

Referencing the September 2017 guidance, updated September 2023

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**Introduction**

The aim of this guidance is to set out for Head Teachers and supporting staff preparing for the Governing Body’s consideration of exclusion, what information governors require in making a rigorous decision about a permanent exclusion. It has been considered in the context of how an Independent Review Panel (IRP) might review the decision.

This guidance draws upon the legislative guidance document [Exclusion from maintained schools, Academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion](#), (Department for Education 2017).

Please contact your local authority Inclusion Officer to discuss in detail the specifics of an individual case and the guidance on preparing evidence for the Governing Body.

At the end of the guidance is a checklist of the documents that are usually made available to the Governing Body where they are relevant to the pupil. It can be helpful to use/adapt this checklist as an index to your document bundle.

## Context

### Responsibilities of the Local Governing Body

This extract summarises the responsibilities of the Governing Body:

In reaching a decision on whether or not a pupil should be reinstated, the governing board should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the head teacher's legal duties and any evidence that was presented to the governing board in relation to the decision to exclude.

(DfE Guidance 2017 – Para 71, p21)

To clarify, Governors should be satisfied that the decision the Head Teacher took:

- was in accordance with the law (section 2 of DfE guidance), and took full account of your legal duties to students in the school including Safeguarding, SEN and Equality
- was a balanced decision that you made having investigated the events fully, seeking the account of the pupil concerned and any witnesses, and that you took sufficient time and appropriate advice to consider the evidence and explore the alternatives to permanent exclusion (section 2 of DfE guidance)
- followed the school's own policies and procedures in administering the exclusion, and that DfE guidance was followed in notifying all parties and meeting the necessary timescales (section 2 of DfE guidance)

The Head Teacher's statement and the supporting documents provide evidence of how they have followed the DfE Guidance and met their legal duties in reaching the decision to permanently exclude.

The statement should be written in straightforward language, avoiding jargon and acronyms, presenting the facts of the case and the order in which things happened, including both the incident itself and your decision-making. The presentation must be accessible to all those who will be party to the governor hearing and potentially an independent review.

### The Headteacher's Statement

The Head Teacher's statement should cover:

- A summary of the incident(s)
- Evidence of the support offered/provided by the school
- Detail of your decision-making process

#### The Head Teacher's Statement – A summary of the incident(s)

The statement should give a clear summary description of the incident which led to the decision to permanently exclude the pupil. In cases of persistent disruptive behaviour, this will be a description of the 'final straw' incident and an outline of the persistent nature of the behaviour over time. The decision should be based on the balance of probabilities 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'

The summary of the incident may be subject to scrutiny by the Governing Body and an IRP so it is important that the statement carries a factual and neutral tone, clearly distinguishes between fact and opinion, and that it accurately reflects any statements that are presented within the bundle of papers in support of the Head Teacher's actions. It is likely that there will be contentious issues and conflicting accounts within the information provided. Head Teachers should acknowledge any inconsistencies and explain why they have taken a particular view.

The DfE guidance states that efforts should be made to obtain the pupil’s account of events and that they have an opportunity to state their case before the decision to exclude is taken. If this has not been possible for some reason, it is important that you make reference to this in your statement and explain the reasons for it.

It may be helpful to present information in an attached chronology for easy reference, particularly in cases of persistent disruptive behaviour where there will be several relevant events. References can be made to other documents within a chronology for further detail but presenting the ‘story’ of events in a chronology can be helpful. There is an example chronology excerpt available at the end of this guide.

### **The Head Teacher’s Statement – Support offered/provided by the school**

The DfE Guidance refers to supportive measures:

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

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. (DfE Guidance)

It is important that the Governing Body has clear evidence that the school has used their ‘best endeavors’ to ensure the appropriate special educational provision was made for a pupil with SEN and with regard to the SEND Code of Practice. The Governing Body should therefore review the reasonable adjustments that have been made (provision and interventions). Head Teachers could summarise the supportive measures in their statement and enter detailed information about support/reintegration timetables/interventions/alternative provision/referrals to other agencies in the chronology and supporting documents. This should demonstrate how they have actively worked to avoid exclusion and how they have assessed the pupil’s educational and social needs and responded to those identified needs.

As part of this they will need to demonstrate they have followed the school’s own policies and the SEN Code of Practice in assessing and meeting SEN need. Schools should make the pupil’s SEN status clear in the statement and provide supporting documentation including recent reviews.

If a specific type of support or intervention is cited, ensure the documented evidence is provided in the bundle to evidence it.

The Governing Body will need to understand the impact of interventions/support, to understand how relevant they were to the needs of the pupil and what the outcome was e.g.

#### **Example A:**

“Hub referral made in May” – does not offer sufficient detail, whereas

“A Hub referral was made on 2nd May 2022 following a meeting with the family about poor attendance patterns. The Hub has worked for 2 months on establishing routines in the home. The impact has been minimal as the family have not met with the Hub regularly. Attendance has not improved” – demonstrates how appropriate the referral was; the focus of the work, and the level of engagement/impact.

Similarly, for any meetings or assessments either within school or by external agency, the Governing Body will need to see the agreed actions and evidence of how these have been put into practice e.g.

### Example B:

“Education Psychology referral made” – does not offer sufficient detail, whereas

“Education Psychology referral made on 14th December 2022, pupil attended 2 appointments with the EP in school on 8th February 2022 and 21st February 2022. Recommendations of the report were to support pupil in small groups of up to 4 and to offer alternative activities at break times with a chosen friend; implement a reward system for good choices based around their interest in trains; and implement the team teach strategies to de-escalate situations of stress and where required follow a positive handling plan to intervene if there are incidents of physical violence towards others. Class teacher and SENCO met with parents to review IEP on 15th March 2022. Some positive response to the reward system observed and better concentration and reduced anxiety within the small groups” – demonstrates the timescale of the referral, engagement, recommendations, how these were implemented by the school and the impact

## The decision-making process – The Head Teacher’s Statement

The Governing Body will need to see how the Head Teacher followed the DfE Guidance in reaching the decision to permanently exclude. The statement should demonstrate to the Governing Body how the decision to permanently exclude was taken:

- By the Head Teacher (or Acting Head, section 579(1) of the Education Act 1996) on disciplinary grounds
- In response to serious or persistent breaches of the school’s behaviour policy; or where allowing the pupil to remain in school would be detrimental to the education or welfare of the pupil or others in the school
- In line with administrative law i.e. lawful, rational, reasonable, fair and proportionate
- Based on the balance of probabilities that it is more likely that the fact is true than not
- Ensuring that in the school’s policies and practice a pupil has not been discriminated against
- With due regard to the SEN code of practice
- After (where practical) the pupil concerned has had opportunity to present their case, and taking into account any contributing factors and mitigating circumstances
- Ensuring that early intervention has been implemented to address the underlying causes of behaviour including SEN or disability in order to prevent the incident(s)

Permanent exclusion should be a last resort. Early intervention and multi-agency working should be used to address underlying causes of disruptive behaviour in addition to assessment of SEN need (para.19).

Governors will need to be satisfied that the decision to permanently exclude has been taken rationally; in fair proportion to the incident(s) and that all alternatives were considered even if they were deemed to be unsuitable.

The local authority Inclusion Officer can offer advice on alternatives to permanent exclusion and give a view on how other schools have responded to incidents. Alternatives include, but are not limited to – fixed term exclusion, restorative approach with those involved towards reparation/resolution, time-limited courses to support engagement, changing the learning environment e.g. considering alternative provision, college courses, activity programmes, or planned transfer to another school.

Ensure that the statement explains what alternatives you considered, and why the Head Teacher deemed them inappropriate. Also document any advice they sought prior to making your decision, what the advice was and if/how they used that.

If the pupil is from a group at high risk of exclusion, the school will need to demonstrate to governors what extra support was considered to identify their specific needs and reduce their risk of exclusion. The guidance specifies that Head Teachers should avoid permanently excluding pupils with a SEN Statement or Education Health and Care Plan (EHCP) and Looked After Children (LAC)/Children We Care For (CWCF), and that schools should work with social care partners and the Virtual School for LAC pupils, and call an early EHCP Annual Review for pupils with an EHCP. If the school has permanently excluded a LAC/CWCF or pupil with an EHCP, they will need to explain why in light of this.

## Supporting documents – Presenting appropriate information to evidence your statement

Head Teachers will need to provide evidence to the Governing Body of the things referred to in the Head Teacher statement.

### Permanent exclusion documents

Head Teachers should include the permanent exclusion form sent to the Local Authority, the letters sent to the parent informing them of the permanent exclusion and any fixed term exclusion made 'in the first instance, pending a decision about permanent exclusion' and present them in date order so the sequence of events is clear.

If the pupil has received a number of exclusions (particularly in the case of persistent behaviours) it is appropriate to include these also.

### Witness statements

It is commonplace for students to provide handwritten statements following an incident, the expectation on children to provide these is at the school's discretion and should take into account their age and understanding. If a verbal statement is taken, it should be written out in full by those who were present. All statements should be named, signed and marked with the date and time of their writing.

School staff are often asked to provide written statements following an incident. Staff should provide a neutral factual account of the incident in clear language. All statements should be named, signed and marked with the date and time of their writing.

It is helpful to encourage students and staff alike to give as much detail as possible including where they were at the time of the incident, what they themselves saw or heard directly and what they believe to have happened - distinguishing between fact and opinion. It may be appropriate for a student or staff member to express how they felt at the time of the incident, but the overall statement should aim to be balanced and factual.

The school may need to consider providing typed versions of the handwritten statements in the bundle to accompany the originals to assist parties in reading them.

When presenting statements in the bundle, the question of providing anonymity to students (and on rare occasion staff) is something Head Teachers must consider. Balancing the need to protect pupils who may have witnessed a serious incident and may fear repercussions from the pupil involved, against natural justice – the right of the pupil to hear what is being alleged and by whom. Each situation must be judged on its individual merits and Head Teachers will need to be able to explain why they have chosen to make the statements anonymous if they do so. Where anonymised, statements should be marked up pupil A,B,C or pupil 1,2,3 for example, to enable parties to distinguish between statements.

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.

(DfE Guidance 2017, Para 118).

## SEN documents

The guidance refers to SEN on a number of occasions, the factors schools should consider when taking the decision to exclude, the fact that pupils with SEN are more likely to receive exclusions and therefore additional provision should be made to prevent their exclusion, and that the school has a duty to give due regard to the SEN Code of Practice and the school's own SEN policy.

Should the case be heard at an independent review panel, the parent may request a SEN expert, even where the school has not recognised the child has SEN. 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.... (they) should base their advice on the evidence provided to the panel.... the role does not include making an assessment of the pupil's special educational needs.... the focus ....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 ... 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."

It is therefore imperative that you evidence how the school has followed the SEN Code of Practice in relation to the pupil, what assessments have been made, what subsequent action was taken, and how this was reviewed and managed over time and the 'graduated approach' and 'assess, plan, do, review' cycles evidenced.

Include the school's SEN Policy and the following documents where they exist for a pupil:

- Education Health and Care Plan (EHCP)
- Individual Education Plan (IEP) / Pupil Profile / SEN Support Plan
- Individual Behaviour Plan (IBP)
- Individual Provision Tracker
- Pastoral Support Plan (PSP)
- Positive Handling Plan
- Individual Provision Map/Tracker
- Targeted Interventions
- Assessments of Learning/Behaviour/Risk
- Third party assessments/advice (may require permission from the author or parent)

## SIMS or other school management system records

Behaviour and attendance records from such systems are sometimes presented to the meeting, this can be helpful but there can also be a lot of irrelevant information in these records and jargon/codes that may need further explanation.

If the school is including electronic records it is useful to check them and provide further detail to make the information clear and accessible to all parties. It may be more useful to present the information in a chronology for this purpose.

## Photographs/video evidence

Schools may have considered video or photographic evidence when taking the decision to exclude, either from school CCTV or from other sources e.g. mobile phones. If they are submitting any photographic or video evidence, they will need to consider the confidentiality of other students who may feature.

Consult your school policy on using images of children i.e. whether you will need the pupil's parents to agree and consider whether images should be edited to remove other pupils or protect their identity.

## Third party reports

The Governors will want to see what advice has been given and how the school has implemented that advice. If the school has reports from other agencies e.g. PCAMHS or Education Psychology, they may need to obtain their agreement to share the documents with the meeting. In addition to the evidence in any SEN paperwork, schools should use the chronology to show when things were implemented and their impact.

## Social care/Hub documents

Where there is social care or Hub involvement, and minutes from core group meetings or conferences, or TAF documents, these are confidential and schools may need to seek agreement from the social worker, and indeed the family, to include them in the bundle. Any information that is included will need to be checked for references to other family members or irrelevant information.

Usually it is sufficient to document when meetings have been held and any action points that were given to the school or relevant to the child – this could be added to the chronology. The TAF documents have a front sheet which details the date of the meeting and who attended, and a page which summarises the actions agreed. Head Teachers could include just these two pages, taking care to remove references in the actions to anyone or anything not relating to the child, which then avoids compromising confidentiality.

## Safeguarding

If the school has made no named requests to social care or taken action in response to safeguarding concerns they will need to consider whether they record that in the bundle. The Head Teacher may wish to enter these actions in the chronology if they are relevant in a wider sense to the exclusion. However, if sharing that information would place someone at risk or if the family is not aware of the contact, schools may want to seek advice from the local authority safeguarding team.

## Risk Assessment

Where the school has had concern about a pupil's risk to themselves or others, they should have completed a risk assessment to find ways to reduce the risk or recurrence or impact. For a serious one-off, they may have only had cause for concern at the time of the incident however; it would be good practice to complete a risk assessment as part of your decision-making on whether or not to permanently exclude the pupil. All risk assessments should be included in the bundle.

## Policies

Include the school's Behaviour Policy and SEN Policy in the bundle, ensuring that they are the policies that were in date and in use at the time the decision was taken to permanently exclude. If the policies have been revised since, schools must include the version that was in use at the time of the incident/decision to exclude. If they have any additional policies that would be relevant to the case e.g. specific policy on drugs or bullying then include those policies also.

Governors may wish to know how the policies have been communicated with pupils and parents throughout their time at the school, and how a parent and pupil would have had access to these policies e.g. on the website or in a welcome pack.

## Presenting the bundle

The document pack or 'bundle' that the Head Teacher provides is sent by post to the parents, the Governors and the local authority (unless an Academy Governing Body has not requested that the local authority attends). As the information is confidential the school should consider how to securely send this to all parties. The bundle must be available to all parties at least 5 school days in advance of the meeting.

Some schools present their bundles in a ring binder, some have them bound and others simply provide loose paperwork in an envelope. It is helpful to have identical sets of documents with numbered pages so that everyone in the meeting can refer to the same pages for reference.

The school may arrange to email the papers to the local authority and the Governors and even the parents if they choose. We would recommend having hard copies available either to follow or at the meeting.

We suggest:

- Removing references to other children (peers/siblings) unless directly relevant to the incident(s)
- Consider accessibility of information and avoid jargon/acronyms. A recipient may have a communication disability, English as a second language or may not read with confidence
- Include a contents/index page of the documents enclosed with page numbers
- Organise the bundle so that the Head Teacher's Statement, Permanent Exclusion Form, Letter to Parents, and the Chronology are near the front
- Consider providing typed versions of handwritten statements/information, to accompany the originals where handwriting may be difficult to decipher.

## Appendix 1 – Checklist of documents

This could be adapted to make an index for the bundle

Document / Information	Page
Information about the Permanent Exclusion	
Permanent Exclusion form	
Permanent Exclusion letter to parents	
Permanent Exclusion letter to parents regarding arrangements for Governor Disciplinary panel	
Head Teacher’s Statement	
Chronology of Events	
General exclusion / attendance information/letters	
Record of all past exclusions	
Letters to parents regarding all past exclusions	
Reintegration meeting minutes and letters from past exclusions	
Other letters/e-mails to parents including behaviour letters, informal meetings, academic reporting, work sent home prior to 5 days’ exclusion	
Record of Attendance	
Evidence relating to the permanent exclusion	
Pupil’s statement(s) from the child (via parents)	
Witness statements – other pupils and staff	
Risk Assessments	
Behaviour Policy	
Exclusion policy	
Inclusion policy	
SEN Support	
SEN Policy	
Education Health and Care Plan / SEN Statement	
SEN Reviews	
Discussions with SEN Officer and recommendations	
IEP Individual Education Plan	
IBP Individual Education Plan	
Individual Provision Tracker	
PSP Pastoral Support Plan	
PHP Positive Handling Plan	
Provision map	
Safeguarding concerns	
Record of concerns raised (safeguarding disclosures)	
Behaviour notes	
External Agency Support	
CAFs and TAC plans	
Referrals to outside agencies and outcomes for pupil, incl alternative learning provision referral	
IYFAP Referrals	
Educational psychologists’ reports	
Other reports / advice from outside agencies and their recommendations	