

Fixed period exclusion

A practical guide to parents' legal rights



What does it mean?

In this guide we use:

- **must** when the law says something must happen.
- **should** when the government expects something to happen.

Other things you need to know

In *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units (2007)* the Department for Children, Schools and Families (DCSF) explains the law and what the government expects from schools and governing bodies when pupils are excluded from school. In this guide we call this the Exclusions Guidance. By law this guidance must not be ignored. It should be followed unless there is good reason not to.

In other guidance, available on the Internet, the DCSF covers behaviour issues. In this guide we call this DCSF web guidance. It too must not be ignored but it is not such high status as the exclusions guidance. ACE strongly advises parents/carers to get copies of both (*see page 15*).

Schools must have a behaviour policy which should include the order of severity of their punishments.

Children **should not be excluded** for minor incidents such as not doing homework or not bringing dinner money; poor academic performance; lateness or truancy; pregnancy, breaking school uniform rules or rules on appearance including jewellery, body piercing and hairstyle (except where persistent and in open defiance of these rules); the behaviour of parents such as refusal or inability to come to a meeting or for their own protection from bullying by sending them home.

Schools should set and mark work for exclusions of more than one day and must provide suitable full time education from and including the sixth school day of any fixed period exclusion. Local authorities (LAs) must provide suitable full time education from the sixth school day of any permanent exclusion.

To the Chair or Clerk of the Governing Body

Dear Sir/Madam

My child **[give name]** has been excluded.

I would like to state my case in person to the governors.

Please give me copies of my child's school record, the school's behaviour/discipline policy and **(if relevant)** the special educational needs, race equality and equal opportunities policies and any witness statements, including my child's statement. Please tell me the order in which people will speak at the meeting **(if applicable)**. I would like to bring a friend or adviser with me.

Yours faithfully,

Parent/carer

Keep copies of your letters

My child has been excluded for a fixed period

What can I do?

This can be a difficult and worrying time for you and your child. This guide looks at what you can do if you disagree with an exclusion.

Step 1: Send a letter

You have the right to put your case in writing and also often in person to the school governors.

The governors will decide if the exclusion was the right action to take. Exclusion is a serious step for a school to take. Even if you do not want to put your case to the governors, it can help your child if you meet to discuss the exclusion and the future with teachers.

To find out if you have the right to put your case in person to the governors, check how many days your child has been excluded this term. Add together this exclusion and any other exclusions this term:

- If the total is five school days or less: the governors do not have to meet with you. But it is good practice for them to do so. Ask to meet them if you want to. Otherwise just write your case and send it to the Chair of the governing body.
- If the total is five and a half school days or more, or if your child will miss a public examination (not SATs): you have the right to put your case at a meeting of the governors. They are able to return to school a child who is still excluded; this is called reinstatement.
- **For exclusions which total no more than 15 school days in one term the governors will only review your child's exclusion if you put your case to them.**
- When exclusions total more than 15 school days in one term, the governors must meet to review the exclusion whether or not you choose to attend

Write immediately to the governors (see example letter on page 2).

Step 2: Putting your case together

ACE advises that you write down your case and read it out at the meeting. This will make sure that your points are clear and nothing is accidentally missed out. You do not have to send in your case before the meeting, but you can if you wish.

To put together your case, go carefully step-by-step through to Step 11. Not all steps will apply to your case, and you may want to add other points.

First check: should your child have been excluded?

Your child should only have been excluded for a fixed period if:

- the school can prove that they are more likely than not to have breached the school's behaviour policy, including persistent disruptive behaviour AND
- the breach is not serious enough to warrant permanent exclusion and lesser sanctions such as detention are considered inappropriate

Now check the list on page 2 of things that children should not be excluded for.

Children can be excluded for behaviour outside school if the Head feels that there is a clear link between that behaviour and maintaining good behaviour and discipline within the school.

If you feel that your child's actions should not have led to exclusion, explain why briefly.

The next steps will help you look at the points in more detail.

Step 3: Check the exclusion

Only the Head may exclude. (If the Head is absent it should be the most senior teacher who is acting as Head).

The Head **must**:

- publicise the school's behaviour policy to parents and pupils each year, and
- let you know as soon as possible (usually by telephone) about the exclusion and your rights

The Head **should not** have excluded your child in the heat of the moment, unless there was an immediate threat to the safety of your child or others in the school.

Before deciding to exclude your child the Head **should**:

- make sure that a thorough investigation has been carried out
- consider all the evidence available
- allow and encourage your child to say what happened
- take into account the school's behaviour and equal opportunities policies and if relevant the Race Relations Act and Disability Discrimination Act as amended (Heads and others involved in exclusion procedures have a positive duty to promote equality)
- check whether bullying or racial or sexual harassment of your child led to your child's actions
- if necessary consult others
- keep a written record of actions taken, including any interview with your child (and witness statements must be dated and should be signed, wherever possible)

The Head **must** inform you immediately, ideally by telephone followed up by a letter.

When this must be sent depends on when the pupil is excluded, or within one school day:

Time of exclusion	Exclusion takes effect	Notice must be given
At end of afternoon session	From next school day	Before start of that day
In morning session	From that afternoon	Before start of afternoon session
In afternoon session	From that afternoon	By end of afternoon session

The notice must be in writing and must include:

- the precise period of the fixed period exclusion
- the reasons for the exclusion
- your right to state your case to the governors and how to go about doing this
- how your child can be involved in the process
- the school days on which you will be required to ensure that your child is not present in a public place during school hours without justification, and that you may be prosecuted, or may be given a fixed penalty notice, if you do not do so
- what arrangements the school has made for your child to continue his or her education during the first five school days of an exclusion, including setting and marking work (it is your responsibility to ensure that work sent home is completed and returned to school)
- the school days on (or school day from) which your child will be provided with and must attend alternative suitable full time education (these details can be sent separately and later if more time is needed)
- if you must attend a reintegration interview, the arrangements for this and the consequences if you do not attend it

If your first language is not English, letters may need to be translated into your language

The letter should also include:

- the latest date for the governors to meet (if applicable)
- your right to have a copy of your child's school record
- the date and time for your child to return to school
- the phone number of ACE's information line (*see page 15*) and details of someone in the LA who can advise you

Fixed period exclusions are for a set time and must not add up to more than 45 school days in a school year. Indefinite and informal exclusions are not lawful. An exclusion should be for the shortest time necessary. The Exclusions Guidance says exclusions of more than a day or two make settling back into school difficult and 1–3 days is often long enough and avoids seriously affecting a child's education.

In exceptional cases an exclusion may be made longer or permanent. If this happens, the Head must write to you again giving the reasons for the change.

Lunch-time exclusions count as half day exclusions but do NOT count towards the school's duty to provide full time education from the sixth school day of a fixed period exclusion. These should not be drawn out – other ways of dealing with the problem should be worked out. If your child has free meals, the school must make other arrangements such as a packed lunch.

If the exclusion was not in line with any of these points, explain what happened and how this may affect your child.

Step 4: Are the details clear?

Ask your child what happened. Try to do this as soon as possible. Write down or record what they say. Then go back to the beginning and question them closely.

Questions you could ask your child:

“Show me *exactly* where you were.”

“Where was everyone standing?”

“Did *anything* lead up to this?”

“What *exactly* did the teacher say?”

Write the details of your child's answers out fully.

Now check – was this a breach of the school's behaviour policy? This is most important.

What do others say?

- Look at what the Head says.
- Look at what other people say. Were statements taken from your child and witnesses? You should be sent all the statements that the Head took into account when deciding whether to exclude.
- Will anyone support your child's story? Try to get a statement from them with clear details.
- Mark any important disagreements between the statements. Has there been a misunderstanding?
- Do the words used by others accurately describe what happened?

Add all the main points to your case. If your child wants to apologise for something, they could do so in writing.

Step 5: Now make notes about your child

Imagine you are describing them to a stranger. Remember their good points! Are there any reports which show what your child is like? Could someone like a playgroup leader, sports coach, doctor or youth worker write a letter about them?

Think about your child at the time of the exclusion

- Was the exclusion right given their age, health and any personal issues?
- Was anything upsetting your child, or was there pressure from others?
- Could anything else have affected their behaviour?

Think about the incident

If others were involved, were their punishments in line with your child's? Have others at the school, or other local schools, recently been treated differently? The LA may be able to tell you this.

Check your child's school record

You are entitled to a full copy of their record, not just the academic record. Does it reveal misunderstandings? Does it reveal new information which may affect your case?

Describe your child and add anything that explains their behaviour and/or shows that the exclusion may be wrong.

Step 6: Does your child fit into any of these groups?

Children who:

are starting primary, middle or secondary school; are from minority ethnic backgrounds; are in care (looked after); are Travellers; are young carers; are from families under stress; are pregnant schoolgirls/teenage mothers; have changed schools or who have special educational needs (including emotional and behavioural difficulties) and/or a disability.

DCSF web guidance says these groups are “at particular risk” and explains special action that schools should take to support them. The Exclusions Guidance gives more advice on children with special educational needs and/or disabilities, looked after children and those from minority ethnic backgrounds.

If your child is in one of these groups, write this down and describe any help you think they need. This could be very important if your child is disabled. If you think the right help may have prevented the behaviour which your child is accused of, you may have a claim of disability discrimination see Step 10 and page 15 for further information

Step 7: Strategies to improve behaviour

DCSF web guidance gives examples of how to help pupils manage their behaviour. It says pupils who have had several fixed period exclusions and are in danger of permanent exclusion should have a Pastoral Support Programme (PSP). The Exclusions Guidance also says what schools can do to reduce exclusions. Think carefully about your child’s behaviour and talk to your child. Has the school tried to help your child manage their behaviour better with anger management training, a mentor etc? Do staff need advice on dealing with your child’s behaviour? Schools generally can call on help from behaviour specialists.

Could this incident have been avoided if your child had been given the right support at school? Add to your case.

Step 8: Does your child have emotional and behavioural difficulties or another learning difficulty?

If a child has learning difficulties and needs extra help at school they have special educational needs (SEN).

If a child’s behaviour is much more difficult than average or they cannot control their feelings, they may have emotional, social and behavioural difficulties (ESBD)

or EBD). This is a learning difficulty. If children with learning difficulties do not get the right help at school, this can lead to poor or worsening behaviour. Help with learning difficulties, including behavioural difficulties, is given through a statement of special educational needs or, for children with less serious difficulties, School Action or School Action Plus. This is a complex area. For more help see the list of publications on page 15.

If you feel your child has EBD or any other learning difficulty, explain why. Are they getting the help they need? If they had been given the right help could this have affected their behaviour? Has the school followed its SEN policy?

Step 9: Were drugs involved?

Check the school's drugs policy. The Head should consult the school's drug coordinator (if there is one) and take account of the policy. See government drugs guidance (*see page 15*).

Step 10: Was discrimination or bullying involved?

In schools, race relations law covers the need to get rid of unlawful racial discrimination and to encourage equality of opportunity and good relations between people of different racial groups. This applies, among other things, to discipline and exclusion. Schools must also have a race equality policy and monitor how policies affect different racial groups.

If you feel that your child's exclusion was linked in some way to their racial group, the Race Relations Act as amended might apply. Concerns about these issues can be referred to the Equality and Human Rights Commission (EHRC).

If you feel that your child's exclusion was related to their disability, the Disability Discrimination Act as amended might apply. You will need to show that the school treated your child less favourably because of their disability and without a lawful reason. Claims regarding disability discrimination in relation to fixed period exclusions are decided by the Special Educational Needs and Disability Tribunal (0870 606 5750). This is a complex area. Contact ACE or the EHRC helpline for more information (*see page 15*).

If your child's exclusion was for the way they reacted to bullying or harassment, check the school's behaviour policy which must include how the school deals with bullying and should include harassment.

If you feel bullying, discrimination or harassment were involved in your child's exclusion, explain why. For further information on these issues *see page 15*.

Step 11: Alternative solutions

The Exclusions Guidance suggests that schools could try the following:

- using a restorative justice process, which allows your child to put right any harm done.
- mediation – a trained person helps sort out any conflict between your child and other pupils or a teacher.
- internal exclusion to somewhere else within the school with appropriate support, or moving to another class on a temporary basis. Internal exclusion may continue during break periods.
- a managed move to another school with your and the LA's the full knowledge and co-operation, and where it is in the best interests of your child. You should not be pressured into removing your child from school under threat of a permanent exclusion.

Step 12: Your summary

At the end of your case the summary briefly repeats all your points from Steps 2 – 11 and any other important points you have made. Are there parts of the Exclusions Guidance or the DCSF web guidance which may not have been followed? Remember, the guidance should be followed unless there is a good reason not to. You could include the relevant pages with the parts highlighted. You can take or send enough copies for everyone at the meeting.

Use the model letter on the next page to help you with your summary. Pick out the sentences which apply to your case.

Step 13: Stating your case

The meeting should be at a time and place convenient to you as far as possible. You can put your case in writing but it is generally better to be there in person.

Before the meeting:

- Write or type out your case to read at the meeting. If you give out copies at the meeting it may help the governors remember your points.
- Look through your case and write down any questions you want to ask.
- Collect any back-up materials (apology, letters, etc.).

Send them to the clerk, even if you have missed the deadline.

Think about taking a friend, relative or adviser along. You can take a legal representative, but make sure they know about school issues.

Your summary

I feel the school, without good reason, has not acted in line with some of the government guidance on exclusion or DCSF web guidance. I have marked this on pages... [say how this affected your child's exclusion].

I understand that a child should only be excluded for a fixed period if the school can prove that they are more likely than not to have breached the school's behaviour policy, including persistent disruptive behaviour and the breach is not serious enough to warrant permanent exclusion and lesser sanctions such as detention are considered inappropriate.

In my child's case:

- the school has not proven that this was a breach of the school's behaviour policy
- the breach is not serious enough to warrant permanent exclusion and there are lesser sanctions that would be appropriate [give examples]

I disagree with my child's exclusion, or feel it is too long because s/he [pick relevant points and give brief details]

- did not do what s/he is accused of...
- did something that should not lead to exclusion...
- was affected by bullying and/or harassment...
- has special educational needs but is not getting all the help that s/he needs...

I also feel that:

- there may have been misunderstandings...
- the exclusion is not for the shortest time necessary and/or is harmful to my child...

Who will be at the meeting?

- generally 3 or 5 governors (none should have an involvement which could make them biased).
- a clerk to take notes and advise the governors on procedure.
- an LA representative will be invited to give their comments but is unlikely to attend for short exclusions.
- the Head to put their case.
- possibly, witnesses including any alleged victim

How will the meeting be run?

You should be told the order beforehand. Usually the case against your child is put first so you can reply to it. You should be sent any statements in advance. For fairness, if the Head brings new evidence or papers ask for a break to read them or for the meeting to be rearranged. You should be able to put your case without interruption. The Head should not be with the governors when you are not there. We advise you to read out your full case including the summary before giving copies out to the governors. If at the end of the meeting you are asked to "sum up", you can read your summary out again, adding any important new points.

Must my child go to the meeting?

No, they do not have to go to the meeting but they should be allowed and encouraged to attend and speak if they wish and you agree. You cannot be made to bring your child. Do you think it would help if they were there? Decide beforehand if you are happy for them to be questioned or just make a statement, or apologise and leave. Make clear to the governors which it will be. If they are to attend, they should receive copies of papers sent round beforehand.

Step 14: The governors decide

- For exclusions that total five school days or less in a term the governors must consider any case you make to them, but they cannot reinstate your child.
- For exclusions that total five and a half school days or more in a term, or lead to your child missing a public examination

The governors **must** consider:

- the circumstances in which your child was excluded
- any representations made by you and the LA

and the governors **should** consider:

- any representations made by your child (if appropriate)
- if, on a balance of probabilities, your child did what s/he is alleged to have done
- if the Head has complied with the law on exclusion and had regard to the Exclusions Guidance.

If your child has returned to school, the governors:

- **must** decide, based on the evidence (*see page 5*) if the Head was justified in excluding your child and their views should go on your child's school record (you can ask for your written case to go on your child's school record and the governors should agree to do this).

If your child is still out of school, the governors, in addition:

- **should** ask the LA what support could be made available to assist with reintegrating your child.
- **must** decide if your child should be reinstated.

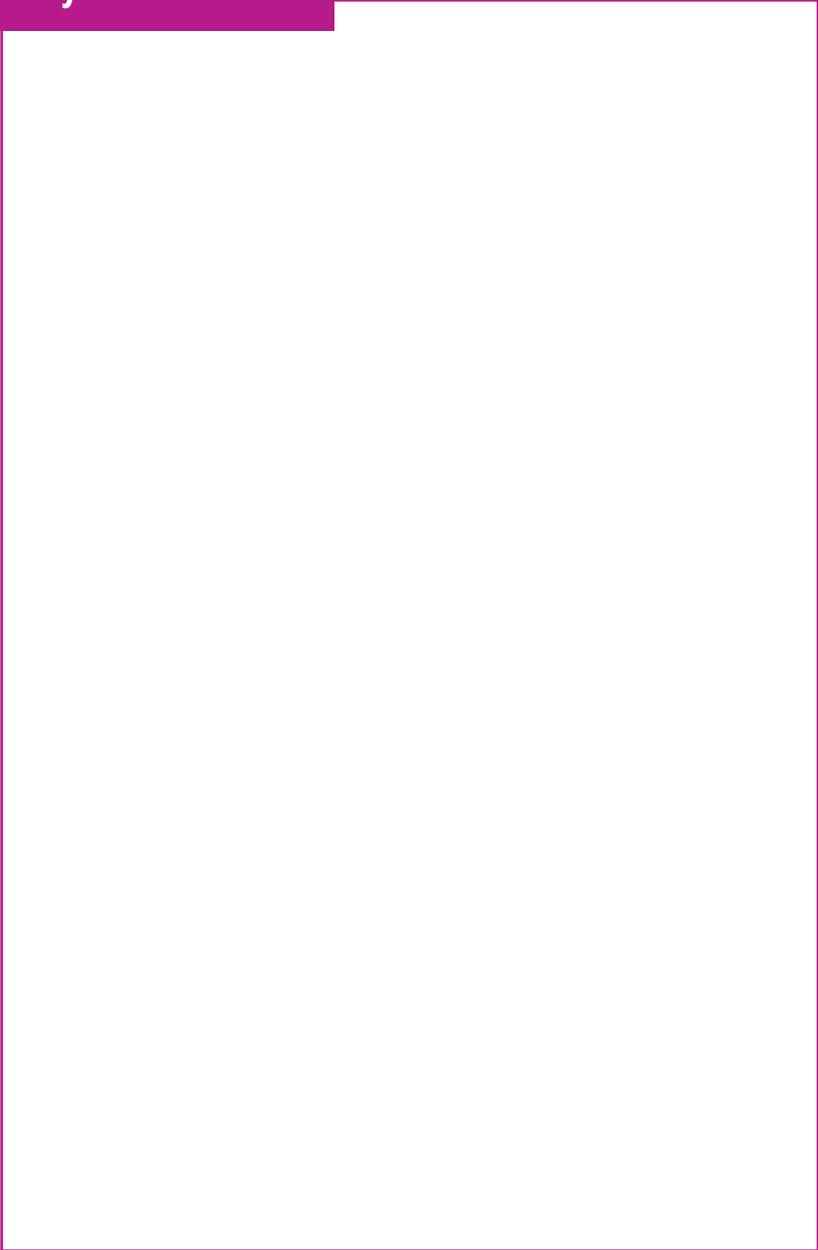
If the governors or your LA think you need support with your child's behaviour they may ask you to sign a Parenting Contract. Your agreement must not be made a condition of your child's return to school.

In some cases if your child is seriously misbehaving so that it has or could have resulted in exclusion and the school or LA think you are unwilling to work with them, the school or LA may apply for a Parenting Order (*See guidance Page 15*).

For your notes



For your notes



Further help

From ACE: Advice lines – Exclusion: 0808 800 0327; All other matters: 0808 800 5793
Publications include guides on **school admissions, bullying, disability discrimination, special education needs, attendance and complaints** available from address or website below. If you have found the advice in this booklet helpful, please consider supporting our helplines by sending ACE a donation via our website www.ace-ed.org.uk

From **DCSF: Publications line/Prolog**: 0845 60 222 60 or www.teachernet.gov.uk
Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units 2007 (00611-2007BKT-EN)
www.teachernet.gov.uk/wholeschool/behaviour/exclusion/guidance2007

Drugs: Guidance for Schools (DCSF/0092/2004)
www.teachernet.gov.uk/wholeschool/behaviour/drugs

SEN Code of Practice (DCSF/581/2001)
www.teachernet.gov.uk/wholeschool/sen/sencodeintro

Guidance on Education Related Parenting Contracts, Parenting Orders and Penalty Notices (00530-2007BKT-EN)
www.dcsf.gov.uk/schoolattendance/uploads/Parenting%20Contract-Guidance%20PNsPCsPOs%20FINAL2007.pdf

Local Authority responsibility to provide full time education and reintegrate permanently permanently excluded pupils
www.dcsf.gov.uk/behaviourandattendance/guidance/LA_responsibility_FTE_reintegrate_permexclpupils/index.cfm

Web based School Discipline and Pupil Behaviour Policies guidance
www.teachernet.gov.uk/wholeschool/behaviour/schooldisciplinepupilbehaviourpolicies

From Equality and Human Rights Commission
Tel: 0845 604 6610
www.equalityhumanrights.com



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