

Rochdale
SENDiass

Special Educational Needs,
Disability Information,
Advice & Support Service.

Exclusion Resource Pack

- fixed term exclusions
- permanent exclusions
- unlawful exclusions

**If you require further information or support
please contact:**

The accurate information provided within this pack is given in line with the following legislation and statutory guidance

Legislation

- Education Act 2002, as amended by the Education Act 2011;
- School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- Education and Inspections Act 2006;
- Education Act 1996; and
- 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

Statutory Guidance

- Exclusion from maintained schools, academies and pupil referral units in England - September 2017

Fixed Period Exclusions

Also known as Fixed Term Exclusions

What is a fixed period/fixed term exclusion?

A fixed period exclusion is where your child is temporarily removed from school i.e. for a specific amount of time (2 days, 3 days etc).

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

Key Points

If a child has been excluded for a fixed period, schools should set and mark work for the first 5 school days.

If the exclusion is longer than 5 school days, the school must arrange suitable full-time education from the sixth school day, e.g at a pupil referral unit (PRU).

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 - 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.

There is a specific process which schools must follow when a child is excluded. See Annex 1.

You have a right to appeal any exclusion. See Annex 2 for details of how to do this.

Permanent Exclusions

What is a permanent exclusion?

Permanent exclusion is the most serious sanction a school can give. It means that the child is no longer allowed to attend the school and their name will be removed from the school roll.

Key Points

Permanent exclusion should only be used as a last resort.

If your child has been permanently excluded, the local authority has a duty to provide suitable full-time alternative education from day 6. This is most likely to take place at a pupil referral unit or other alternative provision.

There is a specific process which schools must follow when a child is excluded. See Annex 1.

You have a right to appeal any exclusion. See Annex 2 for details of how to do this.

Unlawful Exclusions

Also known as unofficial exclusions

What is an unlawful/unofficial exclusions?

An exclusion is unlawful/unofficial when schools do not formally record the process or do not follow legislation and guidance.

It is also unlawful for schools to extend or lengthen any formal exclusion for a non-disciplinary reason such as:

- school saying it can't meet a child's needs. It should look at putting more or different support in place instead.
- Actions taken by a pupils parent/carer
- Not allowing a child back into school after a fixed period exclusion unless they meet particular conditions. Once the exclusion is ended your child must be allowed to go back. For example the head teacher can't extend the exclusion because your child won't admit they are at fault/or accept responsibility.

Key Points

Sending a child home to 'cool off' is unlawful, even if parents/carers agree.

All exclusions should be formally recorded.

Schools unlawfully excluding children are not fulfilling their obligation to provide a fulltime suitable education for your child, with this sort of education you lose your right to appeal, and are unable to use exclusions as evidence that your child needs more or different support in school.

There is a specific process which schools must follow when a child is excluded. See Annex 1.

You have a right to appeal any exclusion. See Annex 2 for details of how to do this.

Template letter for addressing informal/unofficial exclusions. See Annex 3

FAQ's

For what reasons can a school exclude my child?

There is no list of set behaviours for which a pupil can and cannot be excluded, and the decision to exclude lies with the head teacher. Head teachers can only exclude a pupil for a disciplinary reason (e.g. because their behaviour violates the school's behaviour policy). They cannot, for example, exclude a pupil for academic performance/ability, or simply because they have additional needs or a disability that the school feels it is unable to meet. A head teacher can exclude for behaviour outside of school, or for repeatedly disobeying academic instructions.

Can the school send my child to be educated elsewhere?

Schools have the power to send a pupil to another education provider at a different location to improve their behaviour without the parents having to agree.

A school can also transfer a pupil to another school – a process called a 'managed move' - if they have the agreement of everyone involved, including the parents and the admission authority for the new school.

Schools cannot force a parent to remove their child permanently from the school or to keep their child out of school for any period of time without formally excluding. The threat of exclusion must never be used to influence parents to remove their child from the school.

Is there a limit to the number of times my child can be excluded?

Yes. A pupil cannot be excluded for more than 45 school days in one school year. This means they cannot have one fixed-period exclusion of 46 school days or more; and also they cannot have lots of shorter fixed-period exclusions that add up to more than 45 school days. This is true even if these exclusions have been given in different schools. Lunchtime exclusions - where pupils are excluded from school over the lunch period because this is when their behaviour is a problem - are counted as half a day

Can my child be excluded if they have Special Educational Needs (SEN)?

Yes. Any child can be excluded from school. However, Head teachers should, as far as possible, avoid excluding any pupil with SEN, particularly those with an Education Health and Care Plan. Schools

should engage proactively with parents in supporting the behaviour of pupils with additional needs.

Where a school has concerns about behaviour, or risk of exclusion, of a child who has SEN they should assess the suitability of support. Where a pupil has a statement of SEN or EHCP, schools should consider requesting an early annual review or interim / emergency review.

What if I feel my child has been discriminated against by being excluded.

If parents believe that the exclusion has occurred as a result of discrimination 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.

The [Equality Act 2010](#) requires that educational establishments must take reasonable steps to ensure that disabled pupils are not substantially disadvantaged compared with pupils who are not disabled.

Useful Links and Resources

<https://www.ipsea.org.uk/pages/category/exclusion-from-school>

<https://www.gov.uk/school-discipline-exclusions>

Annex 1 – Process to be followed when an exclusion is given.

Step 1

When a head teacher excludes a pupil, they must without delay let parents know the type of exclusion and the reason(s) for it. They must also, without delay, provide parents with the following information in writing:

- the reason(s) for the exclusion;
- the length of the exclusion;
- the parents' right to put forward their case about the exclusion to the governing board (appeal), how they should go about doing this and how the pupil can be involved; and
- when relevant, what alternative provision will be provided from the sixth day of a fixed-period exclusion.

Step 2

The head teacher should inform the governors/Local Authority of the exclusion if

- the child will miss an external examination or national curriculum test or:
- the exclusion is for more than 5 days
- the exclusion is permanent

The Governors must meet within 15 days of receiving notice of exclusion. Parents are entitled to make representations (see annex 2). Parents should be in contact with the Fair Access Team at this stage.

If parents are not happy after the governors have reviewed the exclusion; they can ask for the decision to be reviewed again by an Independent Reviewing Officer

Step 3

Schools should take reasonable steps to set and mark work for pupils during the first five days of a fixed-period exclusion.

From the sixth day of an exclusion, suitable full-time education must be arranged for pupils of compulsory school age (primary and secondary school age), except for Year 11 pupils (final year of secondary school) whose final exams have passed. In the case of a fixed-period exclusion of more than five school days, it is the duty of

the school to arrange this education, unless the school is a PRU (in which case the local authority should make arrangements).

In the case of a permanent exclusion, arranging suitable full-time education is the duty of the local authority for the area where the pupil lives

Where a child has an EHCP a review of the plan will need to be arranged immediately.

Note - For the first five school days of any exclusion, parents must ensure that their child of compulsory school age is not in a public place during school hours without very good reason. Parents must also ensure that their child attends any new full-time education

Annex 2 – Appealing an exclusion

Statutory Guidance highlights that a decision to exclude must be lawful, reasonable and fair. Here are some things for Parents/Carers to consider when making representations to the governors about the exclusion.

Was the decision Lawful?

What reasons are given for the exclusion? Are these genuine disciplinary reasons?
See above - When exclusion is not allowed for a list of invalid reasons.

Has your child committed a single serious breach of the school's behaviour policy?
This could be something like seriously assaulting a teacher or another child or bringing a knife or drugs into school.

or

Has your child been repeatedly in trouble in school? Have they persistently done things that are against the school's behaviour policy?

Check the school's behaviour policy.

If you think that your child did not do what they are accused of or were not involved to the extent the school says, then you will need to consider the evidence very carefully.

Remember that the standard of proof for an exclusion is that it is more probable than not that your child did it.

Talk to your child about what happened. It is sensible to do this as soon as possible. Try to get them to focus on the facts of the incident. You may wish to ask some direct questions such as

- show me exactly where you were
- who else was in the room?
- did any other staff see what happened?
- did anything lead up to it?

Your child's school record, the incident report and any witness statements will be useful here. Do they reflect your child's view of events? Are there differences between the statements? Highlight any inaccuracies. Are there important people who were not asked for a statement? If so you could ask the school to get their views

Has your child been in trouble before? Is it likely that they would behave in this way?

Sometimes children with an otherwise good record do get caught up in misbehaviour and do something silly. Teenagers in particular do not always think through the consequences of their actions.

Effect on other people in the school

The second condition for permanent exclusion is that allowing your child to remain in school would be harmful to the education or welfare of others in the school? Think

about the effect your child has on other children. Are they seriously disrupting the class? Are they a risk to other children or staff? If it's a one off serious offence, how likely is it that it will happen again?

Was the decision fair?

Look at the school's behaviour policy. What do they say about behaviour of this type? Do they generally exclude for this offence? Does the policy say something different to what has happened to your child? Are they applying their behaviour policy consistently? If other children were involved in the incident, how were they treated? Were they given the same punishment?

Was your child affected by anything going on at home or at school? This could be a family bereavement or divorce or bullying at school. Was this something you told the school about?

If your child has been bullied, was the school's anti-bullying policy followed? Have you raised concerns with the school before?

If your child has been having ongoing problems with behaviour, has the school put in support to try and address this? Have they considered a multidisciplinary assessment involving external agencies and services?

Special Educational Needs - Schools must not exclude children simply because they have SEN. If your child does not have identified SEN, has this ever been considered? It may be something that you have already raised with the school.

How do your child's special educational needs affect their behaviour?

Has the school followed its SEN policy?

Was your child receiving the support they should have been? For example, if the EHC plan says your child must have one to one support at playtimes and this wasn't forthcoming, was the incident a result of the lack of support? Has an early interim review of the EHC plan been suggested by the school? An interim review could look at putting in additional support or identifying an alternative placement?

Was the exclusion affected by something like race, gender, disability, sexual orientation?

If your child has a disability, was the behaviour they are being punished for a direct consequence of their disability?

Were there reasonable adjustments the school could have made to avoid the incident? Give examples of what they could have done differently.

Is the exclusion reasonable?

You may think the punishment is too severe for what your child did. Have a look at the school's behaviour policy. Is there a scale of punishments related to the seriousness of the offence? What alternatives might have been available?

Annex 3 - Letter template to address an informal exclusion

[Parent's name and address]

[Headteacher's name]
[School address]

[Date]

Dear Mr / Mrs / Ms

Re: [name of child]

I am writing regarding my [son/daughter], [name of child].

I am concerned that my child has been unofficially excluded from [name of school]. On the following dates, my child has been asked to leave the school during school hours;

- [list of dates here]

Having taken advice, I understand that my child can only be sent home from school during school hours, if they are formally excluded.

Unofficial exclusions are unlawful. I am concerned that my child is currently out of school due to an unofficial exclusion. I would ask that you allow my child to return to school immediately. Failing that, please provide me with lawful notice of the exclusion without any delay.

I understand that exclusion is only lawful if the decision to exclude is taken by you as the head teacher. I also understand that when you make the decision to exclude, you must write to me to provide notice of the exclusion. This notice must contain the following:

- Confirmation of the period of the exclusion,
- Whether the exclusion is for a fixed period, or permanent,
- The reason for the exclusion,
- Parental rights to make representations to the Governing Body about the exclusion,
- The process for making representations,
- Parental rights to attend at an appeal hearing, and to bring representation, if the
- exclusion is permanent.

I do not appear to have received adequate notice of the exclusion(s) listed above. I am concerned that my child has been unlawfully excluded. If notice was provided, please do forward those letters to me at the above address as soon as possible.

I should be very grateful if you could let me know why my child was sent home on the above dates. I would also be grateful if you could assure me that my child will not be sent home again without formal notice of an exclusion being provided. Please also confirm where I should send further representations regarding the exclusions.

If my child requires additional support in school, please let me know. If this is the case, I am very happy to attend a meeting with you and my child's class teacher and/or SENCO to discuss what we need to do next.

I would be very grateful if you could respond to this letter within ten working days. If I have not heard from you by then, I will have to raise my concerns with Ofsted and my Member of Parliament.

I look forward to hearing from you.

Kind regards

[Parent/s' name/s]