



Department
for Education

Exclusion guidance 2017

Government consultation

Launch date: 14 March 2017

Respond by 25 April 2017

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Introduction

1. This consultation seeks views on revisions we are proposing to make to the statutory exclusion guidance. We have made changes in a small number of areas to provide greater clarity to head teachers, independent review panels and governing bodies on their responsibilities when considering exclusion decisions.
2. We have added two non-statutory annexes to the document, one for headteachers and the other for parents, to help them understand the exclusion process.
3. These amendments do not change the rights of, or requirements on, schools, local authorities, children or parents in relation to exclusion.

Who this is for

- Head teachers and governing bodies¹ of maintained schools, academies, free schools, studio schools, pupil referral units (PRUs), alternative provision (AP) academies and AP free schools.
- Local authorities
- Independent Review Panel (IRP) members.
- Clerks to IRPs.
- Parents/carers
- Organisations representing pupils with Special Educational Needs and disabilities and their parents/carers.

Issue date

4. The consultation was issued on 14 March 2017.

Enquiries

5. If your enquiry is related to the policy content of the consultation you can contact the team on the following e-mail: Exclusion.Guidance.consultation@education.gov.uk.
6. If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by e-mail: consultations.coordinator@education.gov.uk or via the [DfE Contact us page](#).

¹ The term 'governing body' includes the management committee of a PRU and the academy trust of an academy.

Additional copies

7. Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

8. The results of the consultation and the Department's response will be [published on GOV.UK](#) in summer 2017.

About this consultation

9. This consultation document seeks feedback on whether the clarifications proposed for the exclusion guidance 2017 are sufficient and clear to understand. We are suggesting revisions to the exclusion guidance to correct factual inaccuracies and to clarify areas that we are aware, through correspondence or practitioner feedback, are causing confusion in the system.

10. Provided for consideration alongside this document is the statutory exclusion guidance 2017 including the new annexes:

- The new non-statutory Annex B of the guidance: exclusion guide for head teachers.
- The new non-statutory Annex C of the guidance: information on exclusion for parents.

11. We would like to hear your views on how helpful the clarifications to the statutory guidance are and how useful the new statutory annexes will be.

Sending us your response

12. Please use the online system wherever possible.

13. If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a Word document version of the form and e-mail it or post it.

By e-mail

Exclusion.guidance.consultation@education.gov.uk

By post

Exclusion team, 2nd floor,
Re: Guidance consultation
Department for Education
Sanctuary Buildings
20 Great Smith Street
London SW1P 3BT

Deadline

14. The consultation closes on 25 April 2017.

Background

15. At the heart of this Government's commitment to delivering real social justice is the belief that every child deserves an excellent education, regardless of their background, and that schools should be safe, secure and calm environments that support their pupils to succeed. Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education, and it is important that head teachers have the knowledge and confidence to exclude pupils where it is warranted. It is equally important that the obligations on schools are clear and well understood, to ensure that any exclusion is lawful, reasonable and fair.

16. In 2012 a revised exclusion system came into effect to give head teachers confidence to exclude pupils where this was appropriate and for governing bodies to decide whether or not to reinstate the pupil. If a parent is unhappy with the decision taken by the governing body, they are able to ask for an Independent Review Panel to consider this decision. A panel may decide to uphold the governing body's decision, recommend that the governing body reconsider its decision or direct that it do so. Where the governing body is recommended or directed to reconsider its decision, it takes a new decision on its merits and may decide to uphold its previous decision not to reinstate the pupil. The 2012 exclusions guidance was issued to reflect the changes to the exclusion legislation.

17. In December 2014 the Department published a revised version which was subsequently withdrawn, so the 2012 guidance has been in force for some time.

Proposal and rationale

18. This statutory guidance has been updated in a small number of areas, to provide greater clarity to head teachers, governing bodies and independent review panels on their responsibilities in relation to exclusion decisions. The reasons for the changes we proposed are as detailed below.

19. In January 2015, the Department amended regulations to clarify that a governing body's duty to arrange education from the sixth day of a fixed-period exclusion is triggered by consecutive fixed-period exclusions totalling more than five days. The guidance has been updated to reflect this clarification. Apart from this amendment, the legislation governing the exclusion process and the policy intent remains unchanged from the existing (2012) version of the guidance.

20. The exclusion guidance has also been updated to reflect the changes brought in by the Children and Families Act 2014 regarding the education of pupils with Special Educational Needs and disability. This includes the introduction of Education, Health and Care (EHC) plans, which have replaced statements of special educational needs.

21. In addition, we have added two non-statutory annexes to the guidance:

- a. Annex B a non-statutory guide for head teachers:

We produced this guide in order to support head teachers through the exclusion process and ensure they feel confident in excluding when they deem it necessary. This guide suggests, at each step of the process,

questions head teachers should ask of themselves to feel assured that they have fulfilled their duties and responsibilities.

b. Annex C: non-statutory exclusion questions and answers for parents:

This guide is designed to ensure parents understand the steps of the process and both their responsibilities and points at which they may make their case or request a review.

22. We are not seeking views on the exclusion system as a whole –this revised guidance does not change the policy on exclusion. This consultation seeks views on the changes we have made to the guidance to clarify areas that we know, from practitioner and public feedback, have been causing confusion in the system.

Timing and implementation

23. The revised guidance will come into effect on 1 September 2017 and will be published in summer 2017 to give time to those involved in the exclusion process to familiarise themselves with the clarifications.

Consultation on statutory exclusion guidance

24. The statutory exclusion guidance is published by the Department for Education and provides a guide to the legislation that governs the exclusion of pupils from maintained schools, pupil referral units, academy schools (including free schools, studio schools and university technology colleges) and alternative provision academies (including alternative provision free schools) in England.

25. It also provides statutory guidance to which head teachers, governing bodies, local authorities, academy trusts, independent review panel members and Special Educational Needs experts must have regard, when carrying out their functions in relation to exclusions. Clerks to independent review panels must also be trained to know and understand this guidance.

26. The current version of the guidance came into force on September 2012 and can be downloaded at the following link:

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

Content of the guidance

27. We have made a small number of changes to the current (2012) guidance to make factual changes and to clarify areas that have caused confusion. We have made changes to clarify:

- that exclusions cannot be extended or converted;
- that consecutive fixed period exclusions are regarded as a cumulative period;
- what is meant by the term 'civil standard of proof';

- the head teacher’s duties regarding notifying the parents of an excluded pupil about an exclusion;
- the governing body’s responsibilities for an excluded pupil;
- the local authority’s responsibilities when exclusions take place;
- the governing body’s responsibilities when reviewing decisions;
- the local authority’s or academy trust’s responsibilities when setting up an independent review panel (IRP);
- the role of the Special Educational Needs (SEN) expert to the IRP;
- the IRP decision-making process;
- the notifications an IRP must make following its decision;
- the governing body’s duty to reconsider reinstating a pupil after a review; and
- some legal requirements which in the current guidance are not accurate reflections of the legislation.

28. We have also made a small number of drafting changes and minor clarifications.

Consultation questions

29. We are seeking views on the following questions:

- 1) We have attempted to clarify in paragraph 3 of the Guidance that exclusions cannot be extended or converted. Extending a fixed-period exclusion involves excluding the pupil for a further fixed-period exclusion on the expiry of the original term. The so-called conversion of a fixed-period exclusion into a permanent exclusion involves issuing a further, separate permanent exclusion. This clarification does not have any significant practical consequence on the process or accountability for exclusion decisions.

Is this clearly expressed?

- 2) In paragraphs 8, 65 and 137 we have expanded on what is meant by ‘civil standard of proof’. We have attempted to clarify that ‘on the balance of probabilities’ means it is more likely than not that a fact is true and that the decision-maker(s) should accept that something happened if it is more likely that it happened than that it did not happen. This will help those making decisions on exclusions understand how to establish the facts of the case.

Does this insertion make this standard clearer?

Does this insertion explain clearly what is meant by the ‘civil standard of proof’

3) In paragraphs 29 and 34 we have attempted to clarify head teachers' responsibilities regarding notifying parents of an exclusion. The clarifications relate to:

- a. providing information about when their child may not be out in public following an exclusion; and
- b. notifying parents when they issue a further exclusion.

Are these paragraphs clear?

4) In paragraphs 45 and 75-82 and in section 7, we have attempted to clarify the responsibilities of the governing body when a pupil is excluded. These clarifications relate to:

- a. the legislation issued in December 2014 regarding consecutive fixed-period exclusions and their implications regarding arranging alternative provision;
- b. the information the governing body must and should provide to parents when deciding not to reinstate their child;
- c. the governing body's duties over removing a permanently excluded child from roll and informing the local authority of this; and
- d. its responsibilities for marking the attendance register following an exclusion.

Are these paragraphs clear?

5) In paragraphs 47-48 and 181-189 we have attempted to clarify the role of the local authority when a pupil is excluded. We have attempted to make clearer:

- a. the local authority's legal duties in arranging alternative education for excluded pupils;
- b. the local authority's duty when a pupil with an Education, Health and Care (EHC) plan is excluded (this is simply an update to reflect that statements of special educational need are being phased out and replaced by education, health and care plans -the policy is unchanged); and
- c. its legal responsibilities regarding financial readjustments and payments related to an exclusion.

Are the responsibilities of the local authority clear?

6) In paragraphs 56-57, 172 and 176-180 we have attempted to clarify the role of the governing body in reviewing an exclusion decision. The clarifications relate to:

- a. its duty regarding reviewing exclusion decisions that take a pupil's number of days excluded to between 5 and 15 in one term;
- b. what it should do when an exclusion means a pupil would miss a public examination or national curriculum test; and
- c. how the governing body should approach reconsideration of its decision when recommended or directed to do so by an IRP.

Do these revisions improve clarity in these areas of the governing body's role?

- 7) In paragraph 93 we have attempted to make clear that it is a legal duty for the local authority and academy trust to make sure any independent review panel is accessible to all parties. Is this new addition clear?
- 8) In paragraphs 76d and 125-130 we have attempted to clarify the role of the Special Educational Needs (SEN) expert to an IRP. This includes attempting to clarify:
 - a. The role of the SEN expert at an IRP ; and
 - b. the experience and expertise the expert should have.

Do the revisions make these elements of the SEN expert role clear?

- 9) In paragraphs 142, 155, 157 and 158-159 we have attempted to clarify the responsibilities of the IRP in coming to a decision about an exclusion. This includes attempting to clarify:
 - a. the evidence the panel should consider;
 - b. what the panel should do if it is aware that the parents do not want their child to return to the excluding school;
 - c. what knowledge of the exclusion process is expected of the panel; and
 - d. what tests the panel should apply when making a decision on the exclusion.

Are these paragraphs clear?

- 10) In paragraphs 147, , 163, 170 and 151 we have attempted to clarify the notifications the IRP must make once it has reached a decision. This includes:
 - a. its duties and responsibilities in ordering financial payments;
 - b. what it must order the governing body to do following the IRP decision;
 - c. who it should notify of its decision; and

- d. what it should include in the notification.

Do these revisions make it clear what information the IRP notifications must include?

11) We have also corrected descriptions of legal requirements that were not clear enough in the previous version. The main corrections are:

- a. in paragraphs 60, 66 and 192 that the governing body should decide whether or not to *reinstate* the excluded pupil, not whether or not the headteacher's decision to exclude was correct;
- b. in paragraphs 138, 143 and 161 that the independent review panel should decide whether or not the governing body was right to not reinstate the pupil, not whether the headteacher was right to exclude the pupil;
- c. in paragraphs 149 and 156 that an independent review panel is not legally required to adjourn if unavailable members mean it does not have appropriate representation but that it is advised to do so, bearing in mind the circumstances and potential impact on those involved in the case;
- d. in paragraphs 151 and 174 that an independent review panel is not legally required to direct the governing body to amend a reinstated pupil's record to note that the twice-excluded rule should no longer apply to the pupil. We have, however, advised panels to do so in the statutory guidance; and
- e. in paragraph 176 that when an independent review panel directs a governing body to reconsider they must look afresh at the question of reinstating the pupil in light of the findings of the IRP.

Do you agree that the proposed guidance accurately and clearly states the legal position?

12) We have produced an additional, non-statutory document for head teachers (Annex B). Is this document helpful for head teachers undertaking an exclusion? Are there any points that would benefit from further clarification?

13) We have included an additional non-statutory document for parents (Annex C). Is this document helpful for parents whose child has been excluded? Are there any points that would benefit from further clarification?

14) Do you have any other views about the clarity of this guidance?



Department
for Education

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