

Guidance on school exclusions – suggestions for improvement

What are the most common questions you receive from parents on exclusions?

- Should the school be providing the child with education whilst they are excluded?
- Should the school inform the parent that their child is at risk of exclusion if there have been a number of breaches of the behaviour policy?
- Should the school take previous good behaviour into account?
- How is the exclusion recorded on the child's education record and can it be removed?
- Can the school use the threat of exclusion to force a parent to remove a child from the school?
- What action should the school take before deciding to exclude i.e. additional support, assessments etc?
- What should the school do to safeguard a victim from a perpetrator?
- What information do the school have to provide the parent when they have excluded a child?
- Can a school exclude a child with SEN?
- How can a parent appeal the decision to exclude?
- Questions regarding managed moves/direction off-site when a child is at risk of permanent exclusion?

What format would Department for Education (DfE) guidance for parents be most appropriate and accessible?

- Flow diagrams, including detailed steps to take
- Precedent letters
- Short video clips
- Additional formats for those with special needs and disabilities

Do you have any specific feedback on what we should change in the statutory exclusions guidance?

1. *The contact details for the Child Law Advice Service education line are included on exclusion letters that schools are required to send to parents. However, they are generally not informed about what our remit is and why they should contact us.*

Remedy: Include wording in the guidance such as "the Child Law Advice Service can provide impartial, initial advice via their website (link to website), email and telephone (link to number of education line) on the law on school exclusion. The Child Law Advice Service does not provide representation and is unable to attend appeal panel meetings."

2. *Parents do not fully understand the civil standard of proof which is applied with respect to school exclusion and defined in Para 8 of the School Exclusion guidance.*

Remedy: The Balance of Probabilities test can be explained in numerical terms in addition to how it is explained in the guidance at present i.e. headteacher concludes that it is 50% likely that the breach/offence in question occurred then the head-teacher cannot exclude, but should a

head-teacher conclude that it is 51% likely that the breach/offence in question occurred then the head-teacher can exclude.

3. *We come across a lot of cases whereby the school have used the threat of exclusion to influence a parent to agree to a managed move/part-time timetable/home-education. Schools are precluded from doing this by virtue of Para 15 of the School Exclusion guidance.*

Remedy: This needs to be outlined and explained more clearly in the School Exclusion guidance. Managed Moves are recognised as an alternative to permanent exclusion and therefore it is important that schools are honest in these situations in explaining that the child is at risk of permanent exclusion but there is the option of a managed move. Whilst we agree that ‘the threat of exclusion must never be used to influence parents to remove their child from the school’, the guidance should be clear that if parents *do* refuse the managed move there is the risk that the child will then be permanently excluded. It is unhelpful to hide that information from them.

Schools should not encourage parents to remove their child from the school-roll, home-educate, agree to a part-time timetable because these are clearly unlawful practices – the guidance could usefully be more explicit about these so that parents are aware of them. The guidance should make clear when parental consent is required and that the use of a part-time timetable cannot be used as a disciplinary measure or because a school cannot meet a particular child’s SEN.

4. *Link to Edubase in Annex C has been archived.*

Remedy: Replace with a link to the following webpage: <https://get-information-schools.service.gov.uk/>

5. *We see a number of cases involving children on managed moves and unlawful or bad practice. These have included:*

- *Schools not informing parents that their consent is required in order for the managed move to be implemented*
- *The transferring school not accepting the child back if the trial broke down at the new school*
- *The new school ending a trial without explanation and without meeting the child’s parents*

It is unclear whether the original school can exclude a child directly after a managed move has broken down on the basis of the breaches of the behaviour policy which occurred before the managed move had taken place – the guidance could usefully address this. It is clear to see that there can be a crossover between managed moves and off-rolling/exclusion.

Remedy: Develop a standalone section of statutory guidance covering the managed move process.

6. *Improper implementation of part-time timetables which can therefore be viewed as unlawful exclusions. There is a small section in the school attendance statutory guidance on the use of part-time timetables but it is insufficient.*

Remedy: Develop a standalone statutory guidance governing the use of part-time timetables or incorporate into the school exclusion guidance or another guidance document.

7. *The school exclusion guidance does not include sufficient information on the investigation process that the head-teacher should follow.*

Remedy: Provide additional guidance on the investigation process i.e. talking to witnesses/taking witness statements, interviewing alleged perpetrators and victims alone in school, obtaining CCTV footage etc.

8. *In many cases we see, parents and carers report that their child's additional needs are not being met by the school but that they had been informed it was too soon to assess the child for any special educational needs. Or the child has a statement of SEN or an EHC plan but the school does not have the resources to meet the child's needs.*

Remedy: The guidance currently states that “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. The head teacher should also consider the use of a multi-agency assessment for a pupil who demonstrates persistent disruptive behaviour. Such assessments may pick up unidentified SEN but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems” (para 19). This could be more strongly worded and include greater emphasis on meeting the learners’ needs and putting into place a more appropriate support package in place *before* exclusion. Schools should have a duty to seek advice from the local authority, CAMHS or other professionals involved with a child before exclusion takes place. We support JUSTICE’s recent recommendation that before a pupil with an EHC plan is excluded an annual review or interim/emergency review of their plan must be conducted and that any pupil without an EHC Plan who is at risk of permanent exclusion on the basis of persistent disruptive behaviour should be assessed by an educational psychologist before the exclusion is finalised.¹

For more information, please contact Gemma Smith, Manager, Child Law Advice Service at gemma.smith@coramclc.org.uk

¹ See JUSTICE, Challenging School Exclusions, 2019, p 73 at <https://justice.org.uk/wp-content/uploads/2019/11/Challenging-Report.pdf>