



# Ulverston Victoria High School

## POLICIES

# Exclusion Policy

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# Exclusion Policy

Adapted from Statutory Guidance

## Summary

This document is based on the guidance issued by the Department for Education which provides a guide to the legislation that governs the exclusion of pupils from maintained schools, pupil referral units (PRUs), academy schools (including free schools, studio schools and university technology colleges) and alternative provision academies (including alternative provision free schools) in England.

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

- The document also provides statutory guidance to which head teachers, governing body's, 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.
- 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.
- 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.
- This document replaces the version published in 2012 for schools in England.

## **This policy is adopted for UVHS's specific context from the DFE publication "Exclusion from maintained schools, academies and pupil referral units in England Statutory guidance for those with legal responsibilities in relation to exclusion" (September 2017)**

The principal legislation to which this guidance relates is:

- the Education Act 2002, as amended by the Education Act 2011;
- the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- the Education and Inspections Act 2006;
- the Education Act 1996; and
- the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, as amended by the Education (Provision of Full-Time Education for Excluded Pupils) (England) (Amendment) Regulations 2014.

This guidance will be kept under review and updated as necessary.

## Definition of ‘parents’ in this guidance

- The definition of a parent for the purposes of the Education Acts is broadly drawn. In addition to the child's birth parents, references to parents in this guidance include any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives. Where practicable, all those with parental responsibility should be involved in the exclusions process. (Further information for parents on exclusion can be found in Annex C to this guidance entitled *a guide for parents/carers*).
- Legislation on exclusion gives clarity and certainty to schools, local authorities, academy trusts and review panels, in terms of how they discharge their obligations to parents. Obligations are to the ‘relevant person’ – a parent or the pupil, aged 18 or over.

## Definition of ‘term’ and ‘academic year’ in this guidance

- Where a school’s academic year consists of three terms or fewer, a reference to a ‘term’ in this guidance means one of those terms. Where a school’s academic year consists of more than three terms, then a reference to ‘term’ means the periods from 31 December to Easter Monday, from Easter Monday to 31 July and from 31 July to 31 December.
- In this guidance ‘academic year’ means a school’s academic year beginning with the first day of school after 31 July and ending with the first day of school after the following 31 July.

## Definition of “Senior Member of Staff”

- A senior member of staff is defined as a member, or associate member of the Senior Leadership Team, or a Pastoral Leader.

## Key points

- The legislation governing the exclusion process remains unchanged. This statutory guidance has been updated in a small number of areas, in particular to provide greater confidence to head teachers on their use of exclusion and to provide greater clarity to independent review panels and governing body’s on their consideration of exclusion decisions.
- 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<sup>1</sup>.

- 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.
- The decision to exclude a pupil must be lawful, reasonable and fair. The School has a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race. The school will give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.
- Disruptive behaviour can be an indication of unmet needs. Where the school has concerns about a pupil's behaviour, it should try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent exclusion. In this situation, the school should consider whether a multi-agency assessment that goes beyond the pupil's educational needs is required.
- The school has a strategy for reintegrating a pupil who returns to school following a fixed-period exclusion and for managing their future behaviour.
- Before a student returns to school a reintegration meeting is held and the student is placed on report to a senior member of staff.
- All children have a right to education. The school will take reasonable steps to set and mark work for pupils during the first five school days of an exclusion; and alternative provision must be arranged from the sixth day. There are obvious benefits in arranging alternative provision to begin as soon as possible after an exclusion.
- Where parents dispute the decision of the 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 (Special Educational Needs and Disability) for disability discrimination, or the County Court for other forms of discrimination.
- 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. The panel will then be expected to order that the school will make an additional payment of £4,000 if it does not offer to reinstate the pupil. Whether or not a school recognises a pupil as having SEN, all parents have the right to request the presence of an SEN expert at a review meeting. The SEN expert's role is to advise the review panel, orally or in writing or both, impartially, of the relevance of SEN in the context and circumstances of the review. For example, they may advise whether the school acted reasonably in relation to its legal duties when excluding the pupil.

- Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and ability to understand.
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## The head teacher's power to exclude

1. Only the head teacher<sup>2</sup> of a school can exclude a pupil and this must be on disciplinary grounds. A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in a single academic year), or permanently. A fixed-period exclusion does not have to be for a continuous period. (Annex B of this guidance, *a nonstatutory guide for head teachers*, summarises the requirements for head teachers, but should not be used as a substitute for this guidance or the relevant legislation.)
2. A fixed-period exclusion can also be for parts of the school day. For example, if a pupil's behaviour at lunchtime is disruptive, they may be excluded from the school premises for the duration of the lunchtime period. The legal requirements relating to exclusion, such as the head teacher's duty to notify parents, apply in all cases. Lunchtime exclusions are counted as half a school day for statistical purposes and in determining whether a governing body meeting is triggered.
3. The law does not allow for extending a fixed-period exclusion or 'converting' a fixed-period exclusion into a permanent exclusion. In exceptional cases, usually where further evidence has come to light, a further fixed-period exclusion may be issued to begin immediately after the first period ends; or a permanent exclusion may be issued to begin immediately after the end of the fixed period.
4. The behaviour of a pupil outside school can be considered grounds for an exclusion.
5. The head teacher may withdraw an exclusion that has not been reviewed by the governing body.
6. Any decision of a school, including exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention on Human Rights and the Equality Act 2010); rational; reasonable; fair; and proportionate.
7. The head teacher must take account of their legal duty of care when sending a pupil home following an exclusion.
8. When establishing the facts in relation to an exclusion decision the head teacher 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.' This means

that the head teacher should accept that something happened if it is more likely that it happened than that it did not happen.

9. Under the Equality Act 2010 (the Equality Act), schools must not discriminate against, harass or victimise pupils because of: sex; race; disability; religion or belief; sexual orientation; pregnancy/maternity; or gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices and the provision of auxiliary aids.

10. In carrying out their functions, the public sector equality duty means schools must also have due regard to the need to:

- eliminate discrimination, harassment, victimisation, and other conduct that is prohibited by the Equality Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not; and
- foster good relations between people who share a protected characteristic and people who do not share it.

11. These duties need to be complied with when deciding whether to exclude a pupil. The school will also ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act allow schools to take positive action to deal with particular disadvantages, needs, or low participation affecting one group, where this can be shown to be a proportionate way of dealing with such issues<sup>3</sup>.

12. The head teacher and governing body must comply with their statutory duties in relation to SEN when administering the exclusion process. This includes having regard to the SEND Code of Practice<sup>5</sup>.

13. It is unlawful to exclude 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 action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting. However, a pupil who repeatedly disobeys their teachers' academic instructions could, be subject to exclusion. It is impossible to produce a definitive list of reasons to exclude and it is incumbent on the Headteacher to decide whether an exclusion is necessary. However reasons may include, but are not limited to: **Bullying:** Verbal/homophobic bullying/physical/racist bullying; **Damage:** Vandalism/Graffiti/Arson; **Drug and Alcohol related:** Possession of illegal drugs/drug dealing/alcohol abuse/inappropriate use of prescribed drugs/smoking/substance abuse; **Persistent Disruptive Behaviour:** Challenging behaviour/persistent violation of school rules/disobedience; **Racist Abuse:** Racist taunting and harassment/racist bullying/swearing that can be attributed to racist characteristics/derogatory racist statements/racist graffiti; **Theft:** Stealing school property/selling and dealing in stolen

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property/stealing personal property (pupil or adult)/stealing from local shops on a school outing; **Physical Assault against adult:** Violent behaviour/Obstruction and jostling/Wounding; **Physical Assault against pupil:** Fighting/Wounding/Violent behaviour/Obstruction and jostling; **Verbal abuse/threatening behaviour against adult:** Threatened violence/Swearing/Intimidation/Aggressive behaviour/ Homophobic abuse and harassment/Carrying an offensive weapon; **Verbal abuse/threatening behaviour against pupil:** Threatened violence/swearing/verbal intimidation/aggressive behaviour/ homophobic abuse and harassment/carrying an offensive weapon; **Sexual Misconduct:** Sexual abuse/sexual harassment/sexual bullying/sexual assault/lewd behaviour/sexual graffiti; **Weapon:** Brought a weapon (or something which could be considered a weapon) into school or community.

14. 'Informal' or 'unofficial' exclusions, such as sending a pupil home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.

15. Maintained schools have the power to direct a pupil off-site for education to improve their behaviour<sup>4</sup>. A pupil at any type of school can also transfer to another school as part of a 'managed move' where this occurs with the consent of the parties involved, including the parents and the admission authority of the school. However, the threat of exclusion must never be used to influence parents to remove their child from the school.

### **Factors that the head teacher will take into account before taking the decision to exclude**

16. A decision to exclude a pupil permanently should only be taken:

- 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.

17. The decision on whether to exclude is for the head teacher to take. However, where practical, the head teacher should give the pupil an opportunity to present their case before taking the decision to exclude.

18. Whilst an exclusion may still be an appropriate sanction, the head teacher should take account of any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it comes to light that the pupil has suffered bereavement, has mental health issues or has been subject to bullying.

19. Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability

that a pupil may have. The head teacher should also consider the use of a multi-agency assessment for a pupil who demonstrates persistent disruptive behaviour. Such assessments may pick up unidentified SEN but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems<sup>5</sup>.

20. Where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed-period exclusion in an academic year, the head teacher should consider whether exclusion is providing an effective sanction.

### **The Headteacher's considerations concerning the exclusion of pupils from groups with disproportionately high rates of exclusion**

21. The exclusion rates for certain groups of pupils are consistently higher than average. This includes: pupils with SEN; pupils eligible for free school meals; looked after children<sup>6</sup>; and pupils from certain ethnic groups. The ethnic groups with the highest rates of exclusion are: Gypsy/Roma; Travellers of Irish Heritage; and Caribbean pupils.

22. In addition to the approaches on early intervention set out above, the head teacher will consider what extra support might be needed to identify and address the needs of pupils from these groups in order to reduce their risk of exclusion. For example, schools might draw on the support of Traveller Education Services, or other professionals, to help build trust when engaging with families from Traveller communities.

### **The Headteacher's considerations concerning the exclusion of pupils with Education, Health and Care plans (EHC plans) and looked after children**

23. As well as having disproportionately high rates of exclusion, there are certain groups of pupils with additional needs who are particularly vulnerable to the impacts of exclusion. This includes pupils with EHC plans and looked after children. The head teacher should, as far as possible, avoid permanently excluding any pupil with an EHC plan or a looked after child.

24. The school will engage proactively with parents in supporting the behaviour of pupils with additional needs. In relation to looked after children, schools should cooperate proactively with foster carers or children's home workers, the local authority that looks after the child and the local authority's virtual school head.

25. Where the school has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with an EHC plan or a looked after child, it should, in partnership with others (including the local authority as necessary), consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision

for a pupil's SEN. Where a pupil has an EHC plan, the school should consider requesting an early annual review or interim/emergency review.

### **The head teacher's duty to inform parties about an exclusion**

26. Whenever a head teacher excludes a pupil they, or a delegated senior member of staff; where this is more appropriate, will, without delay, notify parents of the period of the exclusion and the reason(s) for it.

27. They will also, without delay, provide parents with the following information in writing:

- the reason(s) for the exclusion;
- the period of a fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent;
- parents' right to make representations about the exclusion to the governing body (in line with the requirements set out in paragraphs 52 to 60) and how the pupil may be involved in this;
- how any representations should be made; and
- where there is a legal requirement for the governing body to consider the exclusion, that parents have a right to attend a meeting, to be represented at that meeting (at their own expense) and to bring a friend.

28. Written notification of the information mentioned in the above paragraph 27 can be provided by delivering it directly to the parents, leaving it at their usual or last known home address, or posting it to that address. Notices can be given electronically if the parents have given written agreement for this kind of notice to be sent in this way<sup>7</sup>.

29. Where an excluded pupil is of compulsory school age the head teacher, or a delegated senior member of staff where this is more appropriate, will also notify the pupil's parents of the days on which they will ensure that the pupil is not present in a public place at any time during school hours. These days would be the first five school days of an exclusion (or until the start date of any alternative provision or the end of the exclusion where this is earlier). Any parent who fails to comply with this duty without reasonable justification commits an offence and may be given a fixed penalty notice or be prosecuted. The head teacher or a delegated senior member of staff, will notify the parents of the days on which their duty applies without delay and, at the latest, by the end of the afternoon session<sup>8</sup>.

30. If alternative provision is being arranged, then the following information will be included with this notice where it can reasonably be found out within the timescale:

- the start date for any provision of full-time education that has been arranged for the child during the exclusion;
- the start and finish times of any such provision, including the times for morning and afternoon sessions where relevant;
- the address at which the provision will take place; and
- any information required by the pupil to identify the person they should report to on the first day.

31. Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session, it may be provided in a subsequent notice, but it must be provided without delay and no later than 48 hours before the provision is due to start. The only exception to this is where alternative provision is to be provided before the sixth day of an exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.

32. The information in paragraphs 29 to 31 must be provided in writing but can be provided by any effective method (paragraph 37 provides guidance on this issue).

33. The failure of a head teacher to give notice of the information in paragraphs 29 and 30 by the required time does not relieve the head of the duty to serve the notice. A notice is not made invalid solely because it has not been given by the required time.

34. If a child is excluded for a further fixed-period following their original exclusion, or is subsequently permanently excluded, the head teacher must inform parents without delay and issue a new exclusion notice to parents.

## **The Headteacher's considerations concerning informing parents about an exclusion**

35. For notifications under paragraph 26, although this must not delay notification, ideally, notification should be in person or by telephone in the first instance as this would give the parents an opportunity to ask any initial questions or raise concerns directly with the head teacher, or a delegated senior member of staff where this is more appropriate.

36. When notifying parents about an exclusion, the head teacher, delegated senior member of staff, will set out what arrangements have been made to enable the pupil to continue their education prior to the start of any alternative provision or the pupil's return to school, in line with legal requirements and guidance in section 5.

37. For notifications under paragraphs 29 and 30, effective methods for providing the information may include email or text message, giving the notice directly to the parents, or sending the information home with the excluded pupil. Where information is sent home with the

pupil, the head teacher should consider sending a duplicate copy by an alternative method or confirming that the information has been received.

38. When notifying parents about an exclusion, the head teacher, will, in writing, draw attention to relevant sources of free and impartial information. This information should include:

- a link to this statutory guidance on exclusions (<https://www.gov.uk/government/publications/school-exclusion>);
- a link to sources of impartial advice for parents such as the Coram Children’s Legal Centre ([www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)), or ACE Education (<http://www.aceed.org.uk>) and their advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time); and
- where considered relevant by the head teacher, links to local services, such as Traveller Education Services, the Information Advice & Support Services Network (formerly known as the local parent partnership) (<https://councilfordisabledchildren.org.uk/information-advice-and-support-servicesnetwork/about>), the National Autistic Society (NAS) School Exclusion Service (England) (0808 800 4002 or [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk)), or Independent Parental Special Education Advice (<http://www.ipsea.org.uk/>).

39. The head teacher will ensure that information provided to parents is clear and easily understood. Where the parents’ first language is not English consideration will be given, where practical, to translating the letter or taking additional steps to ensure that the details of the exclusion and their right to make representations to the governing body have been understood.

## **The head teacher’s duty to inform the governing body and the local authority about an exclusion**

40. The head teacher, delegated senior member of staff will, without delay, notify the governing body and the local authority of:

- any permanent exclusion (including where a fixed-period exclusion is followed by a decision to permanently exclude the pupil);
- any exclusion which would result in the pupil being excluded for a total of more than five school days (or more than ten lunchtimes) in a term; and
- any exclusion which would result in the pupil missing a public examination or national curriculum test.

41. The head teacher, delegated senior member of staff, will also notify the local authority and governing body once per term of any other exclusions not already notified.

42. Notifications must include the reason(s) for the exclusion and the duration of any fixed-period exclusion.

43. In addition, within 14 days of a request, a governing body must provide to the Secretary of State and (in the case of maintained schools and PRUs) the local authority, information about any exclusions within the last 12 months

44. For a permanent exclusion, if the pupil lives outside the local authority area in which the school is located, the head teacher, delegated senior member of staff, will also notify the pupil's 'home authority' of the exclusion and the reason(s) for it without delay.

## **The governing body and local authority's duties to arrange education for excluded pupils**

45. For a fixed-period exclusion of more than five school days, the governing body will arrange suitable full-time education for any pupil of compulsory school age. This provision will begin no later than the sixth school day of the exclusion. Where a child receives consecutive fixed-period exclusions, these are regarded as a cumulative period of exclusion for the purposes of this duty. This means that if a child has more than five consecutive school days of exclusion, then education will be arranged for the sixth school day of exclusion, regardless of whether this is as a result of one fixed-period or more than one fixed-period exclusion.

46. For permanent exclusions, the local authority will arrange suitable full-time education for the pupil to begin no later than the sixth school day of the exclusion<sup>9</sup>. This will be the pupil's 'home authority' in cases where the school is maintained by (or located within) a different local authority.

47. In addition, where a pupil has an EHC plan, the local authority may need to review the plan or reassess the child's needs, in consultation with parents, with a view to identifying a new placement.

48. The local authority must have regard to the relevant statutory guidance when carrying out its duties in relation to the education of looked after children.

49. Provision does not have to be arranged by either the school or the local authority for a pupil in the final year of compulsory education who does not have any further public examinations to sit.

### **Education of pupils prior to the sixth day of an exclusion**

50. It is important for schools to help minimise the disruption that exclusion can cause to an excluded pupil's education. Whilst the statutory duty on governing body's or local authorities is to provide full-time education from the sixth day of an exclusion, there is an obvious benefit in

starting this provision as soon as possible. In particular, in the case of a looked after child, the school and the local authority should work together to arrange alternative provision from the first day following the exclusion.

51. Where it is not possible, or not appropriate, to arrange alternative provision during the first five school days of an exclusion, the school will take reasonable steps to set and mark work for the pupil. Work that is provided should be accessible and achievable by the pupil outside school.

## The governing body's duty to consider an exclusion

52. The governing body has a duty to consider parents' representations about an exclusion. The requirements on the governing body to consider an exclusion depend upon a number of factors (these requirements are illustrated by the diagram in Annex A of this guidance, *A summary of the governing body's duties to review the head teacher's exclusion decision*).

53. The governing body may delegate its functions with respect to the consideration of an exclusion to a designated sub-committee consisting of at least three governors.

54. The governing body will consider the reinstatement of an excluded pupil within 15 school days<sup>10</sup> of receiving notice of the exclusion if:

- the exclusion is permanent;
- it is a fixed-period exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term; or
- it would result in a pupil missing a public examination or national curriculum test.

55. The requirements are different for fixed-period exclusions where a pupil would be excluded for more than five but less than 15 school days in the term. In this case, if the parents make representations, the governing body will consider within 50 school days of receiving the notice of exclusion whether the excluded pupil should be reinstated. In the absence of any representations from the parents, the governing body is not required to meet and cannot direct the reinstatement of the pupil.

56. Where an exclusion would result in a pupil missing a public examination or national curriculum test, there is a further requirement for a governing body. It must, so far as is reasonably practicable, consider the exclusion before the date of the examination or test. If it is not practicable for a sufficient number of governors to consider the decision before the examination or test, the chair of governors may consider the exclusion alone and decide whether or not to reinstate the pupil<sup>11</sup>. In the case of an academy the exclusion may be considered by a smaller sub-committee if the trust's articles of association allow them to do so. In such cases,

parents still have the right to make representations to the governing body and must be made aware of this right.

57. The following parties must be invited to a meeting of the governing body and allowed to make representations:

- parents (and, where requested, a representative or friend);
- the head teacher; and
- a representative of the local authority (in the case of a maintained school or PRU)<sup>12</sup>.

58. The governing body will make reasonable endeavours to arrange the meeting for a date and time that is convenient to all parties, but in compliance with the relevant statutory time limits set out above. However, its decision will not be invalid simply on the grounds that it was not made within these time limits.

59. In the case of a fixed-period exclusion which does not bring the pupil's total number of days of exclusion to more than five in a term, the governing body may consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

### **Points for the governing body to consider in preparing for the consideration of an exclusion**

61. Where the governing bod is legally required to consider the reinstatement of an excluded pupil they should:

- not discuss the exclusion with any party outside the meeting;
- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school such as those relating to a pupil's SEN);
- where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting;
- allow parents and the pupil to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing body will first seek parental consent and invite the parents to accompany their child to the meeting);
- comply with their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that has an impact upon their ability to attend the meeting or to make representations); and
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding;

or how the excluded pupil may feed in their views by other means if attending the exclusion meeting is not possible.

### **Points for the governing body to consider when exclusions that would result in a pupil missing a public examination or national curriculum test**

62. Whilst there is no automatic right for an excluded pupil to take an examination or test on the excluding school's premises, the governing body should consider whether it would be appropriate to exercise its discretion to allow an excluded pupil onto the premises for the sole purpose of taking the examination or test.

#### **6.2 The requirements on a governing body when considering the reinstatement of an excluded pupil**

63. Where the governing body is legally required to consider reinstating an excluded pupil they 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.

64. The governing body must also consider any representations made by or on behalf of:

- parents;
- the head teacher; and
- the local authority (in the case of a maintained school or PRU).

65. When establishing the facts in relation to an exclusion the governing body 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'.

66. In the light of its consideration, the governing body can either:

- decline to reinstate the pupil; or
- direct reinstatement of the pupil immediately or on a particular date.

67. Where reinstatement would make no practical difference because for example, the pupil has already returned to school following the expiry of a fixed-period exclusion or the parents make clear they do not want their child reinstated, the governing body must still consider whether the pupil should be officially reinstated. If it decides against reinstatement of a pupil who has been permanently excluded the parents can request an independent review.

## Points for the governing body to consider when deciding on the reinstatement of an excluded pupil

68. The governing body should identify the steps they will take to ensure all parties will be supported to participate in its consideration and have their views properly heard. This is particularly important where pupils aged under 18 are speaking about their own exclusion or giving evidence to the governing body.
69. The governing body should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the governing body. These minutes should be made available to all parties on request.
70. The governing body should ask all parties to withdraw before making a decision. Where present, a clerk **may** stay to help the governing body by reference to their notes of the meeting and with the wording of the decision letter.
71. In reaching a decision on whether or not a pupil should be reinstated, the governing body 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 body in relation to the decision to exclude.
72. The governing body should note the outcome of its consideration on the pupil's educational record, along with copies of relevant papers for future reference.
73. In cases where the governing body considers parents' representations but does not have the power to direct a pupil's reinstatement, it should consider whether it would be appropriate to place a note of its findings on the pupil's educational record.
74. Claims of discrimination to the First-tier Tribunal (Special Educational Needs and Disability), in relation to disability, or County Court, for all other forms of discrimination, can be made up to six months after the discrimination is alleged to have occurred. Where practicable, schools should retain records and evidence relating to an exclusion for at least six months in case such a claim is made.

## The governing body's duty to notify people after its consideration of reinstatement

75. Where legally required to consider reinstating an excluded pupil, the governing body must notify parents, the head teacher and the local authority of its decision, and the reasons for it, in writing and without delay. Where the pupil resides in a different local authority area from the one in which the school is located, the governing body must also inform the pupil's 'home authority'.
76. In the case of a permanent exclusion where the governing body decides not to reinstate the pupil, the governing body's notification must also include the information below.

- The fact that it is permanent.
- Notice of parents' right to ask for the decision to be reviewed by an independent review panel and the following information:
  - a) the date by which an application for a review must be made (i.e. 15 school days from the date on which notice in writing of the governing body's decision is given to parents – see paragraph 77);
  - b) where and to whom an application for a review (and any written evidence) should be submitted;
  - c) that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's SEN are considered to be relevant to the exclusion;
  - d) that, regardless of whether the excluded pupil has recognised SEN, parents have a right to require the local authority to appoint an SEN expert to advise the review panel;
  - e) details of the role of the SEN expert; and
  - f) that parents may, at their own expense, appoint someone to make written and/or oral representations to the panel.
- That, in addition to the right to apply for an independent review panel, if parents believe that there has been unlawful discrimination in relation to the exclusion then they 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.
- That a claim of discrimination under the Equality Act 2010 made under these routes should be lodged within six months of the date on which the discrimination is alleged to have taken place (e.g. the day on which the pupil was excluded).

77. The governing body may provide the information in paragraphs 74 and 75 by delivering it directly to parents, delivering it to their last known address, or posting it first class to that address.

78. Notice is deemed to have been given on the same day if it is delivered or on the second working day after posting if it is sent by first class mail.

### **Points for the governing body to consider on providing information to parents following its consideration of an exclusion**

79. The governing body will set out the reasons for its decision in sufficient detail to enable all parties to understand why the decision was made.

80. Where relevant, it will be for the governing body to confirm the details of where the parents' application for an independent review panel should be sent. This is normally the clerk of the independent review panel. The notice should make it clear that parents are entitled to bring a friend to the review.

81. In providing details of the role of the SEN expert, the governing body should refer to the statutory guidance provided to SEN experts in paragraphs 164 to 167. The notice should explain that there would be no cost to parents for this appointment and that parents must make clear if they wish for an SEN expert to be appointed in any application for a review.

82. Where the governing body declines to reinstate the pupil, it should draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision. This information should be included in the letter notifying parents of a decision to uphold an exclusion, which should also include:

- a link to this statutory guidance on exclusions (<https://www.gov.uk/government/publications/school-exclusion>);
- a link to guidance on making a claim of discrimination to the First-tier Tribunal (Special Educational Needs and Disability) (<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>) or the County Court;
- a link to sources of impartial advice for parents such as the Coram Children's Legal Centre ([www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)) or ACE Education (<http://www.aceed.org.uk>) and their limited advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time); and
- where considered relevant by the head teacher, links to local services, such as Traveller Education Services, the Information Advice & Support Services Network (formerly known as the local parent partnership) (<https://councilfordisabledchildren.org.uk/information-advice-and-support-servicesnetwork/about>), the National Autistic Society (NAS) School Exclusion Service (England) (0808 800 4002 or [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk)), or Independent Parental Special Education Advice (<http://www.ipsea.org.uk/>).

## The governing body's duty to remove a permanently excluded pupil's name from the school register

83. The governing body will ensure that a pupil's name is removed from the school admissions register if:

- 15 school days have passed since the parents were notified of the governing body's decision to not reinstate the pupil and no application has been made for an independent review panel; or
- the parents have stated in writing that they will not be applying for an independent review panel.

84. Where an application for an independent review panel has been made within 15 school days, the school must wait until the review has been determined, or abandoned, and until the governing body has completed any reconsideration that the panel has recommended or directed it to carry out, before removing a pupil's name from the register. Where a pupil's name is to be deleted from the school admissions register because of a permanent exclusion the school will make a return to the local authority. The return will include all the particulars which were entered in the admission register, the address of any parent with whom the pupil normally resides and the grounds upon which their name is to be deleted from the admissions register (i.e. permanent exclusion). This return will be made as soon as the grounds for deletion is met and no later than the deletion of the pupil's name.

85. Where a pupil's name is removed from the school register and a discrimination claim is subsequently made, the First-tier Tribunal (Special Educational Needs and Disability) or County Court has the power to direct that the pupil should be reinstated.

### Guidance to schools on marking attendance registers following exclusion

86. Whilst an excluded pupil's name remains on a school's admissions register, the pupil will be marked using the appropriate attendance code. Where alternative provision has been made and the pupil attends it, an appropriate attendance code, such as Code D (if the alternative provision is at a PRU or independent school where the pupil is dual registered) or Code B (if the provision is an approved educational activity that does not involve the pupil being registered at any other school), should be used. Where pupils are not attending alternative provision, they should be marked absent using Code E<sup>13</sup>.

## Appendix A (DFE guidance verbatim)

### 8. The local authority's/academy trust's duty to arrange an independent review panel

#### 8.1 Arranging a date and venue

##### A guide to the law<sup>14</sup>

87. If applied for by parents within the legal time frame, the local authority or (in the case of an academy) the academy trust must, at their own expense, arrange for an independent review panel hearing to review the decision of a governing board not to reinstate a permanently excluded pupil.
88. The legal time frame for an application is:
- within 15 school days of notice being given to the parents by the governing board of its decision not to reinstate a permanently excluded pupil (in accordance with the requirements summarised in paragraph 75); 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<sup>15</sup>.
89. Any application made outside of the legal time frame must be rejected by the local authority/academy trust.
90. 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<sup>16</sup>.
91. Parents may request an independent review panel even if they did not make representations to, or attend, the meeting at which the governing board considered reinstating the pupil.
92. The local authority/academy trust must take reasonable steps to identify a date for the review that all parties, and any SEN expert appointed to give advice in person, are able to attend. However, the review must begin within 15 school days of the

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<sup>14</sup> Section 51A Education Act 2002 and regulations made under this section.

<sup>15</sup> The First-tier Tribunal (Special Educational Needs and Disability) and County Court have the jurisdiction to hear claims of discrimination under the Equality Act 2010 which relate to exclusions.

<sup>16</sup> In such circumstances, the Tribunal or Court may decide to delay its consideration until after the independent review panel process has been completed.

day on which the parent's application for a review was made (panels have the power to adjourn a hearing if required).

93. The venue must be accessible to all parties<sup>17</sup>.
94. The local authority/academy trust must arrange a venue for hearing the review. Whatever the venue, the panel must hold the hearing in private unless the local authority/academy trust directs otherwise.
95. Where the issues raised by two or more applications for review are the same, or connected, the panel may combine the reviews if, after consultation with all parties, there are no objections.

## **Statutory guidance to the local authority and academy trust on arranging a date and venue for a review**

96. The local authority/academy trust should take all reasonable steps to ensure the venue for the review is appropriate and has a suitable area for the parties to wait separately from the panel before the review.

97. Where the issues raised by two or more applications for review are the same, or connected, but the panel does not combine the reviews the local authority / academy trust should take reasonable steps to ensure fairness and consistency. Where possible, the same panel members should hear all related reviews.

## **8.2 Appointing panel members**

### **A guide to the law<sup>18</sup>**

98. 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<sup>19</sup>.
  - 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.

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<sup>17</sup> When arranging a venue for the review, the local authority/academy trust must comply with its duties under the Equality Act 2010 and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the review (for example where a parent or pupil has a disability in relation to mobility or communication that impacts upon his/her ability to attend the meeting or to make representations).

<sup>18</sup> Section 51A Education Act 2002 and regulations made under that section.

<sup>19</sup> Head teachers/principals/teachers in charge of a PRU and governors/management committee members of maintained schools, PRUs and Academies are eligible to be members of independent review panels considering an exclusion from any type of school covered by this guidance.

- Current or former school governors (including members of PRU management committees and directors of academy trusts) 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 that time.
- Head teachers or individuals who have been a head teacher within the last five years.

99. 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 board 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 board, 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, governing board, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality (though an individual must not be taken to have such a connection simply because they are employed by the local authority/academy trust as a head teacher at another school); or
- have not had the required training within the last two years (see paragraph 124).

100. In relation to panel members appointed by the local authority, sections 173(4) and 174(1) of the Local Government Act 1972 apply when determining allowances for financial loss, travel or subsistence. It is for the academy trust to determine its own payment arrangements for panel members.

101. The local authority/academy trust must make arrangements to indemnify panel members against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review which are taken in good faith.

### **Statutory guidance to the local authority/academy trust on appointing independent review panel members**

102. Every care should be taken to avoid bias or an appearance of bias. The local authority/academy trust should request that prospective panel members declare any conflict of interest at the earliest opportunity.

103. Where possible, panel members who are governors or head teachers should reflect the phase of education (primary/secondary) and type of school from which the pupil was excluded, for example: special school; boarding school; PRU; academy or maintained school.

104. The local authority/academy trust should consider whether the chair should be someone with a legal qualification or other legal experience. This is particularly important where a clerk will not be providing legal expertise to the panel.

105. In order to meet their duties within the statutory time frame, the local authority/academy trust should identify a number of eligible individuals in each of the different categories required to constitute an independent review panel in advance of an application for a review.

## 8.3 Appointing a clerk and the clerk's role

### A guide to the law<sup>20</sup>

106. The local authority/academy trust may appoint a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.

107. Where appointed the clerk must perform the following additional functions:

- Make reasonable efforts to inform the following people that they are entitled to: make written representations to the panel; attend the hearing and make oral representations to the panel; and be represented: a) the parents;  
b) the head teacher;  
c) the governing board; and  
d) the local authority (in the case of a maintained school or PRU).
- Make reasonable efforts to circulate to all parties copies of relevant papers at least 5 school days before the review. These papers must include: a) the governing board's decision;  
b) the parents' application for a review; and  
c) any policies or documents that the governing board was required to have regard to in making its decision.
- Give all parties details of those attending and their role, once the position is clear.
- Attend the review and ensure that minutes are produced in accordance with instructions from the panel.

108. Where a clerk is not appointed, the functions in paragraph 107 become the responsibility of the local authority/academy trust.

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<sup>20</sup> Section 51A Education Act 2002 and regulations made under this section.

## **Statutory guidance to the local authority/academy trust on appointing an independent review panel clerk**

109. The clerk should not have served as clerk to the governing board in the meeting at which the decision was made not to reinstate the pupil.
110. In addition to the training required by law, clerks should have an up to date understanding of developments in case law which are relevant to exclusion.
111. Where a clerk is not appointed, the local authority/academy trust should consider what additional steps it may need to take to ensure that the independent review panel is administered properly.

## **Statutory guidance to local authority/academy trust regarding the clerk's role on preparing for an independent review**

112. The local authority/academy trust should ensure the clerk follows the advice below (paragraphs 113 to 123).
113. The clerk should identify in advance of the meeting whether the pupil will be attending. Where an excluded pupil is attending the hearing, consideration should be given in advance as to the steps that will be taken to support his/her participation. If the excluded pupil is not attending, it should be made clear that they may feed in their views through a representative or by submitting a written statement.
114. The clerk should inform the parents of their right to bring a friend to the hearing.
115. In order to review the governing board's decision the panel will generally need to hear from those involved in the incident, or incidents, leading to the exclusion. The clerk should also try to ascertain whether an alleged victim, if there is one, wishes to be given a voice at the review. This could be in person, through a representative or by submitting a written statement.
116. In the case of witnesses who are pupils of the 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, if they are under 18, with their parents' consent. In such cases, that pupil's parents should be invited to attend the meeting in support of their child.
117. Where character witnesses are proposed, the clerk should seek the agreement of the panel; but this should be allowed unless there is good reason to refuse.
118. All written witness statements should be attributed, signed and dated, unless the school has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements. The general principle remains that

excluded pupils are entitled to know the substance behind the reason for their exclusion.

119. 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.
120. In addition to written witness statements, the clerk should request written evidence from the school in order to circulate it in advance of the meeting, such as policies and documents of the school which the governing board would reasonably have been expected to take account of in reaching its decision on reinstatement.
121. Where the 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 should be used.
122. Where an excluding head teacher has left the school, the panel may use its discretion in deciding whether to also invite this person to make representations.
123. The clerk should notify the panel where requested documents have not been provided so that the panel can take a decision on whether to adjourn the hearing to allow for the documents to be provided.

## **8.4 Ensuring that panel members and clerks are trained**

### **A guide to the law<sup>21</sup>**

124. The local authority/academy trust must ensure that all panel members and clerks have received training within the two years prior to the date of the review. This training must have covered:

- the requirements of the primary legislation, regulations and statutory guidance governing exclusions (which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision-making);
- the need for the panel to observe procedural fairness and the rules of natural justice;
- the role of the chair of a review panel;
- the role of the clerk to a review panel;

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<sup>21</sup> Section 51A Education Act 2002 and regulations made under this section.

- the duties of head teachers, governing boards and the panel under the Equality Act 2010; and
- the effect of section 6 of the Human Rights Act 1998 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act in a manner compatible with human rights protected by that Act.

## 8.5 Appointing an SEN expert

### A guide to the law<sup>22</sup>

125. If requested by parents with their application for an independent review panel, the local authority/academy trust must appoint a SEN expert to attend the panel and must cover the associated costs of this appointment.
126. The SEN expert must be someone who has expertise and experience of special educational needs considered by the local authority/academy trust as appropriate to perform the functions specified in the legislation.
127. The local authority/academy trust must make arrangements to indemnify the 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.
128. Parents have a right to request the attendance of an SEN expert at a review, regardless of whether the school recognises that their child has SEN.
129. The SEN expert's role is set out in paragraphs 164 to 167.
130. Individuals may not serve as an SEN expert if they 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 ability to act impartially. However, an individual should not be assumed to have such a connection simply by virtue of the fact that he/she is an employee of the local authority/academy trust.

### Statutory guidance to the local authority and the academy trust on appointing an SEN expert

131. 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. Examples of suitable individuals might include educational psychologists; specialist SEN teachers; special educational needs coordinators (SENCOs); and behaviour support teachers. Recently retired individuals are not precluded from fulfilling this role,

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<sup>22</sup> Section 51A Education Act 2002 and regulations made under this section.

though the local authority/academy trust would need to assure themselves that the individual had a good understanding of current practice and the legal requirements on schools in relation to SEN.

132. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, a local authority or academy trust, they should not have had any previous involvement in the assessment or support of SEN for the excluded pupil, or siblings of the excluded pupil. The local authority/academy trust should request that prospective SEN experts declare any conflict of interest at the earliest opportunity.
133. The final decision on the appointment of an SEN expert is for the local authority/academy trust to make but it should take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEN expert. Where possible, this may include offering parents a choice of SEN expert. In order to meet its duties within the statutory time frame, the local authority/academy trust should consider maintaining a list of individuals capable of performing the role of SEN expert in advance of a request.
134. It is for the local authority/academy trust to determine the amount of any payment in relation to the appointment of the SEN expert, such as financial loss, travel and subsistence allowances.

## Appendix B (DFE guidance verbatim)

### 9. The duties of independent review panel members, the clerk and the SEN expert in the conduct of an independent review panel

#### A guide to the law<sup>23</sup>

135. Panel members and, if appointed, the SEN expert must declare any known conflict of interest to the local authority/academy trust before the start of the review.
136. The role of the panel is to review the governing board'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.
137. 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'. This means that the panel should accept that something happened if it is more likely that it happened than that it did not happen.
138. Following its review the panel can decide to:
  - uphold the governing board's decision;
  - recommend that the governing board reconsiders reinstatement; or
  - quash the decision and direct that the governing board reconsiders reinstatement.
139. The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied vote, the chair has the casting vote.
140. The independent review panel's decision is binding on the: pupil; parents; governing board; head teacher; and local authority.
141. The panel may only quash a governing board's decision if 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 157 to 162).

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<sup>23</sup> Section 51A Education Act 2002 and regulations made under this section.

142. New evidence may be presented to the panel, though the school may not introduce new reasons for the exclusion or for the decision not to reinstate the pupil and the panel must disregard any new reasons that are introduced.
143. In deciding whether the governing board'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 board at the time of it making its decision not to reinstate. This includes any evidence that the panel considers would, or should, have been available to the governing board and that it ought to have taken into account if it had been acting reasonably.
144. If evidence is presented that the panel considers it is unreasonable to have expected the governing board to have been aware of at the time of its decision, the panel can take account of the evidence when deciding whether to recommend that the governing board reconsider reinstatement.
145. 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.
146. The jurisdiction of the First-tier Tribunal (Special Educational Needs and Disability) and County Court to hear claims of discrimination relating to a permanent exclusion does not preclude an independent review panel from considering issues of discrimination in reaching its decision.
147. If a panel directs a governing board to reconsider reinstatement it may order the local authority to make an adjustment to the school's budget or (in the case of an academy) the academy trust to make an equivalent payment to the local authority in whose area the school is located, unless within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil. Paragraph 163 provides statutory guidance to panels on the circumstances under which this payment should not be ordered. 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. The panel does not have the power to order a financial readjustment or payment in circumstances where it has only recommended that the governing board reconsiders reinstatement of the pupil.
148. The panel may adjourn on more than one occasion, if necessary. However, consideration must be given to the effect of adjournment on the parties to the review, the excluded pupil and their parents, and any victim.
149. A review cannot continue if the panel no longer has representation from each of the three categories of members required (see paragraph 98). In this event, the panel may be adjourned until the number can be restored.

150. Once a review has begun, no panel member may be substituted by a new member for any reason. Accordingly, if the required representation cannot be restored from the original members, a new panel must be constituted to conduct the review afresh. In the case of a five-member panel, the panel may continue in the absence of any of its members, provided all three categories of member are still represented.
151. Following the review, 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 any financial readjustment/payment to be made if a governing board subsequently decides not to offer to reinstate a pupil; and
  - any information that the panel has directed the governing board to place on the pupil's educational record.

### **Statutory guidance to independent review panel members on the conduct of an independent review panel**

152. The chair should outline the procedure to be followed and explain to all parties that the panel is independent of the school, the local authority and (in the case of an academy) the academy trust. The panel should support all parties to participate in the review and ensure that their views are properly heard. The independent review should be conducted in an accessible, unthreatening and non-adversarial manner.

153. It is for the panel to decide whether any witnesses should stay after giving evidence for the rest of the review, but they should not be present before giving evidence.

154. In the interests of fairness and transparency, care should be taken to ensure that no one, other than the clerk, is present with the panel in the absence of the other parties. This includes the SEN expert. The panel should ask everyone, apart from the clerk, to withdraw before the panel makes a decision. The clerk may stay to help the panel by referring to the notes of the meeting and providing advice on the wording of the decision letter.

155. In any event, the panel must always make one of three fundamental decisions: it must uphold the governing board's decision; or recommend reconsideration; or quash the decision. Where parents are not seeking reinstatement for their child, this fact should be acknowledged by the panel, but it should not affect the conduct of the panel or its decision. Recording of the panel's findings on a child's educational record and an acknowledgement by the governing board that it would be appropriate for it to offer to reinstate the pupil are both potential outcomes in these circumstances.

156. In the event that a panel cannot continue because it no longer has representation from each of the three categories of members required (see paragraph 98) it should,

having regard to the particular circumstances and the effect on the parties, victim, and pupil/parent, adjourn to allow reasonable time for enough missing members to become available.

## **Statutory guidance to independent review panel members on coming to a decision**

157. The panel's decision should not be influenced by any stated intention of the parents or pupil not to return to the school. The focus of the panel's decision is whether there are sufficient grounds for them to direct or recommend that the governing board reconsider its decision to uphold the exclusion.
158. Public law principles underpin good decision-making. All decisions of a governing board must be made in accordance with public law. Panels are expected to understand the legislation that is relevant to exclusions and the legal principles that apply. Head teacher and governing board members of panels are likely to have first-hand experience of the education context that may be relevant to considerations about whether or not a decision was reasonable in the circumstances.
159. When considering the governing board's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:
  - Illegality – did the governing board act outside the scope of its legal powers in deciding that the pupil should not be reinstated?
  - Irrationality – did the governing board rely on irrelevant points, fail to take account of all relevant points, or make a decision so unreasonable that no governing board acting reasonably in such circumstances could have made it?
  - Procedural impropriety – was the governing board's consideration so procedurally unfair or flawed that justice was clearly not done?
160. Procedural impropriety means not simply a breach of minor points of procedure but something more substantive, that has a significant impact on the quality of the decision-making process. This will be a judgement for the panel to make, but the following are examples of the types of things that could give rise to procedural impropriety: bias; failing to notify parents of their right to make representations; the governing board making a decision without having given parents an opportunity to make representations; failing to give reasons for a decision; or being a judge in your own cause (for example, if the head teacher who took the decision to exclude were also to vote on whether the pupil should be reinstated).
161. Where the criteria for quashing a decision have not been met, the panel should consider whether it would be appropriate to recommend that a governing board reconsiders its decision not to reinstate the pupil. This should not be the default option, but should be used where evidence or procedural flaws have been

identified that do not meet the criteria for quashing the decision, but which the panel believe justify a reconsideration of the governing board's decision. This could include when new evidence presented at the review hearing was not available to the governing board at the time of its decision.

162. In all other cases the panel should uphold the governing board's decision.

### **Statutory guidance to independent review panel members on the financial readjustment/payment**

163. In the case of a maintained school or PRU, where a panel has quashed the governing board's decision and directed that it reconsiders, the panel should order that a readjustment must be made to the school's budget, unless within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil. In the case of an academy, where the panel has quashed the governing board's decision, the panel should order that the academy trust must make a payment directly to the local authority in whose area the academy is located, unless within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil.

### **Statutory guidance to SEN experts on their conduct during an independent review panel**

164. The SEN expert's role is analogous to an expert witness, providing impartial specialist advice to the panel on how SEN might be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel. The SEN expert's role does not include making an assessment of the pupil's special educational needs.

165. 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 lawful, reasonable and procedurally fair (in line with the guidance to panels in paragraph 159). If the SEN expert believes that this was not the case, they should, where possible, advise the panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

166. Where the school does not recognise a pupil as having SEN, the SEN expert should advise the panel on whether they believe the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEN that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.

167. The SEN expert should not criticise a school's policies or actions simply because they believe a different approach should have been followed or because another school might have taken a different approach.

## **Statutory guidance to the clerk and local authority/academy trust on the record of the proceedings of a review panel**

168. The clerk to a review panel should ensure that minutes of the proceedings are taken, including details of the attendance, the voting and the decision.

169. The minutes are not public documents but should be retained by the local authority/academy trust for a period of at least five years, as they may need to be seen by a court or (in the case of maintained school) by the Public Service Ombudsman. The local authority/academy trust should be aware of its duties under the Freedom of Information Act 2000 and the Data Protection Act 1998 when retaining information.

## **Statutory guidance to the independent review panel and clerk on notifying parties of the outcome of the review**

170. If the panel upholds the governing board's decision, the clerk should immediately report this to the local authority as well as notifying the parents and governing board. If the pupil lives outside the local authority in which the school is located, the clerk should make sure that the 'home authority' is also informed in writing without delay of the outcome of the review. This includes any situation where parents withdraw or abandon their application for a review.

## Appendix C (DFE guidance verbatim)

### 10. The governing board's duty to reconsider reinstatement following a review

#### A guide to the law<sup>24</sup>

171. Where the panel directs or recommends that the governing board reconsider whether a pupil should be reinstated, the governing board must reconvene to do so within ten school days of being given notice of the panel's decision. Notice is deemed to have been given on the day of delivery if it is delivered directly or on the second working day after posting if it is sent by first class mail.

172. It is important that the governing board conscientiously reconsiders whether the pupil should be reinstated, whether the panel has directed or merely recommended it to do so. Whilst the governing board may still reach the same conclusion as it first did, it may face challenge in the courts if it refuses to reinstate the pupil, without strong justification.

173. Following a direction to reconsider, unless within ten school days of receiving notice of the panel's decision, the governing board decides to reinstate the pupil an adjustment may be made to the school's budget in the sum of £4,000 if the panel has ordered this. In the case of an academy, the school would be required to make an equivalent payment directly to the local authority in which the school is located. This payment will be in addition to any funding that would normally follow an excluded pupil.

174. If the governing board offers to reinstate the pupil within the specified timescale but this is declined by the parents, no budget adjustment or payment can be made. The governing board must comply with any direction of the panel to place a note on the pupil's educational record. The clerk must also note, where a pupil is not reinstated following a direction to reconsider, the exclusion does 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, the governing board may appeal against the decision of the local authority as the admission authority to admit the child.

175. In the case of either a recommended or directed reconsideration, the governing board must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:

- the parents;
- the head teacher;
- the local authority; and, where relevant, the 'home authority'.

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<sup>24</sup> Section 51A Education Act 2002 and regulations made under this section.

## **Statutory guidance on the governing board's duty to reconsider reinstatement following a review**

176. The reconsideration provides an opportunity for the governing board to look afresh at the question of reinstating the pupil, in light of the findings of the independent review panel. There is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting. The governing board is not prevented from taking into account other matters that it considers relevant. It should, however, take care to ensure that any additional information does not make the decision unlawful. This could be the case, for example, where new evidence is presented or information is considered that is irrelevant to the decision at hand.

177. The governing board should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the governing board. These minutes should be made available to all parties on request.

178. The governing board should ask any parties in attendance to withdraw before making a decision. Where present, a clerk may stay to help the governing board by reference to their notes of the meeting and with the wording of the decision letter.

179. The governing board should note the outcome of its consideration on the pupil's educational record, along with copies of any papers for future reference.

180. The governing board should base its reconsideration on the presumption that a pupil will return to the school if reinstated, regardless of any stated intentions by the parents or pupil. Any decision of a governing board to offer reinstatement which is subsequently turned down by the parents should be recorded on the pupil's educational record. The governing board's decision should demonstrate how they have addressed the concerns raised by the independent review panel; this should be communicated in standard English for all parties to understand.

## Appendix D (DFE guidance verbatim)

### 11. The local authority's role in overseeing the financial readjustment/payment<sup>25</sup>

#### A guide to the law

181. The local authority cannot require a maintained school or academy to make any additional payments following a permanent exclusion, other than the budget share deductions set out in regulations, or the payments which an academy has to make under its funding agreement<sup>26</sup>.

182. The local authority will be responsible for adjusting the budget share for maintained schools and PRUs with delegated budgets if a pupil is permanently excluded, so funding follows the pupil. The process and requirements are set out in the School and Early Years Finance (England) Regulations, issued on an annual basis.

183. A local authority may ask an academy trust to enter into an arrangement for the transfer of funding for a pupil who has been permanently excluded, on the same basis as if the academy were a maintained school. The academy trust may be obliged under its funding agreement to comply with such a request.

184. If a review panel has ordered a financial adjustment, the local authority will be responsible for reducing the budget share for the excluding school by a further £4,000. If the excluding school is an academy, the academy trust must pay £4,000 to the local authority.

185. If a review panel has made a financial adjustment order and the excluded pupil is given a place at another school, including a PRU, ('the admitting school'), the local authority may, if it chooses, pass any or all of the amount of the financial adjustment (i.e. up to £4,000) to the admitting school.

186. The local authority will be responsible for adjusting the budget share for maintained schools and PRUs with delegated budgets in circumstances where a panel has ordered a financial adjustment (see paragraph 163).

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<sup>25</sup> Section 51A Education Act 2002 and regulations made under this section. The requirements for the transfer of funding following an exclusion from a maintained school or PRU are set out in The Education (Amount to Follow Permanently Excluded Pupil) Regulations 1999. Academy funding agreements may require an academy to enter into a similar agreement with the local authority.

<sup>26</sup> This does not include circumstances where a school or academy has voluntarily entered into a separate legally binding agreement with the local authority.

## **Statutory guidance to the local authority on overseeing the transfer of funding following a permanent exclusion**

187. This financial readjustment should be made within 28 days of notification of a direction from the panel. The academy trust should be expected to make payment to the local authority in which the academy is located within the same timescale.

188. If an academy fails to comply with its legal requirement to pay following a direction from an independent review panel then the local authority will be responsible for enforcing this requirement. However, the local authority should also inform the Education and Skills Funding Agency.

189. If an excluded pupil has been found a place at another school by the time the governing board has reconsidered and decided not to reinstate the pupil, the local authority may, if it chooses, pass the amount of the financial readjustment to the pupil's new school.

## Appendix E (DFE guidance verbatim)

### 12. Statutory guidance to the head teacher, governing board and independent review panel members on police involvement and parallel criminal proceedings

190. The head teacher need not postpone taking a decision on an exclusion solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, the head teacher will need to take a decision on the evidence available to them at the time.

191. Where the evidence is limited by a police investigation or criminal proceedings, the head teacher should consider any additional steps they may need to take to ensure that the decision to exclude is fair. However, the final decision on whether to exclude is for the head teacher to make.

192. Where the governing board is required to consider a reinstatement in these circumstances, it cannot postpone its meeting and must decide whether or not to reinstate the pupil on the evidence available.

193. The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:

- whether any charge has been brought against the pupil and, if so, what the charge is;
- whether relevant witnesses and documents are available;
- the likely length of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the school; and
- whether an adjournment or declining to adjourn might result in injustice.

194. Where a panel decides to adjourn, the clerk (or local authority/academy trust where a clerk is not appointed) should monitor the progress of any police investigation and/or criminal proceedings and reconvene the panel at the earliest opportunity. If necessary the panel may adjourn more than once (in line with the requirements summarised in paragraph 148).

## Useful links

### Departmental Advice on Alternative Provision:

<https://www.gov.uk/government/publications/education-for-children-with-health-needs-who-cannot-attend-school>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/268940/alternative\\_provision\\_statutory\\_guidance\\_pdf\\_version.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/268940/alternative_provision_statutory_guidance_pdf_version.pdf)

**Departmental Advice on Behaviour and Discipline in Schools:**

<https://www.gov.uk/government/publications/behaviour-and-discipline-in-schools>

**Departmental Advice on Behaviour and Mental Health:**

<https://www.gov.uk/government/publications/mental-health-and-behaviour-in-schools--2>

**Children with Special Educational Needs and Disabilities:**

<https://www.gov.uk/children-with-special-educational-needs/overview>

**Departmental Advice on attendance:**

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

