School Exclusion Review
Procedure Notes

This document is intended to be a straightforward guide to give parents a brief outline of
the school exclusion process and procedures. More detailed information can be obtained
from the Department for Education at www.education.gov.uk
1.0 BACKGROUND

1.1 Exclusion from school is one of the tasks Principals and Head teachers most dislike doing. However, it is sometimes necessary and, when it is necessary, it is essential that it is done appropriately – from the point of view of the pupil, the rest of the school and the wider community.

1.2 Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. The Government supports head teachers in using exclusion as a sanction where it is warranted. However, permanent exclusion should only be used as a last resort, in response to a serious breach, or persistent breaches, of the school's 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.

1.3 The decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race. Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.

1.4 Where parents (or excluded pupil, if aged 18 or over) dispute the decision of a governing body not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel. Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents can also make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination). (Exclusion from maintained schools, Academies and pupil referral units in England 2012).

1.5 An independent review panel does not have the power to direct a governing body to reinstate an excluded pupil. However, where a panel decides that a governing body’s decision is flawed when considered in the light of the principles applicable on an application for judicial review; it can direct a governing body to reconsider its decision. If the governing body does not subsequently offer to reinstate a pupil, the panel will be expected to order that the school makes an additional payment of £4,000. This payment will go to the local authority towards the costs of providing alternative provision.

1.6 Whether or not a school recognises that a pupil has special educational needs (SEN), all parents (or pupils if aged 18 or over) have the right to request the presence of a SEN expert at an independent review panel. The SEN expert’s role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion; for example, whether the school acted reasonably in relation to its legal duties when excluding the pupil.

1.7 Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and understanding.
1.8 If you apply within the legal time frame, the local authority or the academy trust must, at their own expense, arrange for an independent review panel hearing to review the decision of a governing body not to reinstate a permanently excluded pupil.

1.9 The legal time frame for an application is:

- within 15 school days of notice being given to the parents by the governing body of their decision to uphold a permanent exclusion (in accordance with the requirements in paragraph 74); 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.

1.10 Any application made outside of the legal time frame must be rejected by the local authority / academy trust.

1.11 The local authority / academy trust must not delay or postpone arranging an independent review panel where parents also make a claim of discrimination in relation to the exclusion to the First-tier Tribunal (Special Educational Needs and Disability) or the County Court.

1.12 You can request an independent review panel even if you not make a case to, or attend the meeting at which the governing body considered the exclusion.
2.0 Procedures

2.1 Welcome and Introductions by the chair who explains that the panel is independent of the Admission Authority and that its decision is binding on all parties.

Order of the hearing – to be explained either by the Clerk or the Chair.

- The Admission Authority presents its case, explaining the reasons for the decision to permanently exclude your child and calling any witnesses if necessary.
- Questions from the Review Panel and you may ask questions of the Admission Authority.
- You or your representative put forward your case, calling any witnesses if necessary. If attending your child may also speak on their own behalf or have their statement read.
- Questions from the Review Panel and from the Admission Authority.
- SEN Expert (if appropriate) Report or statement from the SEN expert on whether SEN played a role in the exclusion, whether the school’s SEN policies were legal, reasonable and procedurally fair.
- Questions to the SEN expert on their advice/report.
- LA Representative (if appropriate). Statement from the LA representative on how local schools have dealt with similar matters.
- Summing Up – Governing Body’s case
- Summing Up – Your case.

2.2 All parties leave the room, only the clerk remain with the panel while their deliberate and make their decision.

1.15 The clerk informs the appellant, the academy/school and the Local Education Authority in writing about the decision.
3.0 In advance of the hearing

3.1 Local authorities/Academy Trusts must take all reasonable steps to ensure the venue for the review is appropriate, accessible to the parties and has a suitable area for the parties to wait separately from the panel before the review. The academy/school must take reasonable steps to find out when the parent and others entitled to attend the hearing would be available in order to ensure that all parties are able to attend. They must arrange a suitable venue for hearing the review in private. (It should be accessible, and have good access for people with disabilities). You also have the right to request an SEN expert regardless of whether the school recognises that your child has an SEN. Should you wish to do so this must be done in writing to the school/Academy/school as soon as possible.

3.2 The following are entitled to make written representations, appear and make oral representations and to be represented (including legally):

   a) The parent (or, if aged over 18, the pupil);
   b) The head teacher;
   c) The governing body.

4.0 Who can attend the Hearing?

4.1 Either the head teacher or the governing body to be represented, or both to be jointly represented, rather than the head teacher and governing body being separately represented.

4.2 An excluded pupil under the age of 18 should be encouraged to attend the hearing and to speak on his or her own behalf, if he or she wishes to do so and the parent agrees. The panel cannot compel witnesses to attend the hearing. If your child is not able to accompany you to the hearing, he/she can provide a written statement.

4.3 You have the right to be accompanied by a friend or representative, including a legal representative or advocate. If you wish to bring more than one friend or
representative, please inform the clerk as soon as possible so that they may seek the panel’s agreement in advance, having regard to a reasonable limit on numbers attending the hearing.

4.4 The clerk should also ascertain whether an alleged victim wishes to be given a voice at the hearing either in person, through a representative or by submitting a written statement.

4.5 When the position is clear, the clerk must give all parties details of those attending and their role and notify them of the order of hearing.

4.6 The clerk should circulate all written evidence to all parties at least 5 working days before the hearing. This must include the statement of decision by the governing body and the notice of review from the parent which gives the grounds for the review and any disability discrimination claim.

4.7 The head teacher or governing body may also make written representations. If any of the parties intend to raise matters or produce documents at the hearing that are not covered by the statement of decision or the notice of review, they should be asked to submit these to the clerk in good time before the hearing.

5.0 Who will consider the review?

5.1 The local authority / Academy Trust must constitute the panel with either three or five members (as decided by the local authority / Academy Trust) representing each of the three categories below. A five member panel must be constituted with two members from each of the categories of school governors and head teachers.

- A lay member to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer.
- School governors, who have served as a governor for at least 12 consecutive months in the last five years, provided they have not been teachers or head teachers during this time.
- Head teachers or individuals who have been a head teacher within the last five years.

A person may not serve as a member of a review panel if they:

- are a member / director of the local authority / Academy Trust or governing body of the excluding school;
- are the head teacher of the excluding school or anyone who has held this position in the last five years;
- are an employee of the local authority / Academy Trust, or the governing body, of the excluding school (unless they are employed as a head teacher at another school);
➢ have, or at any time have had, any connection with the local authority / Academy Trust; school; parents or pupil; or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartially (though an individual must not be taken to have such a connection simply because they are a head teacher at another school); or

➢ have not had the required training within the last two years.

5.0 **Conduct of the review hearing**

5.1 It is for the review panel to decide how to conduct the proceedings which should be reasonably informal so that all parties can present their case effectively. Tape-recording of the hearing should be avoided unless there is good reason and all parties agree.

5.2 In opening the review hearing the chair should outline the procedure to be followed and explain to all parties that the panel is independent from both the academy/school and the Local Authority. The chair should explain that the panel need to have regard to legislation and DfE guidance in its conduct and in reaching its decision.

5.3 Parties attending the hearing have the right to be represented. Representatives may make written or oral representations to the panel. If any of the parties wish to bring more than one friend or representative, the clerk should seek the panel’s agreement in advance, having regard to a reasonable limit on numbers attending the review. However, all parents may attend, if they wish to do so, and each can make representations and be represented. The chair should then lead the panel in establishing the relevant facts. Panel members may wish to ask questions to clarify an issue or to elicit more information. Questions from the panel should generally be taken at the end of each party’s statement and following questioning by the other parties.

5.4 Sufficient time must be allowed for each party to put their case. The panel should ensure that the parent (or, if aged over 18, the pupil) is given the opportunity to comment on relevant information obtained from academy/school. Care must be taken to ensure that no party attending the hearing is present alone with the review
panel in the absence of any other party (including the SEN Expert and LA rep – if attending).

6.0 Evidence and witnesses

6.1 Where the academy/school's case rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the panel. Where there are difficulties in retaining physical evidence, photographs or signed witness statements are acceptable.

6.2 All parties may put forward new evidence about the event that led to the exclusion, including evidence that that was not available to the head teacher/ the governing body. All parties should be given the opportunity to respond to any such new evidence which has been put forward. However, the academy/school/school may not introduce new reasons for the exclusion.

6.3 To reach a decision, the panel will generally need to hear from those directly or indirectly involved. The governing body may wish to call witnesses who saw the incident that gave rise to the exclusion. These may include any alleged victim or any teacher other than the head teacher who investigated the incident and interviewed pupils. A teacher may be accompanied by a friend or representative.

6.4 In the case of witnesses who are pupils of the academy/school, it will normally be more appropriate for the panel to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and with their parent's consent.

6.5 Panels should be sensitive to the needs of child witnesses to ensure that the child's view is properly heard.
6.6 All written witness statements must be attributed and signed and dated, unless the academy/school has good reason to wish to protect the anonymity of pupils, in which case they should at least be dated. The general principle remains that an accused person is entitled to know the substance and the source of the accusation. The panel must consider what weight to attach to written statements, whether made by adults or pupils, as against oral evidence. They should bear in mind that a written statement may not encompass all the relevant issues, nor can the author be interrogated.

6.7 The calling of character witnesses is at the discretion of the panel, but should be allowed unless there is good reason to refuse. It is for the panel to decide whether any witnesses should stay for the rest of the hearing.

7.0 SEN Expert

7.1 Where an SEN expert is present his/her role is analogous (similar) to an expert witness, providing impartial advice to the panel on how special educational needs might be relevant to the exclusion. The SEN expert's role does not include making an assessment of the pupil's special educational needs or about the school/academy/school's policy.

7.2 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 he/she, where possible, advise the panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

7.3 Where the school does not recognise that a pupil has SEN, the SEN 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 special educational needs that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil’s exclusion.

7.4 The SEN expert should not criticise a school’s policies or actions simply because he/she believes a different approach should have been followed or because another school might have taken a different approach.
8.0 Reaching a decision

8.1 In considering a review, the panel should decide, on the balance of probabilities, whether the pupil did what he or she is alleged to have done. However, the more serious the allegation, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard to be applied but it does mean that when investigating more serious allegations, head teachers will need to gather and take account of a wider range of evidence (extending in some instances to evidence of the pupil’s past behaviour), in determining whether it is more probable than not that the pupil has committed the offence. If more than one incident of misconduct is alleged, the panel should decide in relation to each one.

8.2 The panel should consider the basis of the head teacher's decision and the procedures followed having regard to the following:

a) Illegality – did the head teacher and /or governing body act outside the scope of their legal powers in taking the decision to exclude.

b) 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?

c) Procedural impropriety – was the process of exclusion and the governing body’s consideration so unfair or so flawed that justice was clearly not done?

d) The academy/school's published behaviour policy, equal opportunities policy and, if appropriate, anti-bullying policy, Special Educational Needs policy, and race equality policy.

e) The fairness of the exclusion in relation to the treatment of any other pupils involved in the same incident.

9.0 The decision

9.1 The panel must balance the interests of the excluded pupil against the interests of all the other members of the school community.

9.2 Panel members and, if appointed, the SEN expert must declare any known conflict of interest before the start of the review. (Full copy of the guidance can be downloaded from the DfE website).
9.3 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.

9.4 The panel 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’.

9.5 Following its review 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.

9.6 The panel’s decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied decision the chair has the casting vote.

9.7 The independent review panel’s decision is binding on the: pupil; parents; governing body; head teacher; local authority; and (in the case of an Academy) Academy Trust.

9.8 The panel may only quash the decision where it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review (statutory guidance on this consideration is provided by paragraphs 148 to 151 of the guidance).

9.9 New evidence may be presented to the panel, though the school may not introduce new reasons for the exclusion and panels must disregard any new reasons that are introduced.

9.10 In deciding whether the governing body’s decision was flawed, and therefore whether to quash the decision, the panel must only take account of the evidence that was available to the governing body at the time of making their decision. This includes any evidence which the panel considers would, or should, have been available to the governing body if they had been acting reasonably.

9.11 If evidence is presented that the panel considers is unreasonable to have expected the governing body to have been aware of at the time of their decision, the panel can take account of the evidence when deciding whether to recommend that the governing body reconsider their decision.

9.12 Where present, the panel must seek and have regard to the SEN expert’s view of how SEN might be relevant to the pupil’s exclusion. Where a SEN expert has been requested but is not present, the panel should make parents aware of their right to request that the review is adjourned until such time as an SEN expert can attend.
10.0 Record of the proceedings of an review panel

10.1 The clerk to a review panel should take minutes of the proceedings, the attendance, the voting and the decision in a format approved by the academy/school. The minutes are not public documents but should be retained by the academy/school for a period of at least five years, as they may need to be seen by a court or by the Local Government Ombudsman.

It is important that the panel have the services of a Clerk. The Clerk is not a member of the panel but has an important role to play in ensuring that relevant facts are established and that the hearing is fair and also seeks to ensure that there is no breach of the procedure by either party.

11.0 After the hearing

11.1 The panel is independent. Its decision is binding on the parent, the governing body, the head teacher the academy/school and the local authority. The panel cannot revisit its decision once made.

11.2 The panel must issue written notification to all parties without delay. This notification must include:

- The panel’s decision and the reasons for it:

- Where relevant, details of the any financial readjustment/payment to be made if a governing body subsequently decided not to offer to reinstate a pupil; and

- Any information that must be recorded on the pupil’s educational record to reflect the decision; in particular, were a governing body does not decide to reinstate a pupil following a direction to reconsider, it must be noted that the exclusion will 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, that the governing body may appeal against the decision of the local authority as the admission authority to admit the child).
11.3 The decision letter should give the panel's reasons for its decision in as much detail as possible, including clear information about the offences or behaviour for which the pupil has been excluded, so that the parties can understand why the decision was made. Where the panel recommends that the governing body reconsiders it decision or directs that the governing body reconsiders the permanent exclusion, the panel should explain their reasoning for reaching this decision.

11.4 If the panel decide to quash the decision and direct that the decision be reconsidered or recommend that the permanent exclusion be reconsidered, the governing body must reconvene to do so within 10 school days of being given notice of the panel's decision.

11.5 Where the panel directs a governing body to reconsider an exclusion it has the power to order that a readjustment of the school's budget must be made or (in the case of an Academy/school) that the school must make an equivalent payment to the local authority if the governing body does not offer to reinstate the pupil within 10 school days of receiving notice of the panel's decision. The sum of this adjustment/payment must be £4,000 and would be in addition to any funding that would normally follow an excluded pupil.

11.6 The panel does not have the power to order a readjustment or payment in circumstances where it has only recommended that the governing body reconsider their decision.

11.7 Where the exclusion is upheld the clerk should also advise the parent to contact the appropriate person at the home Local Authority about arrangements for their child's continuing education. The head teacher should remove the pupil's name from the academy/school roll the day after the conclusion of the review.

11.8 Details of exclusion may not be deleted from the pupil's record, even where a direction of reconsideration is given. The governing body must, however, comply with any parental request to append their review statement to the pupil's record. It will be for the governing body to decide what details of the exclusion are included in the pupil's academy/school record: copies of the principal correspondence might be included and possibly the minutes of the governing body and review panel hearings, if the governing body and review panel respectively agree to this.
Remedies after the review hearing

12.0 Judicial review

12.1 If either the parent or the governing body consider that the panel's decision is perverse, they may apply to the High Court for a judicial review. This must be done promptly and no later than three months from the date of the decision. If a judicial review were granted, the court would consider the lawfulness of the panel's decision.

12.2 If the High Court found the panel's decision to be unlawful or unreasonable (in the narrow legal sense of 'unreasonable', i.e. irrational or perverse), it could quash the decision and direct the academy/school to hold a fresh review hearing before a newly constituted panel.

12.3 In accordance with paragraph 72 of the exclusion guidance if you feel that the permanent 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.

12.4 A claim under any of the two routes outlined above should be lodged within six months of the date on which the discrimination is alleged to have taken place.

13.0 For independent advice, you may find the following helpful:

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<th>Education Funding Agency</th>
<th>Communities Empowerment Network</th>
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<tr>
<td>Earlsdon Park</td>
<td>Broadman House</td>
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<tr>
<td>Butts Road</td>
<td>64 Broadway</td>
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<tr>
<td>Coventry</td>
<td>LONDON E15 1NT</td>
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<tr>
<td>CV1 3BH</td>
<td>Telephone: 02084320531/0530</td>
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<td><a href="mailto:academyquestions@efa.education.gov.uk">academyquestions@efa.education.gov.uk</a></td>
<td>Fax: 02084320534</td>
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<tr>
<th>Coram Children’s Legal Centre</th>
<th>The Local Government Ombudsman</th>
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<tr>
<td>University of Essex</td>
<td>10th Floor, Millbank Tower</td>
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<tr>
<td>Wiverhoe Park</td>
<td>Millbank</td>
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<tr>
<td>Colchester</td>
<td>London, SW1P 4QP</td>
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<td>ESSEX CO4 3SQ</td>
<td>Tel no. 020 7217 4260</td>
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<td><a href="mailto:CLC@essex.ac.uk">CLC@essex.ac.uk</a></td>
<td><a href="http://www.lgo.org.uk">www.lgo.org.uk</a></td>
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<tr>
<td>Tel: 01206 877 910</td>
<td>Local Parent Partnership</td>
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<td>Fax: 01206 877 963</td>
<td><a href="http://www.parentpartnership.org.uk">www.parentpartnership.org.uk</a></td>
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| First Tier Tribunal         |                                 |
| http://www.justice.gov.uk/tribunals/send/appeals |                                 |

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