



BACME Exclusion Guidance

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BACME Exclusion Guidance 2017

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1. Introduction

1.1 The 'guide to the law' sections in this guidance should not be used as a substitute for legislation and legal advice.

1.2 The document also provides statutory guidance to which head teachers, governing boards, local authorities, academy trusts, independent review panel members and special educational needs (SEN) 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.

1.3 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.

1.4 Where relevant, this document refers to other guidance in areas such as behaviour, SEN, and equality, but it is not intended to provide detailed guidance on these issues.

1.5 Exclusion from school should be used as a last resort in response to serious or persistent breaches of a school's behaviour policy and when allowing the pupil to remain in school would seriously harm the education or welfare of the pupil and others in the school. Other than in the case of a serious one-off offence (such as serious actual or threatened violence, sexual abuse or assault, supplying an illegal drug or carrying an offensive weapon) exclusion should only be used when other approaches have been unsuccessful.

1.6 If a pupil is deemed to be at risk of exclusion it would be considered appropriate to have a Pastoral Support Programme and/or an Early Help Assessment to enable a range of strategies and support to be implemented.

1.7 Schools should, as far as possible, avoid permanently excluding any pupil with a statement of SEN or any pupil who is a looked after child.

2. Head Teacher's Checklist

2.1 Any decision to exclude a pupil must be:

- Lawful;
- Reasonable; and
- Fair

2.2 In making a decision to exclude a pupil, the head teacher must be able to demonstrate that the exclusion has been carefully considered and is being used as a last resort. The checklist below is designed to assist head teachers in these deliberations.

2.3

The circumstances of the case	Yes	No
Has there been a serious breach or breaches of the school behaviour policy?		
Does the pupil's presence seriously harm or threaten to harm the education/welfare of pupils / others?		
Is exclusion a last resort following a wide range of other strategies that have been unsuccessful? or Is this a serious 'one off' offence?		
Is exclusion the appropriate response? Factors to consider: <ul style="list-style-type: none"> • Has a thorough investigation been carried out? • Has the pupil's version of events been sought / encouraged / recorded? • Has the evidence been considered in the light of school policies and possible discrimination? • Are there any mitigating circumstances or any provocation which may be relevant (bullying, harassment etc.)? 		
Has a pastoral support programme been used?		
Is this pupil at school action or school action plus? and if so; Has the possibility of additional support from the LA been explored?		
Have alternatives to exclusion been considered (e.g. restorative approach, mediation, internal exclusion, Managed Move)?		
Standard of proof – "on the balance of probabilities" did the pupil do what he/she is alleged to have done?		
Special considerations	Yes	No
SEN Does this pupil have an Education, Health and Care Plan? Has the Disability Enablement Service been contacted? Has an emergency review been arranged?		
LAC Is this pupil looked after? Has the virtual school for children in care been contacted?		
SAFEGUARDING Is this pupil subject to a child protection or a child in need plan? Is there an Early Help Assessment for this pupil? What other agencies/services are involved?		

The circumstances of the case	Yes	No
Have issues of SEN or disability been taken into account and reasonable adjustments put in place?		

3. Notification of Exclusions

3.1 When a head teacher has decided to exclude a pupil he/she must:

- Immediately inform the parent(s) by telephone;
- Draft the appropriate letter (see model letters in appendices)
- Ensure that this letter is sent by first class post to arrive the following day or is hand delivered;
- Ensure that the letter contains the following information:
 - the reasons for the exclusion;
 - the period of fixed term exclusion or, for a permanent exclusion, the fact that it is permanent;
 - parents' right to make representation about the exclusion to the governing body (in line with the requirements set out in paragraphs 50 to 57 of the DFE guidance) and how the pupil may be involved in this;
 - how any representation should be made; and
 - when there is a legal requirement for the governing body to consider the exclusion, that the parents have a right to attend a meeting, be represented at this meeting (at their own expense) and to bring a friend.

3.2 The head teacher has a duty to inform the governing body and the LA of certain types of exclusion:

- A permanent exclusion;
- A fixed term exclusion where the head teacher has indicated to the parent that following further investigation it may be made permanent;
- exclusions which would result in the pupil being excluded for more than five days (or more than ten lunchtimes) in a term; and exclusions which would result in the pupil missing a public examination or national curriculum test.

3.3 For all other exclusions the head teacher must notify the LA and governing body once a term. However, as best practice, head teachers should ensure an EX1 notification is completed after each exclusion and forwarded to BACME-Referral@walthamforest.gov.uk so that the LA database can be kept up to date.

3.4 For a permanent exclusion, if the pupil lives outside the LA in which the school is located, the head teacher must also advise the pupil's 'home authority' of the exclusion without delay.

4. Unofficial / Illegal Exclusions

4.1 The procedures described above and in the DFE guidance must always be applied when a pupil is excluded. Sending a pupil home informally for a “cooling-off period” or asking parents to take a pupil home to avoid an exclusion are illegal acts which could be subject to challenge. This also applies to lunchtimes; if a pupil is asked by the school to go home at lunchtimes this must also be treated as a half-day exclusion for each lunchtime.

4.2 At no time should a school encourage a parent to off-roll their child to electively home educate in order to avoid a permanent exclusion. Each year a significant number of children are removed from the roll of schools under the guise of elective home education (EHE). In many cases, these children have significant behavioural and/or emotional needs and parents are not always able to provide for them appropriately. Such children will either not have access to the provision that they need or will transfer to a new school without appropriate support thereby placing additional pressures on both schools and families. Schools should, therefore, not promote the use of EHE as a means to remove a child with challenging behaviour or poor attendance from their roll.

5. Procedures following Exclusion

5.1 The 2017 DFE guidance no longer places a requirement on schools to hold a reintegration meeting prior to readmission. However, it would be considered as good practice to have such a meeting with parents, the pupil, and appropriate support services to put a plan in place to support the pupil and avoid any future exclusions; this could include an Early Help Assessment or Pastoral Support Programme.

5.2 Head teachers should note, however, that neither parents nor a pupil can be required to meet specific conditions, such as attending a reintegration meeting, before reinstatement.

6. SEN / Disability / Vulnerable Group Considerations

6.1 Head teachers should, as far as possible, avoid permanently excluding any pupil with a statement of SEN. If the pupil being considered for exclusion has special educational needs (SEN) or any disability, the following considerations must be taken into account.

6.2 Children with SEN may not necessarily have a disability. The definition of disability is not the same as the definition of special educational needs but there may be overlap between those who have SEN and those who have a disability. Please refer to paragraphs 21-25 of the DFE Exclusion guidance.

Children with Disabilities

Does this pupil have a statement and/or disability?

i.e. does he/she have a mental or physical impairment that:

- is adverse;
- is long term;
- is substantial;
- Affects his/her ability to carry out normal day to day activities? (Mobility, manual dexterity, physical coordination, ability to lift, carry or otherwise move everyday objects, speech, hearing or eyesight, memory or ability to concentrate, learn or understand perception of risk of physical danger).

Has the pupil been treated less favourably?

i.e. would/has a pupil without a disability have been dealt with in the same way?

The head teacher will need to consider:

- What is less favourable treatment?
- What is the reason for less favourable treatment?
- Is the reason directly related to the pupil's disability?
- Can less favourable treatment be justified?
- Is the justification material and substantial?

Have reasonable adjustments been made for the pupil?

The head teacher will need to consider:

- Would failure to make reasonable adjustments place the pupil at a substantial disadvantage?
- Could the need to make reasonable adjustments have been anticipated?
- Has the school reviewed its policies, practices and procedures (continuing responsibility)?
- Do reasonable adjustments involve removal/alteration of physical features?
- Do reasonable adjustments involve provision of auxiliary aids/services (SEN framework)?
- Have relevant factors been explored and balanced?
- the need to maintain standards;
- the financial resources available;
- the cost of taking a particular step;
- the extent to which it is practicable to take a particular step;
- the extent to which auxiliary aid/services will be provided under the SEN framework;
- health and safety requirements;
- the interests of other pupils/prospective pupils;
- Could the school have been reasonably expected to know about the disability (confidentiality; lack of knowledge)?
- Can act/omission be materially and substantially justified?

7. The Governing Body's Duty to Consider an Exclusion – Key Points

7.1 The responsibility of the governing body to consider exclusions is usually delegated to a subcommittee of at least three governors. This committee is known as the Discipline Committee. The Discipline Committee has a clear set of responsibilities.

7.2 Where required or requested, the governing body must hold a Governors Discipline Committee (GDC) within the required timescale. (In the case of a permanent exclusion, the GDC must meet within 15 school days of being notified of the exclusion).

7.3 The GDC should consist of 3 or 5 governors who have no previous knowledge of the case. The Chair of the governing body should not be part of the GDC if he/she has previously discussed the case with the head teacher or has had any prior involvement with the case as this could compromise his/her impartiality.

7.4 The GDC should be clerked by a person who has had appropriate training. Minutes must be taken and distributed to all parties upon request to those who were present.

7.5 An LA representative from BACME should be invited to all GDCs at maintained schools. The LA's position will be one of neutrality where the representative would not give his/her view on the merits of the particular exclusion, but rather draw the attention of the panel to issues where there is a lack of clarity or where more information may be needed or where guidance appears not to have been adhered to. In essence, the LA representative will act as an impartial third party, providing objective and dispassionate representations to assist the process.

7.6 For academies: Section 6 in the statutory guidance states that a parent may invite a representative of the LA to attend the GDC as an observer and that representative may only make representations with the governing body's consent.

7.6 As the GDC is responsible for reviewing the decision of the head teacher to exclude a pupil, it would be considered good practice for the GDC to use the head teacher checklist (section 2) when reviewing the exclusion.

7.7 In balancing the needs of the individual against the broader interests of the other pupils and staff within the school, it is recommended that the GDC also consider the following:

Considerations for the Discipline Committee	Comments
What is the quality of the evidence?	

<ul style="list-style-type: none"> • Have the facts been established? • Was a full investigation, involving appropriate witnesses, carried out? • To what extent are the facts agreed between the relevant parties? • How did the incident relate to the school's behaviour policy? • Was the pupil responsible for the behaviour that led to the exclusion? (Governors should consider matters on the 'balance of probability' and if there is serious doubt, a reinstatement should be directed). 	
<p>Was the exclusion a proportionate response?</p> <ul style="list-style-type: none"> • Was exclusion a reasonable and proportionate response to the behaviour? • Was it fair in respect of sanctions imposed on any other pupils involved in an incident? 	
<p>Were alternative strategies tried?</p> <ul style="list-style-type: none"> • If the exclusion was a response to an ongoing pattern of deteriorating behaviour, was it used as a 'last resort' after other strategies, including the involvement of outside agencies and support services, had failed? (A PSP should be in place, clearly identifying school strategies, internal and external support). 	
<p>Were there any mitigating circumstances?</p> <ul style="list-style-type: none"> • Are there any factors arising from parental representation? E.g. special / medical needs, domestic circumstances, genuine remorse, loss of external examination opportunity. 	

8. Fair Hearings and Natural Justice

8.1 It is important that the GDC provides all parties with a fair hearing and that the rules of natural justice are adhered to. Every effort should be made to ensure that this happens.

8.2 The case should be clearly stated and evidence produced. All written material to be presented must have been seen by all parties prior to the GDC to allow for preparation, and to take legal advice if so desired. It is often tempting to provide as much information as possible, however, the information that is provided by the head teacher must be relevant to the decision to exclude a pupil. In order to help with this decision, the following checklist should be used:

Type of evidence	Exclusions for a 'one-off' serious incident	Exclusions for cumulative reasons
Details of the incident(s) in question	Must be provided	Must be provided
Statement from the pupil in question, signed and dated	Should be provided. (where a pupil has refused to provide a statement, evidence of doing so should be provided to confirm a request was made)	Must be provided
Witness statements, signed and dated	Must be provided	Must be provided
Behaviour log and details of previous incidents	No, unless there is a specific reason to do so	Must be provided
Attendance record	Not relevant	Not relevant
Details of support provided to the pupil	Only if relevant	Must be provided
Reports from any professionals involved with the pupil	Not relevant	Must be provided
Details of any SEN the pupil may have	Must be provided	Must be provided
Details of any disability the pupil may have	Must be provided	Must be provided
Academic reports	Not relevant	Not relevant
Early Help Assessment	This must not be included in the GDC information and no area within the Early Help Assessment should be shared with those present at the GDC due to confidentiality	This must not be included in the GDC information and no area within the Early Help Assessment should be shared with those present at the GDC due to confidentiality
Other information	Only if relevant	Only if relevant

8.3 If a pupil has a history of challenging behaviour and is then permanently excluded for a one off incident (which does not follow the pattern of behaviour which

the pupil usually presents with) then the head teacher needs to exercise care about what information is provided.

8.4 If details of prior misconduct are provided in the paperwork, the parent(s) could argue that the GDC has been biased by this information, building up a negative perception of the pupil that may well influence their final decision.

8.5 It is unlawful to exclude or increase the severity of an exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment / ability; the actions of a pupil's parents such as failing to ensure regular attendance at school; or the failure of a pupil to meet specific conditions before they are reinstated. As this information is not relevant to the GDC and their decision making, it should not be included in the paperwork for any exclusion.

9. Governor Disciplinary Committee

9.1 The GDC should ensure that a proper agenda for its meetings is prepared. This should cover the following:

- The Chair welcomes and introduces all parties
- The head teacher puts the case for exclusion
- The parents, governors and LA representative when present may question the head teacher
- The parents make their case against exclusion
- The head teacher, governors and LA representative (when present) may question the parents
- The LA representative (when present) makes a statement
- The parents, head teacher and governors may question the LA representative (when present)
- The head teacher makes his/her concluding remarks
- The parents make their concluding remarks
- The Chair concludes the meeting and advises the parents/child that they will receive the decision of the governors in writing within 24 school hours.

9.2 At the end of the GDC, the governing body must ensure that all other parties have withdrawn before making a decision in private.

9.3 Where a GDC has been held to consider a permanent exclusion, the school must advise the LA within 24 school hours of the decision taken by the governing body in whether to uphold or overturn the exclusion.

10. Independent Review Panels

10.1 Independent Review Panels (IRPs) have replaced Independent Appeal Panels. Following a GDC decision to uphold a permanent exclusion, the LA or Academy Trust must, if requested by parents, arrange for a review panel to be held within 15 school days of the parent's request.

10.2 The panel must consist of 3 – 5 members representing each of the categories below:

- 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.
- A school governor, who has served as a governor for at least 12 consecutive months in the last five years, provided he/she has not been a teacher or head teacher during this time.
- A head teacher or individual who has been a head teacher within the last five years.

10.3 In addition, a clerk must be appointed who should not have served as clerk to the GDC meeting. He/she should have the training required by law and an up-to-date understanding of developments in case law, legislation and guidance which are relevant to exclusion.

11. The Role of the SEN Expert on the Independent Review Panel

11.1 When parents apply for an IRP to be held, they may request that a SEN expert attend the panel.

11.2 Parents have a right to request the attendance of a SEN expert at an IRP regardless of whether the school / academy recognise that the child has SEN.

11.3 Arrangements must be made to indemnify a SEN expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.

11.4 Individuals may not serve as an SEN expert if they have, or at any time have had, a connection with the LA, academy, school, pupil or parent or the incident leading to the exclusion which might reasonably be taken to raise doubts about their ability to act impartially. (However, an individual is not taken to have such a connection solely because he/she is an employee of the LA/school/academy).

11.5 The SEN expert should be a professional with first-hand experience of the assessment and support of SEN, as well as an understanding of the legal requirements on schools in relation to SEN and disability.

11.6 Reasonable steps should be taken to ensure that the parents have confidence in the impartiality and capability of the SEN expert and when possible this may include offering parents a choice of SEN expert.

11.7 The SEN expert's role is analogous to an expert witness to provide impartial advice to the IRP 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.

11.8 The SEN expert's role does not include making an assessment of the pupil's SEN.

11.9 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, were reasonable and procedurally fair (in line with the principles of legality, rationality and procedural propriety). If the SEN expert believes that this was not the case he/she should, where possible, advise the panel on the possible contribution which could have been made to the pupil's exclusion.

11.10 The SEN expert should not criticise school policies or actions simply because he/she believes a different approach should have been followed or because different schools might have taken a different approach.

12. The Remit of the Independent Review Panel

12.1 An IRP does not have the power to direct a governing body to reinstate an excluded pupil.

12.2 An IRP can make one of three decisions. It can:

- uphold the decision to exclude;
- recommend that the GDC reconsiders its decision; or
- Quash the decision and direct the GDC to reconsider its decision.

12.3 If following a direction from the IRP, the GDC 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 LA towards the costs of providing alternative provision for the pupil.

13. Governor's Training

13.1 It is very important that governors, who are called upon to be part of a GDC, receive training. Governors Services provides training sessions for governors on exclusion related policy, procedures and issues, and the expectation is that governors who are likely to be involved in exclusions should make every effort to attend. Training for clerks is also provided.

14. Fair Access Panel (FAP)

- 14.1 FAP Terms of Reference are guided by the School Admissions Code 2014 which states that each local authority must have a Fair Access Protocol. All schools, Academies and Free Schools must participate in the local authority in order to ensure that unplaced young people, who live in the local authority, especially the most vulnerable, are offered a place within suitable provision as quickly as possible. This includes admitting young people above the published admission number to schools that are already full.
- 14.2 The operation of panel is outside the arrangements of co-ordination and is triggered when a parent of an eligible child has not secured a school place under in-year procedures.
- 14.3 There is no duty for local authorities or admission authorities to comply with parental preference when allocating places through the panel.
- 14.4 Where a Governing Body does not wish to admit a child with challenging behaviour outside the normal admissions round, even though places are available, it must refer the case to the local authority for action under the Fair Access Protocol. This will normally only be appropriate where a school has a particularly high proportion of children with challenging behaviour or previously excluded children.
- 14.5 Admissions authorities must not refuse to admit a child thought to be potentially disruptive, or likely to exhibit challenging behaviour, on the grounds that the child is first to be assessed for special educational needs.
- 14.6 A school will not be required to automatically take another child with challenging behaviour in the place of a child excluded from the school.
- 14.7 Wherever possible, pupils with a religious affiliation should be matched to a suitable school, but this should not override the protocol if the school is unable to take the pupil, or if the pupil identified for the school does not have an affiliation.
- 14.8 As part of assessing the suitability of a placement for a young person the panel must take account of any genuine concerns about the admission, for example a previous serious breakdown in the relationship between the school and the family, or a strong view about the religious ethos of the school.
- 14.9 The list of children to be included in the Terms of Reference is to be agreed with the majority of schools in the area but **must**, as a minimum, include the following children of compulsory school age who have difficulty securing a school place:
- Children from the Criminal Justice system or Pupil Referral Units who need to be reintegrated into mainstream education;
 - Young people who have been out of education for two months or more.

- Gypsies, Roma, Travellers, refugees and asylum seekers young people.
- Young people who are homeless.
- Young people with unsupportive family backgrounds for whom a place has not been sought.
- Young people who are carers.
- Young people with special educational needs, disabilities or medical conditions (but without an Education Health and Care Plan).

14.10 In Waltham Forest it has been agreed that the FAP Panel will also consider cases of those:

- At risk of permanent exclusion.
- Young people permanently excluded.
- Children Missing Education.
- Looked After Children

14.11 The local authority must produce an annual report for the Schools Adjudicator with an assessment of the effectiveness of the panel including how many young people were admitted to each school

- Local Authority Governance of the panel's processes and procedures.
- The governance of the panel in the local authority lies with the Chair and the Behaviour, Attendance and Children Missing Education Service (BACME).

14.12 Safeguarding is a priority concern for the Fair Access Panel and underpins the work undertaken in relation to every case referred to the panel. The approach reflects the priorities set out in the School Admissions Code (SAC) 2014 requiring a local authority to have a Fair Access Protocol. These are outlined in Section 3 of SAC 2014, in that, unplaced young people and the most vulnerable are offered a place at a suitable school. Further to this, it requires a local authority to have provision available for those young people where mainstream schooling is not appropriate and where their needs can be met.

14.13 At every stage of the FAP process from the point of referral to the point of entry into the education base the young person's wellbeing and safety is covered by the FAP Terms of Reference. Placing the young person at the centre of the Protection Circles is a demonstration of a child/young person centred approach.

14.14 Therefore, the FAP Terms of Reference outlined from a safeguarding perspective can be said to cover:

- Strategic – placing safeguarding at the centre of co-ordinating and planning FAP service delivery ensures that young person has the best opportunity to fulfil their aspirations.
- Operational – the partnership work between the local authority and Head teachers; the partnership work between all professionals that attend the FAP Panel and the clear and precise operating procedures led by the FAP Co-ordinator ensures the no young person coming to notice falls outside of the system and is therefore protected
- Support – throughout the FAP Journey the young person has a range of support of professionals available to ensure that the transition between education bases and accessing provision is as smooth and protected as possibly it can be.

14.15 The Fair Access Terms of Reference outline the processes of the panel; please refer to the TOR regarding the panel procedures.