

EData Protection Act 1998

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EXCLUSION GUIDANCE (ACADEMIES)

This guidance is based on the Department for Education (DfE) revised Guidance (effective September 2012) “Exclusion from Maintained Schools, Academies, and Pupil Referral Units in England - a guide for those with legal responsibilities in relation to exclusion”. This will be referred to as “Exclusions Guidance – September 2012” in this document. This publication replaces all previous editions and can be accessed in full from the following website:

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

The Exclusion Guidance – September 2012 provides a guide to the legislation that will govern the exclusion of pupils from: maintained schools; Academy schools / Free Schools; Alternative Provision Academies / Free Schools; and pupil referral units in England from 1 September 2012.

It also provides statutory guidance to which: head teachers; principals; governing bodies; local authorities; Academy Trusts; independent review panel members; independent review panel clerks; and special educational needs experts must have regard when carrying out their functions in relation to exclusions.

The phrase ‘must have regard’, when used in this context, does not mean that the sections of statutory guidance have to be followed in every detail, but that they should be followed unless there is a good reason not to in a particular case.

The context for the work of the Discipline Committee

The context for any decision that a principal contemplates with regard to excluding a pupil is what has been referred to as the ‘whole-school approach’ to behavioural management.

The measures determined by the principal and the governing body regarding discipline and good behaviour should be publicised in a written document and brought to the attention of the parents of potential pupils. Pupils, parents and academy staff should be notified of its contents at least once in every school year.

The governing body must review certain exclusions and must consider any representations about an exclusion made by the parents of the excluded pupil. The governing body can delegate some or all of its functions in respect of exclusions to a designated committee consisting of at least three governors and such a committee may be called the Governors’ Discipline Committee.

For the purposes of this guidance this Committee will be referred to, in the following pages, as the Governors’ Discipline Committee.

The decision to exclude

Only the head teacher, principal or teacher in charge of an academy (or, in the absence of the head teacher, principal or teacher in charge, the most senior teacher who is acting in that role) can exclude. From April 2013 Pupil Referral Units became the City of Birmingham School.

A decision to exclude a pupil should be taken only:

- a) in response to **serious breaches** of the academy's behaviour policy; **and**
- b) if allowing the pupil to remain in the academy would seriously harm the education or welfare of the pupil or others in the academy.

Police involvement and parallel criminal proceedings

Part 12 of revised Exclusions Guidance – September 2012 deals with incidents of misconduct by pupils where the academy's investigations might lead to an exclusion and also be the subject of parallel police enquiries connected with the same incident.

Principals and Governors should seek advice from the Local Authority Exclusions Team in such cases.

Witness statements should be taken from anyone who may have observed the incident. Statements should be signed and dated, but may be anonymised to protect the identity of witnesses. However, it is advisable to liaise closely with the Police as to whether it is possible to produce these statements at the Governors' Discipline Committee meeting if the police are still conducting their investigations or are pressing charges against the pupil.

A principal need not postpone his or her decision to permanently exclude a pupil simply because of the possibility that criminal proceedings might be brought in respect of the same incident. In these circumstances a judgement must be made on the basis of the evidence available.

The Governors' Discipline Committee

The governing body must review certain exclusions and must consider any representations about an exclusion made by the parents of the excluded pupil. As indicated above, the governing body can delegate some or all of its functions in respect of exclusions to a designated committee consisting of at least three governors and such a committee may be called the Governors' Discipline Committee. Where reinstatement is a practical option the Governors' Discipline Committee must consider whether to reinstate an excluded pupil.

The Governing Body may nominate a pool of governors from which to select three or five governors to serve as the Governors' Discipline Committee as the need arises.

The Governors' Discipline Committee should appoint a Clerk to the Committee. The Local Authority strongly advises that the principal's PA or secretary should not be appointed as the Clerk to this committee. This advice is based on a previous case of maladministration, which was heard by the Ombudsman.

The quorum for a Governors' Discipline Committee meeting is three members, if a governor has a connection with the pupil/family, or knowledge of the incident that led to the exclusion that could affect his or her ability to act impartially, he or she should step down.

The Committee can make only one of two decisions: to reinstate the pupil at the academy, or not to reinstate. For permanent exclusions, if the pupil is not to be reinstated at the academy, the Local Authority will identify educational provision.

For exclusions of 5 days or fewer (aggregated over a term) where the pupil's parents have made representations, the Committee should consider the representations but does not have the power to overturn the principal's decision. The Discipline Committee is not required to arrange a meeting with parents but it would be considered good practice to do so. The Committee should consider whether it would be appropriate to place a note of their findings on the pupil's educational record.

At a meeting, the Governors' Discipline Committee may consider a number of exclusions, as long as they comply with the statutory time limits relating to each one. The Local Authority would advise that where parent(s)/carer(s) are making representations at a meeting and object to the committee hearing their son/daughters exclusion along with others, that their objections be seriously considered.

If exclusion would result in the pupil missing a public examination, the Committee should try to meet before the date of the examination. In such cases the parent has the right to make representation to the committee.

Governors' Discipline Committee Meetings to Consider Exclusions.

On receiving notice of an exclusion from the Principal, the Governing Body (Governors' Discipline Committee):

- must, in the case of fixed period exclusions (including lunch time exclusions), arrange for the Committee to meet in accordance with statutory timescales (**see Appendix 2**)
- There is no obligation for the Committee to meet in the case of one or more fixed period exclusions totalling fifteen days or less in one term, unless the parent(s)/carer(s) choose to make representations.
- must in the case of a permanent exclusion convene a meeting by the 15th school day after the date of receipt to consider the exclusion;
- must invite parent(s)/carer(s) and the Principal to the meeting at a time and place convenient to all parties (within the statutory time limit). A Local Authority officer from the Exclusions Team can be invited to the meeting and will give an objective view on the exclusion if the governors consent to this.
- should allow parents and pupils to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing body should first seek parental consent and invite the parents to accompany their child to the meeting);
- should have regard to their duty to make reasonable adjustments for people who use the academy and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that impacts upon their ability to attend the meeting or to make representations);
- should identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on his / her own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding; or how the excluded pupil may feed in his/her views by other means if attending the exclusion meeting is not possible.
- should ask for the Principal's report regarding the exclusion, the Permanent Exclusion Form, and any other relevant paperwork;

- should circulate in advance the paperwork mentioned above to those who will be present at the meeting. This should be at least 5 school days before the meeting.
- should, where possible, provide a list of all those who will be present at the meeting in advance of the meeting;

At the meeting the Governors' Discipline Committee:

should conduct the meeting taking into account the requirements outlined in part 6 of the revised Exclusions Guidance – September 2012 (available at website address indicated on page 1)

The role of the Local Authority representative at the Discipline Committee meeting is to comment objectively on the permanent exclusion (with governors' consent). The Local Authority can make a statement to the Discipline Committee, for example, about how other schools and academies in the area have dealt with similar incidents. When considering reinstatement, the Discipline Committee should seek the Local Authority representative's advice as to what support could be made available to assist with reintegration, and to advise on alternative arrangements for the pupil to continue his/her education if the exclusion is confirmed. The Local Authority representative will also offer advice to the parent with regards to the next stage of the process once the decision is made.

The Governors' Discipline Committee may ask the Local Authority officer for specific technical advice. However, they should make their decision alone, asking the other parties to withdraw. The Clerk may stay with the Committee to help them with reference to his/her notes of evidence and in wording their decision.

The Committee must comply with the statutory time limits but are not relieved of their legal obligation to carry out the relevant duty if they fail to comply. Accordingly their decision will not be invalid simply on the grounds that it was made out of time.

Where the Committee is legally required to consider an exclusion they 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 academy.

The Committee must also consider any representations made by:

- parents;
- the principal and
- a representative of the Local Authority (if present and invited to make representations).

When establishing the facts in relation to an exclusion decision, the Committee must apply the civil standard of proof; i.e. 'on the balance of probabilities' it is more likely than not that a fact is true rather than the criminal standard of 'beyond reasonable doubt'. In the light of their consideration, the governing body can either:

- uphold an exclusion; or
- direct reinstatement of the pupil immediately or on a particular date.

Where reinstatement is not practical because for example, the pupil has already returned to the academy following the expiry of a fixed period exclusion or the parents make clear they do not want their child reinstated, the Governors' Discipline Committee must, in any event, consider whether the Principal's decision to exclude the child was justified based on the evidence.

It is suggested that the Governors' Disciplinary Committee should give consideration to the surroundings in which the meeting is to take place and to the seating arrangements.

The Local Authority recommends that, where possible, meetings of the Governors' Disciplinary Committee should not be held in the Principal's office.

The Committee should consider whether it has sufficient information to make its decision. Careful and even-handed consideration must be given to all matters placed before the committee. It must not simply accept the Principal's judgement.

If a new issue arises during the hearing, parties should be afforded an opportunity to consider and comment on it. The Committee may consider adjourning the hearing if it, or any of the parties, require information that is not available at the time.

Members of the Committee must not be drawn into discussions with any of the parties to the proceedings before the hearing or during an adjournment. Care must be taken to ensure that no one attending the meeting is alone with the governors in the absence of another party.

The principles of natural justice apply to all aspects of the exclusion process.

Suggested Format for the Meeting

1. Chair of the meeting introduces him/herself and asks all parties to introduce themselves.
2. The Clerk checks that all present have received the appropriate written information and explains to the parents/carers, the pupil and their representative that the purpose of the meeting is to decide whether the Governors' Discipline Committee will consider reinstatement or confirm the permanent exclusion of the pupil to the academy, and that there will be an opportunity for questioning by the other parties after each presentation.
3. They must also explain how the decision of the meeting will be communicated to all parties. The Committee can choose either of the options below:-
 - a) A letter confirming the decision must be sent to the parent(s)/carer(s), principal and Local Authority Exclusions Team without delay.Or
 - b) All parties will be invited back into the room once the decision has been made and informed of the decision verbally. A letter confirming this decision must also be sent to the parent(s)/carer(s), principal and Local Authority Exclusions Team without delay.

In both cases, the Clerk must write to parents/carers giving the Governors' Discipline Committee decision, an explanation of how the Committee reached its decision and details of how to appeal against the Governing Body Discipline Committee's decision.

4. Chair of the meeting invites the Principal to explain the reasons for the permanent exclusion of the pupil.
5. All parties may ask questions.
6. The Chair asks the parent(s)/carer(s) (and their representative where present) to make their representations regarding the exclusion.

7. All parties may ask questions.
8. The Chair invites the pupil (or representative) to make any comments about their exclusion.
9. All parties may ask questions.
10. If present and governors give consent, the Local Authority officer is asked to give their views on the exclusion.
11. All parties may ask questions.
12. The Chair invites the Principal to sum up the case.
13. The Chair invites the parent(s)/carer(s) to sum up his/her case.
14. Parent(s)/carer(s), pupil, representative, principal, Local Authority officer (if present) and others are asked to withdraw whilst a decision is made. (NB. Details on how the Governors' Discipline Committee will communicate the decision will already have been given to all parties upon commencement of the meeting - see point 3).
15. The Clerk may stay with the committee to help them with reference to his/her notes of evidence and in wording their decision.
16. The Committee reaches a decision regarding the reinstatement or otherwise of the pupil.
17. If requested, minutes of the meeting should be available to any of the parties present.

If the Decision of the committee is to reinstate the pupil to the academy the following must be undertaken:-

1. The member of the Committee who chaired the meeting must complete and sign a Notice of Decision Form (**Appendix 1**).
2. The clerk must write to the parent(s)/carer(s) without delay to confirm the Committee's decision. The letter of decision must contain the date on which the pupil should return to the academy.
3. The Clerk must also forward a copy of the Notice of Decision Form and the decision letter to the principal and the Local Authority Exclusions Team without delay.

If the Decision of the Committee is not to reinstate, then the following must be undertaken:-

1. The member of the committee who chaired the meeting must complete and sign a Notice of Decision Form (**Appendix 1**).
2. The Clerk's letter to the parent(s)/carer(s) should contain the decision of the Governors' Discipline Committee and give reasons, explaining how the Committee arrived at its decision. The full requirements of information to be included in the decision letter, including the right to an **Independent Review** (replaced Independent appeal from September 2012) are outlined in section 6.3 of the revised Exclusions Guidance – September 2012.
3. The clerk must forward a copy of the Notice of Decision Form and the decision letter to the Principal and the Local Authority Exclusions Team without delay.

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APPENDIX 1

**PERMANENT EXCLUSION
NOTICE OF DECISION**

Academy:

Name of the Chair of the Governors' Discipline Committee:

.....

Pupil's Name:

Date of meeting to consider exclusion:

DECISION OF MEETING (tick appropriate box below)

TO REINSTATE THE PUPIL:

DATE BY WHICH THE PUPIL IS TO BE REINSTATED: ___ / ___ / ___

NOT TO REINSTATE THE PUPIL:

REASONS FOR THE DECISION

.....
.....
.....
.....
.....

(continue overleaf if necessary)

Signature of Person Chairing the Governors' Discipline Committee Meeting:

.....

Date: ___ / ___ / ___

Please return this form to the Exclusions Team (by post to Exclusions Team, PO Box 16542, Birmingham B2 2DJ or by Fax on 0121 303 2882) within 1 school day of the Discipline Committee meeting.

In determining your review the IRP can make one of three decisions:

- they may uphold your child's exclusion;
- they may recommend that the governing body reconsiders their decision; or
- they may quash the governing body's decision and direct that the governing body considers the exclusion again.

In addition to the right to apply for a review by an IRP, if you believe that the exclusion has occurred as a result of discrimination, you may 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. A claim of discrimination made under these routes should be lodged within six months of the date on which the discrimination is alleged to have taken place e.g. the day on which your child was excluded.

The arrangements currently being made for **[pupil's name]**'s education will continue. **[specify details here]**.

I would like to remind you of the following sources of advice and assistance:

- **The Local Authority Exclusions Team.** The Team can provide advice concerning the exclusion process. Tel: 0121 303 2685/7893. Fax: 0121 303 2882. Email: exclusions@birmingham.gov.uk
- **Coram Children's Legal Centre.** The Coram Children's Legal Centre is an independent national advice centre for parents/carers of children in state maintained schools. They offer information and support on state education in England and Wales, including advice on exclusion from school. Tel: 0300 330 5485
Email: www.childrenslegalcentre.com
- **Special Educational Needs & Disability Information, Advice and Support Service (SENDIASS).** The Service offers direct support to parents/carers of pupils who are going through the formal special educational needs assessment process (education health care plan) by working closely with schools and other agencies, and offers impartial advice and information. Tel: 0121 303 5004. Fax: 0121 464 3137. Email: sendiass@birmingham.gov.uk
- The statutory guidance on exclusions is available at:
<https://www.gov.uk/government/publications/school-exclusion>

APPENDIX 2 - Summary of the Governing Body's duties to review the Principal's exclusion decision

