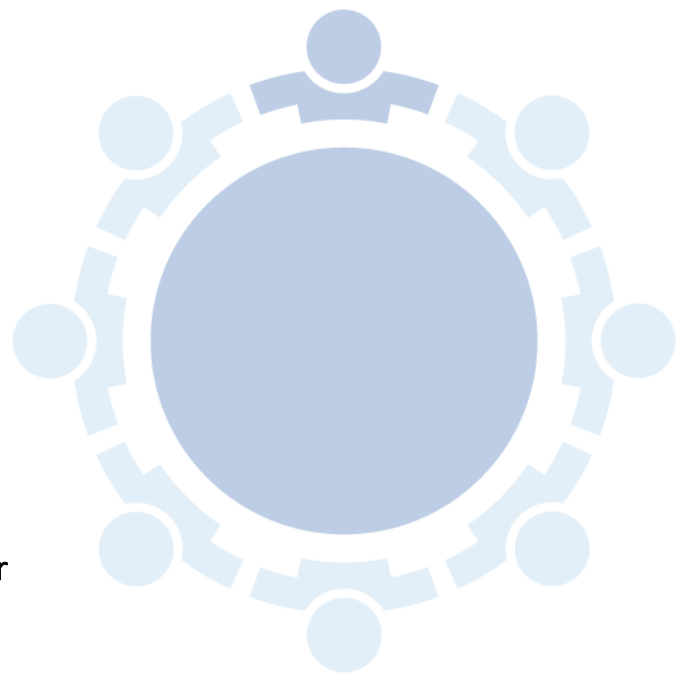


Exclusions

A guide for governing boards



Author: Dr Samuel Tranter, Advice Officer

Update November 2019

National Governance Association

The National Governance Association (NGA) is the membership organisation for governors, trustees and clerks of state schools in England.

We are an independent, not-for-profit charity that aims to improve the educational standards and wellbeing of young people by increasing the effectiveness of governing boards and promoting high standards. We are expert leaders in school governance, providing information, advice and guidance, professional development and e-learning.

We represent the views of governors, trustees and clerks at a national level and work closely with, and lobby, UK government and educational bodies.

Contents

	Page
Introduction	3
Why excluding a pupil should always be a last resort	3
How governing boards can ensure that excluding a pupil is always a last resort	4
The types of formal exclusion	4
The stages in the exclusion process	4
How should governors and trustees approach reviewing exclusions	5

Appendices

Appendix A – the four stages of the exclusion process

Appendix B - exclusions action matrix

Appendix C - example statements for use in the decision notification letter

Introduction

While the management of behaviour in schools is an operational role for the senior leadership team, governing boards have a statutory duty to consider certain instances of pupil exclusions and decide whether the decision should be upheld or the pupil reinstated. Considering whether or not to uphold the headteacher's decision to exclude is one of the most challenging and important roles that school governors and trustees have to fulfil, because it has significant implications for a child's education and potentially for the governing board's relationship with the headteacher and other school staff.

This guidance explains the legal obligations and limitations that surround exclusion decisions. It also provides practical advice on how to prepare and the things to bear in mind if you are called on to consider an exclusion decision. Particular emphasis in this guidance is placed upon permanent exclusions, as governing boards are not required to review the majority of fixed-period exclusions.

This guidance should be read alongside the Department for Education (DfE) [statutory guidance for those with legal responsibilities in relation to exclusion](#), as well as additional [guidance on behaviour and discipline](#).

Despite it not being a legal requirement, NGA's view is that governors and trustees on exclusion review panels should have received appropriate training regarding the legislation surrounding school exclusions and appropriate conduct at reviews. Exclusion will have a profound effect upon the young person involved and, therefore, it is important that those sitting on panels take their responsibility seriously. NGA's view is that the governing board should ensure a pool of potential panel members receives appropriate training in advance. **NGA provides [face to face training for governors and trustees who are likely to be involved in reviewing decisions as part of a panel](#), and offers [e-learning](#) that covers the governing board's role in exclusions.**

It is worth noting that NGA has previously suggested that the stage in the exclusion process that involves school governing boards may not be serving a useful purpose, and that the process should include an appeal stage entirely independent of the institution that made the decision to exclude the pupil. Whilst there is no indication that any change to the process is being considered, should there be an opportunity to propose an alternative system then NGA will do this in consultation with our members. NGA values the voices of all and would also want to make sure the voices of parents were heard in any subsequent discussion.

Why excluding a pupil should always be a last resort

There is compelling evidence that shows the impact being excluded from school has on a child or young person, particularly those who are vulnerable, and why excluding pupils should always be viewed by schools as a last resort.

Analysis conducted as part of the [Timpson review](#) shows that 78% of permanent exclusions issued in the period under review were to pupils who either had SEND, were classified as in need or were eligible for free school meals. A [report](#) by the All-Party Parliamentary Group on knife crime published in October 2019 also revealed a "disturbing correlation" between children excluded from school and those exploited by violent gangs. The report urged mainstream schools to be more accountable for the children they exclude, adding that "too many children are being socially excluded and marked as failures, with tragic consequences.

How governing boards can ensure that excluding a pupil will always be a last resort

The governing board has a significant, strategic role in ensuring that the boundaries of acceptable behaviour are clear and that pupils and staff are supported to model positive behaviour. By carrying out this role effectively, boards are ensuring that the decision to exclude a pupil is always a last resort.

Maintained school governing boards must make sure that their school has policies designed to promote good behaviour and discipline, and prevent all forms of bullying among pupils. They must also formulate, and periodically review, a written statement of principles to help the headteacher determine the measures that make up the policy.

The trustees of academies must ensure that a written policy, which promotes good behaviour among pupils (and defines the sanctions to be adopted where pupils misbehave) is drawn up and implemented. Trustees must also ensure that bullying at the school is prevented so far as is reasonably practicable, by drawing up and implementing an effective anti-bullying strategy.

When overseeing the implementation at school level of the policies and systems designed to promote positive behaviour, the governing board should always be mindful of the impact exclusion has on both the pupil and the school.

The types of formal exclusion

Pupils cannot be 'removed' from school for any other reason than a formal exclusion – i.e. they cannot be asked to 'stay away' or work at home, or be sent home for the remainder of the day to 'cool off', even if their parents agree to it. Such practice would be classed as an illegal exclusion.

There are two types of formal exclusions:

- **A Fixed-period exclusion** – A pupil can be excluded for a fixed-period of one or more school days. However, they cannot be excluded for more than 45 days cumulatively in a school year. In other words, a pupil can receive multiple fixed-period exclusions throughout the course of the school year, but these cannot exceed a total of 45 days in a school year unless it is a permanent exclusion.
- **A Permanent exclusion** – When a pupil is removed from the register at the school, with the Local Authority (LA) having to find alternative provision for them. The governing board and the LA must be informed by the headteacher immediately of any permanent exclusion.

The stages in the exclusion process

The four key stages of the exclusion process are referred to in Appendix A of this guidance. An exclusions actions matrix is included as Appendix B. For an additional summary of the governing board's duties to review the headteacher's exclusion decision, see Annex A of the [statutory guidance](#) on school exclusion.

How should governors and trustees approach reviewing exclusions?

Part 2 (stage 2) of Appendix A to this guidance provides a detailed overview of the governing board review stage of the process.

Being part of a panel reviewing a headteacher's decision to exclude can be challenging and even emotionally draining. The issues involved can arouse strong feelings and be upsetting to everyone involved.

When placed in this situation it is important to act sensitively towards those affected.

At the same time, governors and trustees involved should approach reviewing exclusions with a focus on whether the decision was lawful, reasonable and fair. They should not allow feelings of loyalty towards the school, the pupils involved or their families to influence their judgement. It is also essential to ensure that panel members do not carry any bias. What is meant by this is that the members of the panel should have no personal interest in the case, and should have minimal knowledge of the situation (in other words, they may know a child has been excluded but should not know the details), so that they are able to review the situation objectively.

The following two tests of the headteacher's decision to exclude are referred to in the [statutory guidance](#):

1. Has the headteacher demonstrated that their decision to exclude the pupil is in response to a serious breach, or persistent breaches, of the school's behaviour policy?
2. Has the headteacher demonstrated that allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school?

Both tests must be met in order for a permanent exclusion to be legal and both tests should be difficult to meet.

A further test to apply is what external advice (e.g. from the LA exclusions team) has been sought on the appropriateness of the exclusion. Does the advice support the decision and view it to be lawful and reasonable in the circumstances?

Appendix A: The four stages of the exclusions process

Stage 1: Headteacher makes either a permanent or fixed-period exclusion

Only the headteacher has the power to exclude a pupil, either permanently or for a fixed-period. This includes where an individual is acting headteacher (e.g. the deputy in the headteacher's absence).

Whenever a headteacher excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reason(s) for it, alerting them to their right to make representations about the exclusion to the governing board, and outline how any representations should be made.

There are specific rules for what action governing boards need to take in relation to fixed-period and permanent exclusions. These are as follows:

- **Fixed-period exclusion** - The governing board and the LA must be informed where the exclusion would amount to the pupil being excluded for six or more school days in a term, or where it would result in the pupil missing a public examination or national curriculum test. Otherwise, the headteacher need only notify the governing board and the LA once a term of any fixed-period exclusions that have been made.

The governing board is responsible for ensuring suitable alternative full-time education for the excluded pupil from the sixth day of their exclusion (where the exclusion is for more than five days). However, the governing board should make efforts to ensure educational provision as soon as is practical in the interests of the educational welfare of the pupil, particularly in the case of looked-after children.

- **Permanent exclusion** - The governing board and the LA (along with the home authority, where applicable) must be informed by the headteacher immediately of any permanent exclusion. The pupil's home authority is responsible for ensuring suitable alternative full-time education for the excluded pupil from no later than the sixth day of their exclusion.

Stage 2: Panel appointed by the governing board reviews the headteacher's decision

Whenever parents make representations about any exclusions that take place, the governing board is obliged to consider them.

For a fixed-period exclusion that brings a pupil's total excluded days to more than five but less than 15 for the term, the governing board must consider reinstatement within 50 school days if parents request this. In the absence of any representations from the parents, or where the exclusion would not take the pupil's total days of exclusion above five for the term (even where representations are made), the governing board cannot direct reinstatement.

Permanent exclusions and fixed-period exclusions that would mean that the pupil had been excluded for more than 15 school days in a single term, must be reviewed within 15 days of the governing board being notified, regardless of whether the parents make representations.

Where a pupil's fixed-period exclusion would cause them to miss a public examination, the governing board must make reasonable efforts to meet and review the decision before the date of the exam; otherwise, they must review such a decision within 15 days.

In maintained schools, the governing board may/should delegate this duty to a designated panel (sub-committee) consisting of at least three governors. In academies, the governing board may delegate to a smaller panel if the trust's articles of association allow them to do so (they usually do). When delegating this duty it is important to consider which governors/trustees have the best understanding of the exclusions process, the school's behaviour policy and/or have received appropriate training.

The mechanism for reviewing the decision is a review meeting.

The purpose of the review meeting is for the panel to determine whether the headteacher's decision to exclude was lawful, reasonable, and procedurally fair, particularly with respect to the identification of any SEND that the pupil may potentially have, and whether this is likely to have influenced the circumstances surrounding the pupil's exclusion.

It is crucial that the review meeting is clerked, ideally by the clerk to the governing board. The clerk has an important role in the review meeting that includes:

- acting as contact point for all parties;
- arranging the meeting;
- collating and distributing any relevant papers in advance of the meeting, and
- providing procedural advice during the meeting

The chair of the panel also has a role in ensuring that the review meeting is conducted in the correct procedural manner. They may also be required to mediate between the parties involved.

Preparing for the review meeting

The clerk must invite parents and the headteacher to the review meeting. Where appropriate, the pupil in question may also be invited to attend as a witness or to speak on their own behalf. In such cases, the governing board should first seek parental consent. Neither the parents nor the pupil have to attend, though if they wish to make representations it would be more appropriate if they were there in order to put forward their views. Maintained schools and Pupil Referral Units must also invite a representative of the LA.

The parents and pupil are allowed to be accompanied by a friend or representative at the meetings.

The panel should request the written evidence and information relating to the exclusion in advance of the review meeting. Where possible, the clerk should circulate the written evidence and information relating to the exclusion to all parties, including the panel, at least five days in advance of the review meeting. This may include, but is not limited to, the following:

- a list of all those who will be present at the review meeting
- the school's exclusion policy
- the school's behaviour policy
- a report summarising the incidents that led to this meeting
- the pupil's behaviour record
- the pupils Education, Health and Care plan (EHCP) (where relevant)
- the school's notes on the pupil's SEND (where relevant)
- any statements from the witnesses
- professional opinions from relevant experts – for example, educational psychologists, social workers, teachers or teaching assistants who have worked with the pupil
- attendance data (where relevant)
- evidence of support and interventions attempted before now

The panel should consider what reasonable adjustments could be made to help parties attend and contribute to the meeting, for example parents with mobility or communication disabilities. Specific attention should also be given to encouraging the excluded pupil to attend and speak on their own behalf. This could involve allowing the pupil to bring a friend, or, if their attendance is impossible, suggesting an alternative means of feeding their views into the process.

The exclusion review should not be discussed outside of the meeting.

Conducting the review meeting

NGA recommends that the following process is used to conduct the review meeting.

The clerk should take minutes throughout the meeting, which clearly state the evidence and information considered by the panel. The minutes should be made available to all parties on request and may be referred to by an independent panel called upon to review the decision of the governing board panel. Beyond this, minutes will remain confidential in accordance with data protection principles.

Arrival and introductions

The chair of the Panel welcomes all parties and outlines the stages of the meeting and the expectations of conduct.

The panel considers the information and evidence relating to the decision to exclude

The purpose of this stage is to allow the panel to establish the facts and circumstances of the decision to exclude, as well as the circumstances of the excluded pupil. The [statutory guidance](#) states that when establishing the facts 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'.

Those attending the review meeting to make representations should, in turn, be invited by the chair of the panel to speak and have their views properly heard. Sufficient time should be given to allow for this to happen and for the panel to ask questions, clarify points, etc. However, it is reasonable for the chair to intervene and move the meeting on if they think that it is necessary and in the interests of all concerned.

This process should be followed for any party invited to the meeting to give evidence relating to the pupil concerned and the decision to exclude.

The questions the panel ask of those attending the review meeting will of course be based on specifics. In broad terms, the panel may wish to ask the following questions:

- In what way did the excluded pupil seriously or persistently breach the school's behaviour policy?
- What evidence is there to support this?
- What evidence is there of the school intervening and supporting the excluded pupil to prevent serious and or persistent breaches of the school's behaviour policy?
- In what way were the specific needs and circumstances of the pupil taken into account before the decision was made to exclude them?
- What advice has been sought on the appropriateness of the exclusion, and does the advice support the decision and view it to be lawful and reasonable in the circumstances?
- What is the likely impact on the pupil of the decision to exclude them?

- How would allowing the excluded pupil to remain in school seriously harm the education and/or welfare of the excluded pupil and/or others in the school?
- The panel should consider representations and evidence given at the review meeting alongside the written evidence and information received in advance.

The panel should consider representations and evidence given at the review meeting alongside the written evidence and information received in advance.

Final statements and concluding the meeting

Prior to concluding the review meeting it is appropriate for the chair to invite those present to make representations to give a brief final statement. This may also extend to those attending the meeting to give evidence if the panel deems it to be necessary.

The chair concludes the meeting by thanking all parties for their attendance and requesting that they withdraw to allow the panel to consider its decision. The clerk may stay to help the governing board by reference to their notes of the meeting and with the wording of the decision letter.

The decision stage

The panel must decide to uphold the exclusion decision or to reinstate the pupil either immediately or on a specific date. In some cases a decision to reinstate will make no practical difference. For example, the pupil may already have returned to school following a short fixed-period exclusion. However, the panel should still consider, on the basis of the evidence, whether or not it would have upheld the decision to exclude.

On reaching a decision the [statutory guidance](#) says that the governing board/panel should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the head teacher's legal duties and any evidence that was presented to the governing board/panel in relation to the decision to exclude.

Enacting the decision

The panel must inform the headteacher, the LA (along with the pupil's home authority, where applicable) and the parents of their decision and the justification for it in writing immediately. If the panel uphold the headteacher's decision to permanently exclude, it must provide the parents with the following information:

- The reason for the panel's decision.
- The parent's right to appeal to an independent review panel (IRP) within 15 school days of receipt of the panel's decision.
- Where and to whom this appeal should be submitted (usually the clerk of the IRP).
- That their application for a review should set out the grounds on which it is being made.
- That the parents have the right to ask a SEND expert to attend the independent review (regardless of whether the excluded pupil has recognised SEND) along with an explanation of what the SEND expert does.
- That they may appoint someone to make representations on their behalf, at their own expense.
- What to do if the parents think that there has been discrimination in the decision (i.e. that they may make a claim to the First-Tier Tribunal under the Equality Act 2010 in cases of disability discrimination, and for other types of discrimination that they can make a claim to the County

Court), and that such action must be taken within six months of the date that the pupil was excluded.

- Sources of further information (these are listed on pages 23-24 of the [statutory guidance](#).)

Example statements that can be adapted for use in the written notification of the decision are included as Appendix C to this guidance.

A note must be made on the pupil's educational record, whatever the decision, and copies of relevant papers should be kept for at least six months in case a discrimination claim is made.

If the parents fail to apply for an IRP within 15 school days of them being notified of the governing board's decision, or if the parents state in writing that they will not pursue a review, then the governing board is responsible for ensuring that the name of the permanently excluded pupil is removed from the school admissions register. Where a pupil's name is deleted from the register because of a permanent exclusion, a return must be made to the LA as soon as the grounds for deletion are met and no later than the deletion of the pupil's name.

Stage 3: Independent Review Panel review the governing board's decision

Parents can apply for an IRP hearing to review the decision of a governing board not to reinstate a permanently excluded pupil, providing they do so within the legal timeframe. Therefore, an IRP must be convened if the parents apply for an independent review within 15 school days of having been informed of the governing board's decision, or within 15 school days of the final determination of a claim made under the Equality Act 2010 that the exclusion arose from unlawful discrimination.

In maintained schools it is the responsibility of the LA to arrange an IRP and the governing board remains largely uninvolved in the process. In academies it is the responsibility of the academy trust, which may choose to delegate this to a service provider.

The procedures an IRP must follow, the duties of IRP members, the clerk and the SEND expert are covered in sections 8 and 9 of the [statutory guidance](#) relating to exclusions.

The role of the IRP is to review the governing board's decision not to reinstate a permanently excluded pupil. In doing so, the panel will consider the interests and circumstances of the excluded pupil, making its decision using the civil standard of proof (i.e. based on the balance of probabilities). It must also decide whether the governing board's decision was flawed owing to illegality, irrationality or procedural impropriety. Following its review, the panel has three options:

- uphold the decision of the governing board;
- recommend that the governing board reconsiders reinstatement; or
- quash the decision and direct the governing board to reconsider reinstatement.

To support this process, the governor who chaired the review panel will be expected to attend the IRP and give evidence about how they arrived at their decision. The headteacher will also be asked to attend, as will the parents. The clerk will be required to identify if the excluded pupil is attending.

Stage 4: Governing board revisit their decision

If, as a result of the IRP, the governing board is in receipt of a direction or a recommendation to review its original decision, it must reconsider that decision within 10 school days of receiving notice to do so.

Regardless of whether it is a direction or recommendation of the IRP, it is important that the governing board reconsiders reinstatement conscientiously, carefully and by applying a thorough process.

In reconsidering the original decision, the governing board can appoint whichever governors it sees fit to make the decision. However, it is strongly recommended that the governors/trustees that served on the panel that made the original decision are not asked to reconsider it.

The governors/trustees involved in reconsidering the decision of the exclusion review panel are not required to receive representations or hear evidence from relevant parties. However, it is important that any new information and evidence that is relevant to the exclusion is considered at the meeting convened to reconsider the decision of the exclusion review panel.

It is also important that clear minutes are taken of the meeting convened to reconsider the decision of the exclusion review panel.

If, in the case of a governing board receiving a direction to reconsider the exclusion decision, it decides not to offer to reinstate the pupil, £4000 may be removed from a maintained school's budget. In the case of an academy, the trust may be required to make a direct payment of £4000 to the LA. Whatever the decision, the governing board must give written notification to the parents, the headteacher, the LA and, where relevant, the home authority immediately.

If the governing board decides to reinstate the pupil, it will need to determine the date of the reinstatement and notify the headteacher and the parents immediately. A pupil may not wish to return to the school, but, either way, the decision should be noted on their educational record. As in stage two, a pupil's intention (or otherwise) to return to the school on reinstatement should not affect the panel's decision to reinstate. It should be based purely upon whether, in light of the IRP's recommendations, the school would have made the same decision.

N.B. The governing board is required to give the Secretary of State (and, in the case of maintained schools and PRUs, the LA) information about any exclusions that have taken place within the last 12 months when given 14 days' notice to do so.

Appendix B: Exclusions actions matrix

Length of the exclusion	Will the exclusion amount to more than 15 days in a single term?	Who to inform?	Is an automatic governing board (GB) review required?	Can the parents make representations to the GB	Time limit for considering representations	GB actions and limitations
Up to and including five days.	No	Parent – immediately GB & LA – once a term	No	Yes, written. The GB is not required to meet with the parents.	No specified time limit	GB must consider parents' representations. They cannot overturn the HT's decision or remove the exclusion from the behavior record, but can place a note on the student's record.
	Yes		Yes	Yes, either written, or at a meeting of the GB to review the exclusion decision.	15 days	
More than 5 days, up to and including 15 days	No	The parents, the GB and the LA (plus home authority where relevant) immediately.	No	Yes. GB must meet with parents to consider representations if parents request it	50 days	GB can determine whether the HT's decision was justified, lawful and procedurally correct. Can reinstate pupil immediately or on a given date. While the GB can note their decision on the pupil's record, they cannot remove the original exclusion decision.
	Yes		Yes	Yes, either written, or at a meeting of the GB to review the exclusion decision.	15 days	
More than 15 days	Yes		Yes		15 days	
	N/A		Yes		15 days	
Permanent	N/A		Yes		15 days	
	N/A		Yes	15 – GB must endeavor to meet before the date of the examination.		

Appendix C: Example statements for use in the decision notification letter

Upholding the headteacher's decision

1. Having considered the evidence presented and representations made, the panel has decided to uphold the decision of the headteacher to permanently exclude <student's name> from <name of school> for the following reasons:
 - <list reasons>
2. Having thoroughly deliberated on all evidence made available to the panel, governors/trustees have decided to uphold the headteacher's decision to permanently exclude <student's name> on the grounds of <insert justification here - this should be succinct and straightforward>.
3. It is with regret that the panel has decided to uphold the permanent exclusion of <student's name> on the grounds of <succinct justification for exclusion>.

<Student's name>'s behavior has consistently fallen significantly below the level required of pupils at the school and we are concerned about the adverse impact of <student's name> behavior on the wellbeing of staff and other students.

4. Upon consideration of the evidence and representations made to the panel, we unanimously agree that the school has done everything within its power to support <student's name>, putting in place extensive and personalised support. However, <name> has continued to behave in an inappropriate manner, affecting both the education and safety of <himself / herself> and other students, and for this reason the panel has decided to uphold the headteacher's decision to permanently exclude <name> from the school.
5. The panel has decided to uphold the headteacher's decision to permanently exclude <pupil's name>.

The comprehensive and personalised support provided to <student's name> by the school and a variety of external agencies has not resulted in the improvement required and <student's name>'s behavior has continued to deteriorate further.

Having considered the evidence made available, it is with regret the panel has come to the conclusion that the school has tried everything within its power to meet <student's name>'s needs and in light of their continued poor behavior the panel has no alternative other than to permanently exclude.

Not upholding the headteacher's decision

After due consideration of all available evidence and representations made to the panel, we have decided not to uphold the headteacher's decision to permanently exclude <student's name>. As such, <student's name> will be allowed to return to the school on <date> at <time>.