

## Education (Pupil Information) England Regulations (2005)

These Regulations oblige the Governing Body of the school to ensure that the school maintains curriculum recording in respect of each pupil which is updated annually. This is a formal record of a pupil's academic achievements, other skills and abilities and their progress in school including reports. This record has to be sent to a new school when a pupil is under consideration for admission to that school.

Every parent is entitled to receive an annual report in respect of their children and to make arrangements to discuss the content of the report with the child's teacher. "Parent" is defined in s576 of the Education Act 1996 as someone with parental responsibility or who has care of the child. It follows that absent parents with parental responsibility have the right to receive reports. When the child reaches 18 years of age and is not proposing to leave school by the end of the school year to which the report relates, the Head Teacher should give the report to the pupil and to the parent if the Head Teacher considers there to be special circumstances which make it appropriate. In respect of any pupil who has ceased to be of compulsory school age and is proposing to leave or has left the school the Head Teacher should give the school leavers report to the pupil concerned.

Educational records are defined in Regulation 3 of the Regulations and includes the curricular record, any statement of special educational needs and any personal education plan. Educational records do not include information which is processed for the teacher's only use such as lesson plans. Regulation 5 of the Regulations provides that a Governing Body must make a pupil's education record available for inspection or provide a copy within 15 school days of parents' written requests. The time for response includes any time taken to seek third party consent. There is no provision to make a charge for this inspection and the right is available to a parent within the meaning of s576 as outlined above.

The Education (Pupil Information) England Regulations (2005) do not apply to non-maintained schools such as academies. Parents of children at non-maintained schools wishing to access information must therefore make a request for information under the Data Protection Act or refer to annual written reports from that school made under the 2010 Education (Independent School Standards) (England) Regulations or information on the school's website.



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| Article no: 1

| Pupils and parents

| Issue Date: January 2014

## Limiting parental access to school

School land is not public land and so the body or organisation which owns the land can decide who has access to their grounds. Parents, however, have an implied licence or permission to have reasonable access to their child's school. This means that compared to any other member of the public, a higher standard is required before the land owning body or organisation may limit access to the site. Inevitably, this is a contentious area so all schools should have a detailed policy to give clarity.

In particular, it is important to keep a good record of events which have led up to the decision to limit access.

Commonly, a decision by the land owning body or organisation to limit parental access to school premises will be taken to prevent risk of harm to children (which includes emotional harm as well as Court or police action) or risk of harm to staff. Depending on the seriousness of any incident a gradual approach can be taken with written warnings, including a copy of the policy, sent to the parent in question. This course of action, especially a decision to bar a parent, should be taken in consultation with the land owning body or organisation. A parent should have the right to appeal. If the problem is not resolved then section 547 Education Act 1996, as amended, gives the power to declare that the person in question is not lawfully allowed on premises (i.e. barred) and if such person causes 'nuisance or disturbance' enables the person to be prosecuted.

Throughout the process consideration should be given to the child of the troublesome parent, clearly this will be a difficult situation for them. In extreme circumstances the actions of the parent may give cause for concern about the welfare of the child and a referral to social care should be considered.



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## Regulating pupil behaviour out of school

Schools have statutory power to discipline pupils for actions taken when they are outside of school “to such an extent as is reasonable” under s90 Education and Inspections Act 2006. This is, unfortunately, a vague provision and consequently, our advice is that a school should consider how it will implement that power through a formal policy, which will allow consideration of all the issues, in plain English so that all staff and pupils understand the school’s position. In our experience, factors to consider include whether the pupil is wearing uniform; whether the activity is school related (for example an arranged fight between pupils); and the proximity of an incident to the school. The power under s90 is also useful in dealing with internet bullying or the misuse of social media and the policy can be extended to cover those instances.

Force and restraint may only be used as a last resort but is allowed by staff members if the force used is “reasonable” under s93 Education and Inspections Act 2006. The law allows force to be used in only these situations to prevent a pupil committing a crime; causing injury (including to themselves) or damage to property; or disrupting “good order and discipline”. Physical force can only be used within the school premises or if the pupil is under the lawful control of a member of staff, for example a school trip. The Governing Body must ensure that any significant use of force is recorded and that a policy is created to formalise this. Extra care must be used if the pupil has special educational needs or any factor which may make them more vulnerable and this should be specifically addressed within the policy.

Reasonable force can be used by a member of staff authorised by the head teacher to search pupils for prohibited items (this may not include all items banned by the school). There are strict rules regulating a search using force including specifying that the gender of the teacher must be the same as the pupil and there must be a further member of staff present. If a pupil’s property (including lockers) is searched without consent, they must be present.



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## Pupil records and information

Individuals may access pupil information as follows:

1. Education (Pupil Information) England (Regulations 2005) gives parents of pupils at maintained schools the right to access their children's "education records" and sets out when such a request may be refused;
2. The Data Protection Act 1998 which applies to all schools as data controllers holding personal data about pupils; and
3. The Freedom of Information Act 2000 which applies to all schools which are public bodies and permits public access to any information held by those bodies subject to certain exemptions.

Under the Education (Pupil Information) England (Regulations 2005) schools may refuse to disclose information to a parent, whereas under the Data Protection Act the school would have no right to disclose the information to the pupil or the pupil would not be entitled to see it.

The Data Protection (Subject Access Modification) (Education) Order 2000 prevents disclosure of:

- personal data processed by a court;
- personal data where the disclosure would be likely to cause serious harm to the physical or mental health or condition of the data subject or other person; and
- in certain circumstances, information as to whether the data subject is or has been subject of or maybe at risk of child abuse, the definition of which includes physical injury and physical and emotional neglect, ill treatment and sexual abuse of a child.

Where the information is about a third party, e.g. a letter relating to a different person from the applicant or the applicant's child this is not the personal data of the applicant if it does not identify or relate to them in some way. It should be edited out/blanked out from any disclosed documents. There may also be information that originates from a third party, e.g. letters from doctors or a relative. In this case consent should be sought from the third party before its disclosure. If consent is refused the information should not be disclosed unless it is reasonable in all the circumstances to do so. You should seek legal assistance before disclosure. A request from members of the public such as parents or journalists about another individual should be considered as a request under the Freedom of Information Act 2000. Personal data is usually exempt from disclosure under this Act.



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## Challenges against exclusions

One of the most common factors in challenges arising from exclusion cases is whether the school and Governing Body have followed the correct procedure – it is very important that everyone involved knows the correct procedure, especially the exclusion committee of the governors.

Case law about the standard of the decision making in this area has reached Europe but is not settled, there is an argument over whether Article 6 (Right to a Fair Trial) of the European Convention of Human Rights applies to educational disputes. This is an area which is subject to a high level of scrutiny and any decision has to be seen to be fair. Records should be kept.

A parent has 15 school days to challenge the decision as, since September 2012, an Independent Review Panel can only overturn the governors' decision on Judicial Review principles, so if it was unlawful, irrational or procedurally unfair. They cannot reinstate a pupil but they can ask the Governing Body to retake the decision.

Many challenges are based around claims of discrimination (a parent has 6 months to lodge such a claim). It is important that the decision has taken into account any SEN or protected characteristic (such as race) even if it has not been raised as a factor by the pupil or parent.

Fixed term exclusions must not be used in place of a permanent exclusion. Fixed term exclusions can total a maximum of 45 school days for one pupil in one school year.

The excluded pupil must be provided with school work to complete not later than 6 school days after exclusion.



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