

Your child might be, or has been excluded from school. Is it legal? And what can you do? This sheet contains some key points about the law relating to exclusion. It isn't intended to be a complete guide, and shouldn't be relied on as advice for individual cases. It applies to exclusions which take place in mainstream schools and some (but not all) other learning institutions. The law in this sheet is valid as of 18 May 2016 but may change subsequently.

Excluding a child from school

All children have a right to an education so exclusions should only be done where necessary. Only the head teacher can exclude a child and must notify the parent of the exclusion and the reasons for it without delay and provide this in writing. The exclusion must be for a disciplinary reason. It would be unlawful to exclude a pupil simply because he or she has additional needs or a disability that the school considers it is unable to meet. Informal or temporary exclusions such as sending a child home to 'cool off' are also unlawful.

There are only two types of exclusion: fixed term or permanent. 'Fixed term' means for a specified period of days and should not exceed a total of 45 days in one academic year. It may include lunchtimes, which count as half a day.

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.

If the exclusion is for 5 days or less the school must take reasonable steps to set and mark work. Parents have a legal obligation to ensure their child is not seen in a public place unless alternative provision has been found. If the child has been excluded for a total of more than 5 days, the governing body must arrange suitable alternative education for pupils of compulsory school age. If the exclusion is permanent, it is the local authority which must arrange suitable full time education.

Review of head teacher's decision by the governing body

Parents have an opportunity to challenge the head teacher's decision to the governing body. There are particular protections for children with special educational needs (SEN) and disabilities. The decision of the head teacher to exclude must be reviewed by the governing body within 15 school days if:

- The exclusion will result in the child missing a public exam or national curriculum test
- The exclusion means the child will be excluded for a total of over 15 days in one term
- The exclusion is permanent.

The decision of the head teacher must be reviewed by the governing body within 50 school days if the exclusion means the child will be excluded for a total of between 6 and 15 days in one term and the parents request it. If the exclusion is for 5 days or less, the governing body must consider any representations made by the parents (although it doesn't have to meet them) but it cannot direct reinstatement of the pupil.

Review meeting of governing body

Parents and the pupil are entitled to attend the review meeting and to bring a representative to support them. The governors should circulate written evidence in advance, such as information about a pupil's special educational needs (SEN). The governors can then either uphold an exclusion or direct reinstatement of the pupil (immediately or on a particular date). The governors must notify the parents of their decision without delay in writing.

Right to appeal the decision of the governing body for permanent exclusion

If the exclusion is permanent, parents have a right to appeal the decision of the governing body to an independent panel. The appeal must be made to the local authority (or academy trust) within 15 school days of parents receiving the written decision of the governing body. The authority/trust must arrange for the review to begin within 15 school days of the day it received the parents' application. The parents have the right to request the attendance of a SEN expert at the expense of the authority/trust, whether or not their child is recognised by the school as having SEN. The independent panel can do one of three things:

1. Uphold the decision of the governing body
2. Ask the governing body to review their decision
3. Quash their decision and ask them to go through the review process again.

Issues relevant to autistic children

Schools are under additional legal duties when considering the exclusion of children with SEN and disabilities, which may help parents of autistic children who are contesting a decision to exclude. Children with SEN are entitled to extra support, which may range from more help within school, to the involvement of outside specialists and ultimately an education health and care (EHC) plan.

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.

Head teachers and governing bodies must take account of their statutory duties in relation to SEN when administering the exclusion process. The decision to exclude must be:

- Lawful
- Rational
- Reasonable
- Fair
- Proportionate

Head teachers should, as far as possible, avoid permanently excluding any pupil with an EHC plan. Head teachers should also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour.

The governing body of a school has a duty to use its best endeavours to secure that the special educational provision required by a pupil with SEN is made. If it has not done so it may provide grounds for parents to argue that an exclusion decision was unfair.

Schools have a duty not to discriminate against pupils with a disability. Parents can bring a claim for disability discrimination to the First Tier Tribunal or the County Court for other types of discrimination, apart from the review process described above. This must be done within 6 months of the date the alleged discrimination occurred (usually the date of exclusion).

Useful resources

If you want advice on your personal circumstances, you can contact Autism West Midlands for more information and support specific to children with autism.

Website: www.autismwestmidlands.org.uk

Telephone: 030303 00 111

Email: info@autismwestmidlands.org.uk

The charity IPSEA (Independent Parental Special Education Advice) also gives free and independent legally based information, advice and support to parents. Their website contains more detailed information on the law about exclusion: www.ipsea.org.uk

You can also refer to the Department for Education guide on exclusion from maintained schools, academies and pupil referral units in England last updated February 2015 and the SEN code of practice last updated May 2015.

www.gov.uk/government/publications/school-exclusion

www.gov.uk/government/publications/send-code-of-practice-0-to-25