonable steps to ensure that disabled pupils are sufficiently and appropriately supported.



The head teacher should consider **three** questions:

- Is the pupil disabled or unable to function normally in a school environment over a considerable period of time ? The Act covers Attention Deficit Hyperactive Disorder (ADHD) as well as ODD (Oppositional Defiance Disorder) and Aspergers Syndrome. But even if there is no diagnosis of a disability, schools should be aware of students struggling to cope in a school environment over a period of time, for whom a proactive approach would seem appropriate.
- Is the exclusion for a reason related to the pupil's disability, or obvious difficulty? If it is thought there is a connection it is possible discrimination has taken place.
- Can discrimination be justified? The exclusion of a disabled pupil for a reason relating to their disability can be justified if there is a 'material' and 'substantial' reason for it. The maintenance of order and discipline in the school may be a material and substantial reason. Exclusion would not be justified if the school could not demonstrate it had made 'reasonable adjustments' to cope with a particular disability. Reasonable steps 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.

Examples of what may and may not amount to discrimination are available at www.education.gov.uk/publications/standard/publicationDetail/Page1/RB608. See also www.equalityhumanrights.com.

Students from ethnic minorities. The law places specific duties on schools to ensure they do not discriminate against pupils on racial grounds. Schools should advance equality of opportunity between people. 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.

Children in care. Exclusion of children in care should be an absolute last resort. Before exclusion schools, in conjunction with the local authority (LA), should first consider alternative options for supporting the child. No child in care should be excluded without discussion with the LA and the involvement of the headteacher of the Virtual School for Looked After Children. Even where the local authority does not have parental responsibility, the child's social worker should be involved at the earliest opportunity about the possibility of any exclusion.

Where a child in care is excluded from school, full time support should be provided after the first day rather than the sixth day that is stipulated in all other cases.

When a child in care is permanently excluded his/her Personal Education Plan (PEP) should always be reviewed.

The clerk to the governors Discipline Committee should invite the pupil's social worker, parent, and foster carer to the Discipline Committee meeting if relevant.



4. When should parents be contacted and what information must be given?

Model letters for exclusions can be found in Part Three of this guidance

Whenever a head teacher excludes a pupil of compulsory school age for either a fixed term or permanently the parent must be notified immediately, ideally by telephone, followed by a letter. Parents should be informed by the end of the afternoon session that for the first five school days of an exclusion (or until the start date of any alternative provision where this is earlier) parents are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parents may be given a fixed penalty notice or prosecuted if they fail to do so.

Where a pupil is of compulsory school age the head teacher must also notify parents without delay, and by the end of the afternoon session:

- That for the first five school days of an exclusion (or until the start date of any alternative provision where this is earlier) parents are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parents may be given a fixed penalty notice or prosecuted if they fail to do so
- If alternative provision is being arranged then the following information must be included where it can reasonably be found out within the timescale:
- The start date for any provision of full-time education that has been arranged for the pupil during the exclusion,
- The start and finish times of any such provision, including the times for morning and afternoon sessions where relevant,
- The address at which the provision will take place; and
- Any information required by the pupil to identify the person he/she should report to on the first day.
- Where the information on alternative provision is not reasonably ascertainable by the end of the afternoon session it may be provided by a subsequent notice, but it must be provided without delay and no later than 48 hours before the provision is due to start. The only exception to this is where alternative provision is to be provided before the sixth day of exclusion, in which case information can be provided with less than 48 hours with parents' consent.

Statutory guidance gives several acceptable methods of communicating this information to parents: email or text message; giving the notice directly to the parents; or sending the information with the excluded pupil. Where information is sent home with a pupil, head teachers should consider sending a duplicate copy by an alternative method or confirming the information has been received.

Schools must also, without delay, provide parents with the following information in writing :

- The reasons for the exclusion



- The period of a fixed term exclusion or, for a permanent exclusion, the fact that it is permanent,
- Parents' right to make representations about the exclusion to the governing body and how the pupil may be involved in the process,
- How any representations should be made; and
- Where there is a legal requirement for the governing body to consider an exclusion, that parents have a right to attend a meeting, be represented at the meeting (at their own expense) and to bring a friend.
- Attention should also be drawn to relevant sources of free and impartial information. In Southend-on-Sea this should include:
- A link to statutory guidance on exclusions <http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion>
- A link to the Coram Children's Legal Centre: <http://www.childrenslegalcentre.com/> 08088 020 008; and
- The name and telephone number of an officer of the LA who can provide advice – see contacts page
- A link to any other local service considered relevant by the head teacher, such as the Information advice and Support Service if the child has a statement of SEN /EHCP or the headteacher of the Virtual School if a Looked After Child
- 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.

5. What is the role of the local authority in exclusions procedures?

It is the role of the Local Authority officer to advise all parties equally and with complete impartiality on both procedure and points of statutory guidance. Information and advice is routinely supplied to schools both before and after exclusion. The LA view will then be given at the meeting of the Discipline Committee and at any subsequent meeting of the Independent Review Panel.

The LA representative is not a party to the proceedings and will not attempt to persuade either the Discipline Committee or the Independent Review Panel to reach one outcome rather than another. But the LA will give information about how other Southend-on-Sea schools have dealt with similar incidents that could inform the governing body's consideration on whether the decision to exclude is reasonable. The LA will also draw attention to issues where there is a lack of clarity or where statutory guidance appears to have been ignored.



An LA representative will not attend any Discipline Committee meeting at an academy unless requested to do so by a parent. In the event that such a request is made, and agreed to by the authority, the Local Authority officer will fulfil the same role as in a maintained school.

6. The role of the Governors Discipline Committee and procedures

It is the role of the Governors Discipline Committee to consider the use of exclusion in a school. However, the length and nature of the exclusion governs if and when a Discipline Committee must meet.

Composition of Governors Discipline Committee

A Discipline Committee will have at least three members, but not more than five. If a committee comprises four and is locked 2-2 in reaching a decision, the chair has the casting vote. No governor should serve on a Discipline Committee who has been consulted over the exclusion, or was present at or involved in any way in the exclusion incident.

Exclusions of five days and under. If the committee receives representations from a parent concerning an exclusion in this category, the committee must consider them but cannot direct reinstatement nor erase the exclusion from the pupil's record although they can place a copy of their findings on the pupil's school record. A meeting of the governors is not necessary in these circumstances.

Exclusions of 6-15 days in one term. If a parent requests a meeting of the Discipline Committee for exclusions in this category, then a meeting must be convened within 50 school days of the Discipline Committee receiving notice of the exclusion. The Discipline Committee can decide whether or not the head was justified in excluding the pupil and note this on the pupil's school record. It can also reinstate the pupil immediately or by a particular date.

Exclusions of over 15 days in one term. When an exclusion of over 15 days in one term is imposed, the Discipline Committee must meet within 15 school days to consider the circumstances of the exclusion. If any further exclusions are incurred by the pupil during the same term a further meeting of the committee would be triggered. The Discipline Committee can decide whether or not the head was justified in excluding the pupil and note this on the pupil's school record. It can also reinstate the pupil immediately or by a particular date.

Exclusions which would result in the pupil missing a public examination or national curriculum test. The governing body is required by statutory guidance, as far as is reasonably possible, to consider the exclusion before the date of the examination or test. If this is not practicable, the chair of governors may consider the exclusion independently and decide whether or not to reinstate the pupil. These are the only circumstances in which the chair can review an exclusion decision alone. In such cases parents still have the right to make representations to the governing body and must be made aware of this right.

While there is no automatic right for an excluded pupil to take an examination or test on the excluding school's premises, the governing body should consider whether it is appropriate to exercise their discretion to allow an excluded pupil on the premises with supervision for the sole purpose of taking the examination or test.

Permanent exclusions. The governing body must meet to consider the exclusion within 15 school days of receiving the notification. The Discipline Committee can decide whether or not the



head was justified in excluding the pupil and note this on the pupil's school record. It can also reinstate the pupil immediately or by a particular date.

As has been made clear, it is the role of the discipline committee to consider the decision of the headteacher, who alone has the power to exclude. It follows that the governing body has no power to increase the severity of an exclusion, for example by extending the period of a fixed period exclusion or converting a fixed term exclusion into a permanent.

Who should the Discipline Committee invite?

- The head teacher
- The pupil, who should be allowed and encouraged, to attend the meeting and to speak. Where the excluded pupil is over 18 he/she must be invited and make representations in their own right.
- The parent, who could be accompanied by either a friend or legal representative
- Local authority representative, (for academies the Local Authority can be invited to attend if the parent requests it).

The paperwork

All paperwork including written statements and other relevant information held by the school such as those relating to a pupil's SEN should be circulated to all parties at least five working days in advance of the meeting of the Discipline Committee.

Late meetings

The governing body has a duty to comply with the statutory time limits set out above, but is not relieved of its obligation to carry out its duty if failing to comply. Accordingly its decision will not be invalid simply on the grounds that it was made out of time.

Conduct of the meeting

The next section gives a suggested running order for the meeting, used in the vast majority of schools. Just as important as the format is the overall tone and fairness of the meeting. It is important that the meeting is held in as informal an atmosphere as possible and the parent(s) leave the meeting feeling they have had a fair hearing.

Governors in particular need to be aware that it is their role to consider the decision of the head teacher to exclude, not to make the school's case. The committee should therefore uphold a rigorous impartiality in its approach to all parties, and never display bias in either its questioning or general comments. It is not the role of the committee to reprimand the pupil.

Statutory guidance stresses the importance of making reasonable adjustments to support the attendance and contribution of parties at the meeting, as well as identifying the steps to be taken to encourage the excluded pupil to attend and speak on his/her own behalf. If the pupil cannot attend all efforts must be made to help the student feed his/her views into the meeting.

7. Agenda for the governors' meeting

The following agenda is suggested;



1. The Discipline Committee gathers on its own, together with the clerk. The Chair is agreed.
2. The head teacher, parents, student and local authority representative then enter, as equals. It is important to avoid any opportunities for conferring before the meeting
3. The Chair introduces all present and explains their roles. The order of the meeting should be outlined.
4. The head teacher outlines the case for exclusion. A member of staff with particular knowledge of the student and/or the exclusion may also contribute.
5. Governors, parents and the local authority representative are invited to ask questions of the school.
6. Parents, their representative and pupil present their case.
7. Governors, head teacher and local authority representative are invited to ask questions of the parents and/or pupil.
8. The local authority representative gives a Borough perspective of the exclusion.
9. All present are invited to ask questions of the local authority representative.
10. Head teacher sums up the case for exclusion.
11. Parents and pupil sum up their case.
12. All leave, except the clerk who remains to advise the Discipline Committee by referring to his/her notes and with the wording of the decision letter

Actions following the meeting of the Discipline Committee

Usually the Clerk to the Governors will inform the parents by telephone of the decision of the Discipline Committee. The Clerk should then send a letter (see below) to the parents and local authority within one school day giving the decision in writing, and stating the reasons. If the decision has been to reinstate the student, no conditions can be attached to the reintegration.

The governing body should 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 available to all parties on request.

The governing body should note the outcome of their considerations on the pupil's record, along with copies of relevant papers for future reference.



8. REVIEW OF EXCLUSIONS BY GOVERNING BODIES (GBs)/MANAGEMENT COMMITTEES (MCs) Copyright: ACE Ltd (Mar 12)

Length of Exclusion	Will the GB/MC automatically review the exclusion?	Can the parent make written representations to the GB/MC?	Can the parent meet with the GB/MC and make representations in person?	Time Limit	Outcome of the meeting	GB/MC DOES NOT have power to:
					GB/MC has power to:	
Total 5 school days or less in one term	NO. The GB/MC will not automatically review the exclusion.	YES. The GB/MC must consider any of the parent's written points about the exclusion.	MAYBE. The GB/MC can agree to meet with the parent if the parent requests this, but they do not have to.	No time limit for the meeting but the GB/MC should consider responding promptly.	Decide whether or not the Head was justified in excluding the pupil and note their views on the pupil's record. Include copies of other relevant papers on the pupil's record, e.g. the pupil's version of the incident or the parent's statement.	Reinstate the pupil. Erase the exclusion from the pupil's record.
Total 5½ - 15 school days in one term	NO. The GB/MC will not automatically review the exclusion. But they must meet, if the parent requests this, even if the parent does not attend.	YES. The GB/MC must consider any of the parent's written points about the exclusion.	YES. But the parent has to request a meeting with the GB/MC.	The GB/MC must meet between 6 and 50 school days after they receive information about the exclusion. This information may come from the parent's request or from the Head.	Decide whether or not the Head was justified in excluding the pupil and note this on their school record. Consider whether the Head followed the guidance. Reinstate the pupil immediately or by a particular date.	Erase the exclusion from the pupil's record.
Total 15½ school days or more in one term	YES. The GB/MC will automatically review the exclusion.	YES. The GB/MC must consider any of the parent's written points about the exclusion.	YES. The GB/MC must invite the parent to their meeting.	The meeting must be between 6 and 15 school days after the GB/MC receives information about the exclusion from the Head. The Head must inform the GB/MC of the exclusion within one school day.	Decide whether or not the Head was justified in excluding the pupil and note this on their school record. Consider whether the Head followed the guidance. Reinstate the pupil immediately or by a particular date.	Erase the exclusion from the pupil's record.
Permanent exclusion	YES. The GB/MC will automatically review the exclusion.	YES. The GB/MC must consider any of the parent's written points about the exclusion.	YES. The GB/MC must invite the parent to their meeting.	The meeting must be between 6 and 15 school days after the GB/MC receives information about the exclusion from the Head. The Head must inform the GB/MC of the exclusion within one school day.	Decide whether or not the Head was justified in excluding the pupil and note this on their school record. Consider whether the Head followed the guidance. Reinstate the pupil immediately or by a particular date.	Erase the exclusion from the pupil's record.
Any exclusion which will result in the pupil missing a public exam including SATS	YES. The GB/MC will automatically review the exclusion.	YES. The GB/MC must consider any of the parent's written points about the exclusion.	YES. The GB/MC or the Chair must invite the parent to their meeting/review.	The meeting should be before the date of the exam . If this is not possible, the Chair of the GB/MC can review the exclusion alone.	Decide whether the Head was justified in excluding the pupil and note this on their school record. Consider whether the Head followed the guidance. Reinstate the pupil immediately or by a particular date. Allow the pupil into school just to take the exam.	Erase the exclusion from the pupil's record.

9. Notifications the governing body must give

Where a meeting has been legally required (for fixed term exclusions over five days when a parent requests one, a fixed term exclusion(s) either over, or in total over 15 days in one term, or permanent) the governing body must notify the parents, the head teacher and the local authority of their decision, and the reasons for their decision, in writing and without delay. Where a pupil lives in a different local authority, the governing body must also inform the home authority.

In the case of a permanent exclusion the governing body's notification must include the following:

The fact that it is permanent,

Notice of the 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 must be made (i.e. 15 school days from the date on which notice in writing of the decision was given to parents),
- b) that the local authority will forward an application for a review, together with details of where the form should be sent,
- 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 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 to appoint an SEN expert to attend the review
- e) details of the role of the SEN expert and that there should be no cost to parents for the appointment
- f) that parents must make clear if they wish for a SEN expert to be appointed in any application for a review
- 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
- h) 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 can 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.
- i) That a claim of discrimination made under these routes should be lodged within six months on which the discrimination is alleged to have taken place



e.g. the date on which the pupil was excluded

Where the governing body decides to uphold an exclusion, either for a fixed term or permanent, they should draw the attention of parents to the following sources of free and impartial information :

A link to statutory guidance on exclusions:

<https://www.gov.uk/government/publications/school-exclusion>

A link to guidance on making a claim of discrimination to the First-tier Tribunal

<http://www.justice.gov.uk/tribunals/send>

A link to the Coram Children's Legal Centre: <http://www.childrenslegalcentre.com/> 08088 020 008; and where considered relevant by the governing body, links to local services such as Parent Partnership.

10. The head teacher's duty to remove a permanently excluded pupil's name from the school register

A guide to the law

The head teacher must remove a pupil's name from the school admissions register if:

- 15 school days have passed since the parents were notified of the governing body's decision to uphold a permanent exclusion and no application has been made for an independent review panel; or
- The parents have stated in writing that they will not be applying for an independent review panel.

Where an application for an independent review panel has been made within 15 school days, the head teacher must wait until the review has been determined, or abandoned, before removing a pupil's name from the register.

Where a pupil's name is removed from the school register and a discrimination claim is subsequently made, the First-tier Tribunal or County Court has the power to direct that the pupil should be reinstated.

Lunchtime Exclusions

If behaviour at lunchtimes is disruptive a child may be excluded from the premises for the duration of the lunchtime period. For statistical purposes, a lunchtime exclusion is counted as half of one school day. More than 10 days of lunchtime exclusions enables a parent to request a formal Governors Meeting.

For registration purposes the child should be in school for the morning and afternoon registration sessions and is therefore marked in the register accordingly.

The use of lunchtime exclusions should be detailed in a written plan and reviewed



regularly.

Circumstances in which a child is out of school but not excluded

If a pupil is accused of a serious criminal offence, but the offence took place outside the school's jurisdiction and the Headteacher decides it is in the interests of the child and the school community, the child can be educated off site. This is subject to review and the register can be marked as B (educated off site) if this is an appropriate supervised alternative provision. School work being sent home does not constitute a supervised alternative provision.

If a child is too sick to attend school, or for medical reasons their presence represents a serious risk to the health and safety of other pupils or school staff, the Headteacher may send pupils home after consultation with parents and health professionals. Alternative provision should be put in place and the register marked accordingly.

11. Statutory guidance to schools on marking attendance registers following exclusion

If exclusion is between half a day and five days, the school will mark the child as E in the register. (Schools cannot just send the child home, if they do not exclude following procedures the child has a right to be in school). The child returns to school for the session following the end of the exclusion, regardless of the time arranged for a reintegration meeting.

For exclusions longer than five days, schools are responsible for providing full time education provision from the sixth day, often schools work in partnership to make this provision. If the child attends the provision, they can be marked as B in the register, educated off site. Where pupils are not attending alternative provision they should be marked absent using Code E.

Permanent Exclusions

If a school decides to permanently exclude a pupil they must inform the parents immediately or at least within 24 hours. This can be done by phone, but must then be followed up in writing as soon as possible. They must also inform the local authority.

The date of the exclusion is specified in the letter from the school.

Alternative provision can be made immediately, but the latest by the sixth day of exclusion. If the alternative provision for the child is in a Pupil Referral Unit or Short Stay School, the main school can mark the child as D in the register (dual registered). If they are in another alternative provision they can be marked as B if they attend. If they do not attend they should be marked as absent. If they are not in provision the child should be marked as E.



Removal from roll/deleting from the register

The actual recorded date of the permanent exclusion is the date the exclusion starts as specified in the permanent exclusion letter sent by the school. However, this will not be the date the child is taken off roll. The school can take the child off roll only in the following circumstances:

- After the permanent exclusion is confirmed in an independent review panel
- On expiry of the time allowed for a request for an independent review (15 school days from the parents receipt of the permanent exclusion letter from school)
- If the parent confirms in writing that they do not intend to seek an independent review
- The child takes up a place elsewhere

12. Independent Review Panels and Procedures

If a permanent exclusion imposed by a head teacher is upheld by the Discipline Committee, the parents of all permanently excluded pupils have the right to go to an Independent Review Panel. Forms, with explanatory details, will be sent to parents by the Local Authority's legal services.

Parents have three school weeks to request a review, from the date appeal papers are received. The independent review panel meetings will normally be held at the Civic Centre in Southend-on-Sea.

Prior to the meeting a school will be requested to supply its written case. All written statements should be attributed, signed and dated, unless the school has good reason to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements. The general principle remains that excluded pupils are entitled to know the substance behind the reason for their exclusion.

Independent Review Panels are comprised of a lay member, who should chair, a governor, provided they have served at least 12 consecutive months in the previous five years, and a head teacher who is either in post or has been within the last five years.

The Chair of the Discipline Committee at the school meeting will attend the Independent Review Panel Meeting to explain the basis of the Committee's decision.

The clerk will be a solicitor from Southend-on-Sea Legal Services.

If requested by parents in their application for an IRP, the local authority must appoint a Special Educational Needs (SEN) expert to attend the Panel. Parents have a right to request the attendance of a SEN expert at a review, regardless of whether the



school recognises the 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 may be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel ; the role does not include making an assessment of the pupil's special educational needs, although if the school does not recognise that a pupil has SEN, the expert should advise the panel on whether he/she believes the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEN the pupil may have, and any contribution this could have made to the circumstances of the pupil's exclusion.

The focus of the SEN expert's advice should be on whether the school's policies which relate to SEN, or the application of these policies in this particular case, were legal, reasonable and procedurally fair, in line with the principles for the decision of the IRP itself, set out below.

At an IRP a school may introduce fresh evidence to support an exclusion, but not fresh reasons.

The panel will consider the basis of a permanent exclusion in light of the principles applicable in an application for judicial review, and should apply the following tests (having regard to the following):

Illegality – did the Headteacher 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 and flawed that justice was clearly not done? Procedural impropriety is defined by statutory guidance as not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision making process. Examples suggested in guidance are: bias; failing to notify parents of their right to make representations; the governing body reaching a decision without having given parents an opportunity to make representations; failing to give reasons for a decision; or being the judge in your own cause (for example, if the head teacher who took the decision to exclude were also to vote on whether to uphold an exclusion).

An IRP can reach one of three decisions:

- to uphold the exclusion to exclude.
- to recommend that a governing body reconsiders its decision not to reinstate a pupil (direct immediate reinstatement or reinstatement by some future date).
- to quash a decision and direct the governing body to reconsider its decision. If the governing body subsequently fails to reinstate the pupil, the IRP has then power to order that an adjustment of £4000 should be made to the school's budget, that would be in addition to any funding that would normally follow an



excluded pupil (the only exception to this is where a school does not have a delegated or separate budget from which the readjustment can be made).

Subsequent school meeting of the Governors Discipline committee

Where a panel directs or recommends that a governing body reconsiders its decision, the governing body must reconvene within 10 school days of being given notice of the panel's decision.

If a governing body offers to reinstate the pupil within the specified timescale but the parents decline the offer, no readjustments can be made to the school's budget. The governing body must comply with any direction of the panel to place a note on the pupil's educational record. This includes noting that, where a pupil is not reinstated following a direction to reconsider, the exclusion does not count towards the rule that an admission authority may refuse to admit a child who has been excluded twice; or in the case of a community or voluntary controlled school, the governing body may appeal against the decision of the local authority as the admission authority to admit the child.

The parents, head teacher and local authority (or where relevant the home authority) must be informed of the governors' decision and the reasons for it immediately and in writing.

Parental remedies post-appeal

A parent can appeal to the local government Ombudsman about maladministration by the review panel. The Ombudsman might recommend a fresh hearing, if practical.

If a parent feels the decision of the Review Panel is unlawful, or one which a reasonable panel could not have reached, they may apply to the High Court for a judicial review. Application must be made within three months of the date of the decision. If a judicial review was granted, and the panel's decision was found to be unlawful or unreasonable, the High Court could quash the decision and direct the LA to hold a fresh appeal hearing before a newly constituted panel.

School remedies post-appeal

Schools can also apply for judicial review on the same grounds as cited in 'Parental remedies post-appeal'.

Funding

Where a pupil is permanently excluded the Local Authority will adjust the schools budget pro rata to the date of the exclusion according to the formula set out in regulations. This also applies to any pupil premium payable in respect of the excluded pupil. If the pupil is attending an out of Borough school then there should be a budget transfer between authorities. This is to ensure that funding follow the pupils. If the pupil is subsequently admitted to another school then the balance of funding should follow the pupil to the new school.



The Local Authority would expect Academy Trusts to enter into an arrangement for the transfer of funding for pupils permanently excluded on the same basis as for a maintained school.

In Southend there is a local agreement that the funding will follow the pupil in the same way if it is agreed that the pupil is at the point of being permanently excluded and would have been, had the LA not made alternative arrangements such as a fresh start at another school or a placement in the pupil referral unit. This enables the LA to make provision for the pupil who goes on roll at the PRU.

13. Contacts

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

Mark Aspel, Victory Park Academy 01702 347490

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

sarahgreaves@southend.gov.uk

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

