

Exclusions (Fixed-Term Exclusions & Permanent Exclusions)



- Do you want to understand more about the types of school exclusions?
- Would you like to understand you and your child's rights around school exclusions?
- Do you have questions about how to appeal a decision to exclude your child?



What is Exclusion?

Exclusion is the formal sending home of a pupil from school for disciplinary reasons. An exclusion can be **fixed term (temporary)** or **permanent**. A pupil is not allowed in school while they are excluded.

All state-funded mainstream and special schools, including academies and free schools, must follow government [statutory guidance on exclusions](#). The information in this booklet is about exclusions from state-funded schools and pupil referral units. Independent schools do not have to follow this guidance, and they will have their own exclusion procedures.

Schools must have a **behaviour policy** setting out the school rules and the consequences if pupils break the rules, including the circumstances where exclusion might be used. In some situations, a pupil can be excluded for behaviour outside school. Exclusion may be for a series of incidents, often described as “persistent disruptive behaviour”, or for more serious “one off” incidents.

The Decision to Exclude

Exclusions must be **lawful, reasonable** and **fair**.

Only the head teacher or an acting head can make the decision to exclude your child. The exclusion must be for disciplinary reasons only.

For example, it is not lawful to exclude because the school cannot meet a pupil’s special educational needs (SEN); for low academic attainment; for a parent’s behaviour; or with an expectation that your child meets certain conditions before they are allowed back in school.

Before making the decision, the head teacher should consider the views of those involved. Where possible they should give your child a chance to present their case. The head can apply the balance of probabilities – is the pupil more likely than not to have done what they are accused of? Other factors should be considered, for example, is the incident a response to bullying? Are there family difficulties affecting a pupil’s behaviour?



Exclusion of children with special educational needs (SEN) or a disability

The head can exclude any pupil, even if they have SEN or a disability. However, if disruptive behaviour is related to a child's SEN or disability, the school should first take action to identify and address the underlying cause of the behaviour.

For example, the school could:

- increase SEN support or pastoral support;
- seek specialist advice from services, such as behaviour and educational psychology teams;
- request an EHC needs assessment; or
- arrange an emergency review of an EHC plan.

In some cases, excluding a pupil for behaviour related to their disability could be discriminatory. The school must be able to show that the exclusion is a "proportionate means of achieving a legitimate aim". This might be, for example, if a pupil's behaviour is having an impact on the education or safety of others. If the school cannot show that the exclusion is justified on these grounds, it could be a case of disability discrimination. **Exclusion should be a last resort.**



Under the **Equality Act**, schools must make **reasonable adjustments** for disabled pupils. For example, the school might change its behaviour policy so it doesn't treat disabled pupils in the same way as others by punishing with exclusion.



Alternatives to Exclusion

The school's behaviour policy should set out alternatives to exclusion. Disciplinary measures will depend on the school, but may include:

- Detention.
- Being taught in a separate room within the school.
- A managed move to another school, either on a trial or permanent basis.
- Temporary attendance in another education centre to help improve behaviour.

The Procedure When a Child is Excluded

You must be told without delay about the exclusion. The school would usually ring you first, but they **must** also **write to you** straight away. This can be sent by letter or electronically. The written information must include:

- The reason for the exclusion.
- The length of the exclusion – the number of days if fixed term, or that it is permanent.
- Information about how you can challenge the exclusion.
- The responsibility to make sure your child (if they are of compulsory school age) is not in a public place during school hours for the first five days of the exclusion.
- Arrangements for alternative provision, if relevant.

The school must always provide this information in writing if they are sending your child home for disciplinary reasons, even if the exclusion is very short. It is not lawful for the school to tell you to just take your child home, without recording it as a formal exclusion.

Fixed-Term Exclusion

A school can exclude for a set number of days, up to a maximum of 45 days in a school year. A lunchtime exclusion counts as half a day.



When the exclusion has ended, your child must be allowed back to school. The head teacher cannot extend an exclusion, but they may issue a new fixed-term or permanent exclusion to begin straight after the first. This should only be done in exceptional circumstances, for example if new information has come to light.

The school should invite you and your child to a reintegration meeting on the day your child returns to school. However, your child must still be allowed in school even if you cannot attend a reintegration meeting.



Your Child's Education During Fixed-Term Exclusion

During the first five days of an exclusion, the school should take reasonable steps to set and mark work for your child.

For longer exclusions, the **school must arrange** suitable full-time alternative education to begin from the sixth day of the exclusion. This may be in a pupil referral unit (PRU).

CHALLENGE

Challenging A Fixed-Term Exclusion

For all exclusions, you can put your views in writing to the school governors. This is called "**making representations**".

The governors have the power to decide whether the head teacher made the right decision. In some cases they can overturn the exclusion and reinstate your child..

Permanent Exclusion

A permanent exclusion should be issued only:

- In response to a serious breach or persistent breaches of the school behaviour policy
- and
- Where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

Your Child's Education During Permanent Exclusion

During the first five days of an exclusion, the school should take reasonable steps to set and mark work for your child. From the sixth day, the **local authority must arrange** suitable alternative education for your child. This may be in a pupil referral unit (PRU).

In the longer term, the local authority should find a place in another school for your child.

You can also apply to other schools. However, a school can refuse to accept a child if they have been permanently excluded twice already within the last two years, and in some circumstances they can refuse pupils with challenging behaviour.

If your child has an **Education Health and Care (EHC) plan**, an exclusion, or the threat of one, should trigger an **emergency review of the plan**. The local authority must make sure that any alternative provision is able to meet your child's special educational needs (SEN) as set out in the EHC plan.

Challenging A Permanent Exclusion

The **governors must meet within 15 school days** to review the exclusion. You have the right to attend the meeting and to put your views to the governors. The governors must consider whether the head teacher's decision was **lawful, reasonable and fair**.

1. They have the power to overturn the exclusion and allow your child back to school. They can also overturn the exclusion and reinstate your child in principle, even if you do not want your child to return to the school.
2. If the governors agree with the head teacher and uphold the decision, they must write to you to let you know. You have **15 school days** from the date of the letter to ask for an Independent **Review Panel (IRP)** to consider the exclusion.

The Governing Body Must:

- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school, such as those relating to a pupil's special educational needs);
- circulate any written evidence and information, including a list of those who will be present, to all parties at least 5 school days in advance of the meeting;
- allow parents and pupils to be accompanied by a friend or representative;
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf (taking into account the pupil's age and understanding), or participate by other means if attending the meeting is not possible.



The Independent Review Panel

If the governing body uphold a permanent exclusion, parents have the right to request that their decision is reviewed by an Independent Review Panel (IRP).

Parents must lodge their application for a review:

- **within 15 school days of notice** being given to the parents by the governing body of their decision to uphold a permanent exclusion; or
- where an application has not been made within this time frame, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion.

These are strict deadlines and any application made outside of the legal time frame must be rejected by the Local Authority / Academy Trust.

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

Parents must submit written representations and, if applicable, supporting evidence, when lodging their application. New evidence can be submitted to the Independent Review Panel.

However, when deciding whether to quash the decision, the panel should only take account of evidence available to the governing body at the time of making its decision not to reinstate. The Panel is able to take account of evidence that they consider would, or should have been available to the governing body, and that the governing body ought to have considered if they had been acting reasonably.

The Local Authority / Academy Trust must constitute the Panel with either 3 or 5 members:

- a lay member to chair the panel;
- 1 (or 2) school governor(s) who have served as a governor for at least 12 consecutive months in the last 5 years, provided they have not been teachers or head teachers during this time; and
- 1 (or 2) head teacher(s) or individual(s) who has/have been head teacher(s) within the last 5 years.

The role of the Panel is to review the governing body's decision **not** to reinstate a permanently excluded pupil. In reviewing the decision, the Panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

The panel can decide to:

- uphold the exclusion decision;
- recommend that the governing body reconsiders their decision; or
- quash the decision and direct that the governing body considers the exclusion again.

When considering the governing body's decision, the Panel should apply the following tests which need to be satisfied to quash the decision:

- **Illegality** – Did the head teacher and / or governing body act outside the scope of their legal powers in taking the decision to exclude?
- **Irrationality** – Did the governing board rely on irrelevant points, fail to take account of all relevant points or make a decision so unreasonable that no governing board acting reasonably in such circumstances could have made it?



- **Procedural impropriety** – Was the process of exclusion and the governing body's consideration so unfair or flawed that justice was clearly not done?

If any of these criteria are met, the Panel can quash the decision of the governing body and direct that they consider the exclusion again.

Where the criteria for quashing a decision have not been met, the Panel should consider whether it would be appropriate to recommend that a governing body reconsiders their decision not to reinstate the pupil. This should be used where evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision but which the Panel believe justify a reconsideration of the governing body's decision.

In all other cases the panel should uphold the exclusion.

Can I request a special educational needs (SEN) expert attend the IRP?

Parents have a right to request the attendance of a SEN expert at the IRP, regardless of whether or not the school recognises that their child has SEN.

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

SEN experts must be **impartial**. The SEN expert can be employed by another Local Authority or Academy Trust but they should not have had any previous involvement in the assessment or support of SEN for the excluded pupil, or siblings of the excluded pupil. The purpose of this is to avoid a conflict of interest.

The appointment of an SEN expert is for the Local Authority / Academy Trust to make, but it should take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEN expert. Where possible, this may include offering parents a choice of SEN expert.



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 relation to the excluded pupil, were legal, reasonable and procedurally fair. If the SEN expert believes that this was not the case, they should advise the Panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

Where the school does not recognise that a pupil has SEN, the SEN expert should advise the Panel on whether they believe the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEN that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.

Legal Advice

Child Law *advice*

For more information about school exclusions, appeals and the IRP, contact Child Law Advice.



Email Advice: Education:

<https://childlawadvice.org.uk/email-advice-education/>



Education Law:

0300 330 5485



<https://childlawadvice.org.uk/>

Further Support

SENDIASS Leicester	0116 482 0870	www.sendiassleicester.org.uk
IPSEA	national	www.ipsea.org.uk
Council for Disabled Children	national	www.councilfordisabledchildren.org.uk
Special Education Services*	0116 454 2050	ses@leicester.gov.uk
Contact - For families with disabled children	national	www.contact.org.uk
Education Law Association	0118 9669866	secretary@educationlawassociation.org.uk

* SES are part of the Local Authority that organise and write up Education, Health and Care Plans for Leicester City children and young people

Key Words and Jargon

SEND	Special Educational Needs & Disabilities	A child/ young person that has a Special Educational Need and/ or Disability
EHCP	Education Health & Care Plan	Legal document highlighting a child/ young person's needs and provisions
SEN	Special Educational Need	A child/ young person that needs support in education
SEP	Special Educational Provision	Support that is put in place for a child/ young person
SES	Special Education Service	The Local Authority service that write and maintain EHCP's
SENDIASS	Special Educational Needs & Disability Information, Advice & Support Service	A service to support parents/ carers or young people themselves to give information, advice and support in a confidential and impartial way
LA	Local Authority	Authority responsible for all children/ young people in their area
LO	Local Offer (Local Authority website)	The Local Authority Website that supports parents/ carers and young people with SEND including information about schools/ colleges & accessing groups/ support

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