

EFFECTIVE PRACTICE FOR LOCAL AUTHORITIES AND SCHOOLS IN MANAGING AND ELIMINATING INCIDENTS OF UNOFFICIAL EXCLUSION

The latest exclusions guidance (see link at end of document) makes it clear that removing pupils from school sites for disciplinary reasons without following formal exclusions procedures is **illegal**, since there is no basis in law for head teachers or other school staff to do this, even if done with the agreement of parents or carers.

Head teachers have to deal with everyday difficulties in school and sometimes have to make pragmatic decisions. Some head teachers find themselves under pressure from parents of children at risk of exclusion (and often from other parents) and from teachers to make rapid decisions. Head teachers need to know where they stand in an increasingly litigious society.

Our latest exclusions guidance gives an unequivocal message that unofficial exclusions are illegal and should not take place.

This note sets out:

- what constitutes an unofficial exclusion (including sending pupils home to 'cool off');
- four key effective practice principles which underpin successful management of exclusions; and
- how some schools and local authorities (LAs) are making clear that unofficial exclusion is illegal.

What constitutes an unofficial exclusion?

Unofficial or informal exclusion refers to:

- head teachers or other school staff sending pupils home for disciplinary reasons, but not following the procedures required for formal exclusion and;
- pupils being sent home for either short periods of time, or for longer, indefinite, periods which can sometimes result in the pupil not returning to school at all.

These pupils may be marked as an authorised absence, or in some cases marked as attending, and eventually taken off the school roll incorrectly without having another school place to go to. This practice is illegal and the formal exclusion process should always be used.

Cooling Off

Where critical situations have erupted during the school day, head teachers may decide to send pupils home to 'cool off' for the remainder of the day without following the formal exclusions process. This may be viewed as a

suitable way to manage the pupil's behaviour in the short-term and as preferable to formal exclusion. However, our view is that this also constitutes unofficial exclusion and there is no legal basis for it. It cannot be viewed as an internal management arrangement as this ignores the rights of the individual child and could lay the school open to legal challenge.

Section 52(1) of the Education Act 2002 enables head teachers of maintained schools to exclude a pupil from school for a fixed period or permanently. For fixed period exclusions, Regulation 3 of the Exclusion Regulations (SI 2002/3178 – see link at end of document) specifies a maximum of 45 school days in a school year but are silent on the minimum length of an exclusion. This means that **there is no provision to send pupils home in response to a breach of discipline, other than through exclusion.**

If a head teacher were to send a pupil home to 'cool off' for cumulatively five or more days in a term, be this on one or more than one occasion, there could be a legal challenge. A parent of a pupil formally excluded for such a period would have the legal right under Regulations 4 and 5 of the Exclusion Regulations to receive information and make representations to the school governors. Being unofficially excluded or sent home to 'cool off' may result in a breach to the pupil's human right not to be denied education which could result in an order for damages against a school if a pupil were to be successful in such a claim. (Appendix 1 outlines examples where pupils are being sent home to 'cool off', a practice which is not allowed by the current exclusions guidance.)

Other mechanisms have been inappropriately used by some schools as a means of 'unofficially excluding' pupils. For example:

- following a fixed period exclusion, a pupil remains out of school awaiting a reintegration interview which may be indefinitely delayed and the pupil does not return to school (see paragraph 27 of the exclusions guidance for information on reintegration interviews);
- parents being advised that if their child returns to school after the fixed period exclusion ends, the child will be permanently excluded;
- parents being strongly encouraged to home educate even though they may not be aware of the responsibilities involved;
- disruptive pupils being asked to stay out of school for particular reasons e.g. for the duration of an OFSTED inspection; and
- pupils placed on study leave for periods of time longer than recommended in guidance (for guidance on school attendance please go to <http://www.dfes.gov.uk/schoolattendance/publications/index.cfm>).

Principles of effective practice

From our work to date with LAs and schools, four key principles have emerged which if applied consistently should make it clear that unofficial

exclusion is illegal. They are:

- LA senior officer involvement at a strategic level within the inclusion agenda, making it clear that unofficial exclusion is illegal and reminding head teachers of their obligations;
- schools to give clear, positive messages to staff, governors, parents and pupils. For example, a school's behaviour policy could highlight the damaging effects of unofficial exclusion. There could also be positive messages in the school's prospectus about the behaviour policy and reassurance that if it should become necessary to remove a child from school on disciplinary grounds, the school will always do this in accordance with the law;
- LA to ensure the school workforce is given early training and support to manage difficult or disruptive pupil behaviour so that unofficial exclusion is never an option. Schools could also support each other through partnership working;
- school and LA agreeing formal, well-defined processes, protocols and record-keeping at every stage of a pupil's school life in order to identify instances of this practice. This will include the Hard to Place Pupil Protocol which acknowledges the real need of vulnerable young people who are not on the roll of any school to be dealt with quickly and sympathetically and reduce the time that these pupils spend out of school.

How some schools and LAs are making clear that unofficial exclusion is illegal and should not take place

Identifying instances

The very fact that unofficial exclusions are not recorded means that it can be extremely difficult to identify instances of this practice. However, the following methods have been used, singly or in combination, by LAs and schools to identify unofficial exclusions.

- **Formal lines of communication established** with other agencies and the voluntary sector, such as Social Services and Connexions, to ensure sharing of information about children out of school. The integration of Children's Services under the Children Act is a crucial part of strengthening these communications.
- **Analysis of individual school data** and follow-up of worrying patterns may include LAs monitoring patterns such as numbers of pupils outside usual age for transfer looking for other schools, or gaps in admissions data between dates when pupils leave one school and apply for another. In addition LAs should have protocols in place to allow robust follow up of pupils taken off roll, especially where pupils have no school or alternative provision place. (For further information about when a school should notify the LA that they have taken a pupil off the school

roll, please see the link about pupil registration at the end of the document.)

- **Close working between Education Welfare Service (EWS) and schools** could include periodic detailed register checks of schools, matching pupils to ticks on register and investigating reasons for authorised absences, education off-site or other forms of approved education activity. The LA can also utilise software that allows central access to registers so that the EWS/LA can scrutinise patterns and follow up. In addition EWS should follow up informal intelligence (from parents, pupils, home visits, etc.) about pupils out of school.
- **Providing an opportunity for the public to inform the LA of possible instances of unofficial exclusion**, for example, setting up confidential phone lines to pass on information about children out of school. This could include encouraging parents to report instances of unofficial exclusion to the Authority.
- **When OfSTED inspects a school, records of exclusions and reasons for persistent non-attendance are examined.** This will help to identify instances of unofficial exclusion. Where pupils have poor attendance, or are excluded, or drop out in significant numbers, inspectors should evaluate the school's attempts to re-engage them.
- **Truancy sweeps** may identify pupils who have been unofficially excluded and details of the pupil will be passed to the LA.

Stopping the practice where it happens

If a pupil is excluded unofficially they are unlikely to have educational provision made for them. Unofficial exclusions need to be addressed because this issue has a direct impact on the Government's aim to ensure that no child is missing from education.

We recommend the following policies and practices to tackle unofficial exclusions where they are identified:

- training for school governors and managers, and EWO meetings with all schools to remind them of their obligations;
- letter to relevant school(s) from Senior Education Officer reminding head teachers of their legal obligations;
- formal feedback to all schools in a LA on findings from data or register checks;
- head teachers to challenge/support their peers;
- follow-up visits to relevant school(s) accompanied by an action plan.

Where to find more information

- Examples of early intervention strategies and good practice in managing exclusions can be found at:
www.dfes.gov.uk/exclusions/case/index.cfm
- Guidance on managing exclusions '*Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units September 2006*', Ref 02017-2006BKT-EN, available on-line at:
www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance

Printed copies are available from Prolog: 0845 60 222 60

- The exclusion regulations, SI 2002/3178, can be found at:
<http://www.opsi.gov.uk/si/si2002/20023178.htm>
- Guidance explaining the 2006 regulations on pupil registration can be found at:
<http://www.dfes.gov.uk/schoolattendance/legislation/index.cfm>
- Guidance on schools pastoral and disciplinary policies can be found on-line at:
<http://www.dfes.gov.uk/behaviourandattendance/guidance/IBAGuidance/index.cfm>

APPENDIX 1

Instances where pupils are being sent home to ‘cool off’

- 1. Where it has taken time and effort to build a relationship with parents, excluding the pupil would jeopardise this relationship.**

This is a judgement only a head teacher can make but alternatives to exclusion may be available such as minor disciplinary penalties or referral to an internal exclusion unit (this should not be a learning support unit).

- 2. When there is a minor breach of discipline the parent may ask to withdraw their child in response to a telephone call from the head teacher.**

It could be argued that this is not an exclusion since the parent has asked to withdraw their child. However, this could still leave the school and LA open to challenge as this is an exclusion in all but name and the initiative has come from the school through the telephone call, not the parent. Parents have a duty to secure suitable and efficient education for their child, either by regular attendance at school or elsewhere.

- 3. Sending a pupil home to ‘cool off’ can be written in to Pastoral Support Programmes (PSPs) so that it is above board and agreed by all parties.**

PSPs are non-statutory and our guidance (please see the link on the previous page) explains that they should identify precise and realistic outcomes for the child or young person to work towards. An appropriate sanction for misbehaviour may be exclusion, depending on the individual circumstances of the case. Writing in ‘cooling off’ to the plan does not legitimise the practice. Likewise, writing it in to the school’s Behaviour Policy or using it as an internal management sanction does not legitimise the practice.

- 4. Part-time timetables can formalise such arrangements and if they are not illegal how can it be illegal to send pupils home to cool off?**

Our legal advice is that DfES guidance on the recommended number of hours taught time at each key stage is only advisory and so long as pupils attend morning and afternoon registration, they can be marked as attending for the whole school day. However, when pupils are put on a reduced timetable which only requires them to attend for the morning or afternoon session, they need to be marked as authorised absence for the other session (attendance Code C). Guidance on the pupil registration regulations and attendance codes can be found at:

<http://www.dfes.gov.uk/schoolattendance/legislation/index.cfm>.

Part-time timetables can be used in a variety of contexts including reintegrating pupils back into school after a long absence, as well as in response to ongoing behaviour difficulties. But part-time timetables may not be the most appropriate response to every disciplinary situation and they should only be used as a short-term part of a full reintegration plan, rather than as a solution to behavioural problems and/or as a sanction.

5. Sending a pupil home to ‘cool off’ is simple and effective and avoids the need for all the bureaucracy involved in an exclusion.

We need to be aware of the general thrust of reducing bureaucracy in schools but this argument is more difficult for head teachers to sustain as it is implicitly involves cutting corners.

6. If the Department takes a tough line on this there will be an inevitable rise in recorded exclusions.

We have alerted Ministers to this possibility and we would rather have a higher exclusions figure which gives a truer picture. This is fairer for LAs with high but accurate figures.