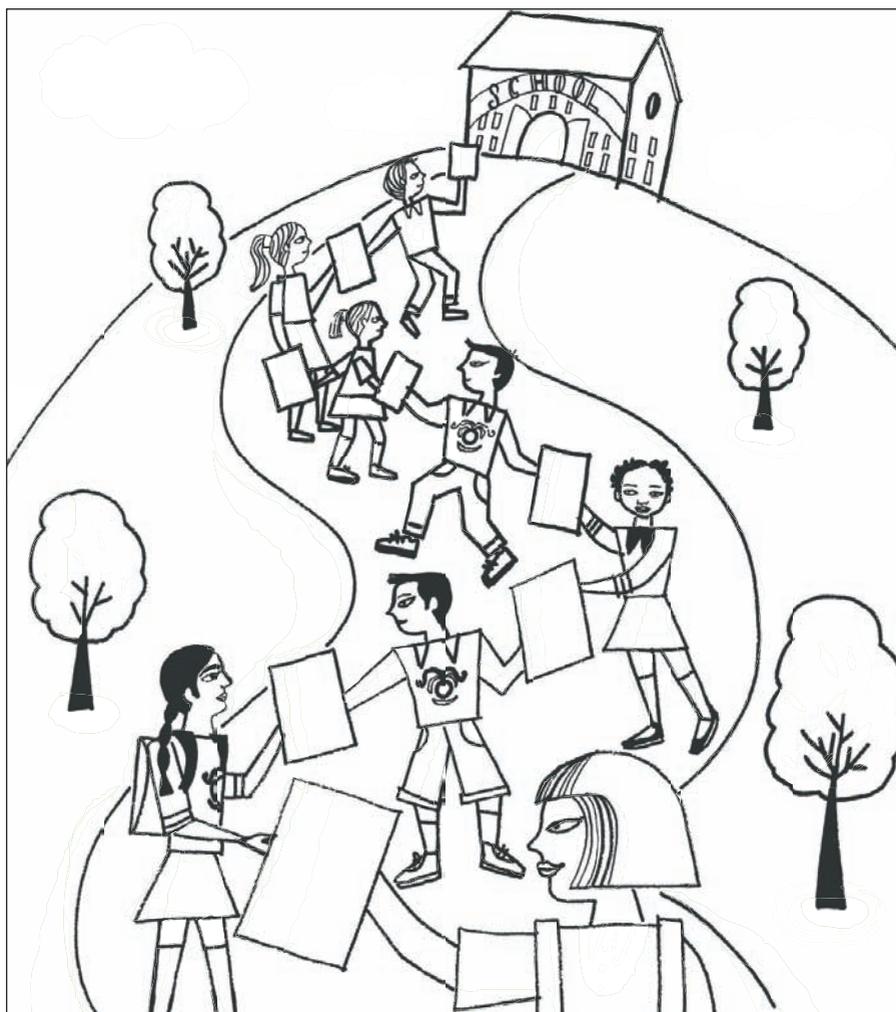




Permanent exclusion

A practical guide to parents' legal rights



What does it mean?

In this guide we use:

must when the law says something has to 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, governing bodies, local authorities (LAs) and appeal panels 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 behavioural issues. In this guide we call this DCSF web guidance. It must not be ignored but it is not such high status as the Exclusions Guidance. **ACE strongly advises parents to get copies of both** (*see page 16*).

Fixed period exclusions of a pupil must not add up to a total of more than 45 school days in one school year. If fixed period exclusions are made permanent, the Head must write again to you about your rights.

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 parents' refusal or inability to come to a meeting, or for their own protection from bullying by sending them home.

Schools must set and mark work for exclusions of more than one day and the local authority (LA) must provide suitable full time education from and including the sixth school day of any permanent exclusion.

An independent appeal panel of three or five members, is set up by the LA and must include a set number of past or present headteachers and governors. Panels must not include people whose connections may cast doubt on their impartiality.

My child has been permanently excluded

What can I do?

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

Step 1: Send a letter

You have the right to put your case in person and/or in writing to the school's governing body. A discipline committee may act on behalf of the governing body. The governors can return your child to school (this is **reinstatement**).

If the governors do not reinstate your child, you can put your case to an independent appeal panel. The panel can also reinstate your child.

Write immediately to the governors.

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. I may bring a friend or adviser with me.

Thank you.

Yours faithfully,

[name] Parent/Carer

Keep copies of letters

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 13. Not all the steps will apply to your case, and you may want to add other points.

First check if your child should have been excluded?

Your child should only have been excluded from school:

- if they have seriously broken the school's behaviour policy *and*
- it would seriously harm the education or welfare of themselves or others if they stayed in school.

Exclusions should be used as a last resort when all other alternatives have been exhausted.

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, briefly explain why. The next steps will help you look at the points in more detail.

Step 3: Check the exclusion

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

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. Any exclusion should be in proportion to your child's actions and must follow the procedures in the law and should follow the Exclusions Guidance.

Before deciding to exclude your child the Head should:

- ✓ make sure that a thorough investigation has been carried out
- ✓ consider all the evidence available and if necessary consult others
- ✓ 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
- ✓ keep a written record of actions taken, including any interview with your child (witness statements must be dated and should be signed, wherever possible)

The Head **must** tell you about the exclusion 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

At end of afternoon session
In morning session
In afternoon session

Exclusion takes effect

From next school day
From that afternoon
That afternoon

Notice must be given

Before start of that day
Before start of afternoon session
By end of afternoon session

The notice must be in writing and must include:

- ✓ that it is a permanent exclusion
- ✓ the reasons for the exclusion
- ✓ your right to state your case to the governors and how to go about doing this
- ✓ the school days on which you will be required to ensure that your child is not in a public place during school hours without justification, and that you may be prosecuted, or 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 5 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)
- ✓ when your child will be provided with alternative suitable full time education

The letter should also include:

- ✓ the date the exclusion starts and any relevant previous history
- ✓ the latest date for the governors to meet
- ✓ your right to have a copy of your child's school record
- ✓ details of someone in the (LA) who can advise you
- ✓ the phone number of the ACE information line (*see page 16*)

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

Step 4: Are the details clear?

What does your child say?

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 serious 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 copies of 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 now 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 sports coach, youth worker or doctor 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?

And very importantly

If your child were back in school (rather than excluded) would this seriously harm the education or welfare of themselves or others? If not, give your reasons.

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 include new information which may affect your case?

Describe your child and add anything that explains their behaviour and/or shows that 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/disabilities (including emotional and behavioural difficulties).

DCSF web guidance says these are groups who are “at particular risk” and explains special action that schools should take to help 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 down why and 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 11 and page 16 for where to get further information).

Step 7: Strategies to improve behaviour

Permanent exclusion should normally be a last resort when a school has tried all available strategies. The Exclusions Guidance says what schools can do to improve pupils' behaviour and reduce exclusions. This includes changes to the curriculum or your child's class, help from a mentor or Connexions personal adviser, or temporary attendance at a learning support unit or a pupil referral unit. Schools can also ask for specialist help, usually from the LA.

DCSF web guidance gives examples of how schools can help pupils improve 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). But if the governors or an appeal panel believe that a child's misbehaviour is persistent and defiant they should not normally reinstate the child.

Think carefully about your child's behaviour and talk to your child. Has the school tried a wide range of strategies? Did your child have a PSP? Did the school try to help your child manage their behaviour better with anger management training, a mentor? Did staff need advice on dealing with your child's behaviour? Is the behaviour really persistent and defiant? Could this incident have been avoided if your child had been given the right support? Add to your case.

Step 8: Does your child have a learning difficulty?

Does your child have a learning difficulty? If a child has a learning difficulty 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.

Other than in the most exceptional circumstances, schools should avoid permanently excluding pupils with statements.

If your child is on School Action or School Action Plus or is being assessed for a statement, the school should make every effort to avoid exclusion and try all

practical means to keep them in school. This includes asking for outside professional advice, an assessment for a statement, or a review of a statement. If the LA can give more help or change the school on a statement, the Head should normally withdraw the exclusion.

This is a complex area. For more help see publications on page 16.

If you feel your child has emotional, social or behavioural difficulties 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 helped their behaviour? Has the school followed its special educational needs policy?

Step 9: Serious offences

In exceptional circumstances, a Head may exclude for a first or one-off serious offence where such behaviour can affect the discipline and well-being of the whole school for example:

- serious actual or threatened violence against a pupil or a member of staff
- sexual abuse or assault
- supplying an illegal drug
- carrying an offensive weapon.

If the basic facts of the case have been clearly established on the balance of probabilities and the governors or an appeal panel believe that your child has carried out such an offence they should not normally reinstate your child.

Does the accusation accurately describe what your child has done or does it exaggerate the severity? If you believe it will not happen again, explain why not.

Step 10: Were drugs involved?

Check the school's policy on drugs – this should be a key factor in deciding whether or not permanent exclusion is appropriate. The Head should consult the school's drugs co-ordinator (if there is one) and take account of the policy.

The Government's drugs guidance (*see page 16*) says that in some cases fixed period exclusion will be more appropriate than permanent exclusion.

If your child is found repeatedly using or in possession of an illegal drug on school premises, the governing body should not normally reinstate them.

Step 11: 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 also applies 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 linked in some way to their disability, the Disability Discrimination Act as amended might apply. For example, if their behaviour was related to their disability the school is expected to take steps where possible to prevent the behaviour resulting in punishments such as exclusion. *You can get more information from the Equality and Human Rights Commission (EHRC) helpline.*

Check the school's behaviour policy which must cover bullying and should include harassment. *If you feel bullying, discrimination or harassment were involved in your child's exclusion, explain why. For more information on all these issues, see page 16.*

Step 12: Alternative solutions

The Exclusions Guidance suggests schools try the following instead of exclusion:

- 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 - this should only be done if you and the LA agree and 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.

Check: Is there another solution that would work for your child? Explain why. An example may be a different punishment coupled with help for behaviour problems or special educational needs.

Step 13: Have relationships broken down?

Do you think the school may say that there has been a breakdown in relationships between your child and others at the school? If so, perhaps you could explain why. Think carefully about what you will say and try to show how relations can be improved with goodwill on both sides.

This is very important because, in exceptional circumstances, on appeal, even where the appeal panel disagrees with the exclusion, they will not reinstate your child if such a breakdown exists and cannot be put right. If you think any bad feeling is temporary and not exceptional, how might you show this to the panel? The panel must balance your child's interests against the interests of everyone else in the school. This is not a finding open to the governors.

Explain how this exclusion will affect your child now and in the future. Why will your child be better off if they return to school? Add to your case.

Step 14: Your summary

At the end of your case briefly repeat all your points from steps 2–13 in a summary along with any other important points you want to make. Are there parts of the Exclusions Guidance or the DCSF web guidance which may not have been followed and which may have led to unfairness? Remember, the Exclusions Guidance should be followed unless there is 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 document on the page 12 to help you with your summary. Pick out the sentences which apply to your case.

Step 15: Stating your case

The meeting with governors must be held within 15 school days of the exclusion. It should be at a time and place convenient to you as far as possible. You can just put your case in writing but it is generally much better to be there in person.

Your summary (see Step 14)

I feel the school, without good reason, has not acted in line with some of the government guidance on exclusions 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 serious breach of the behaviour policy and if their being in school would seriously harm the education or welfare of themselves or others and that exclusion should not be used if there is an alternative.

In my child's case this was:

- not a serious breach of the school's behaviour policy
- s/he would not seriously harm the education or welfare of themselves or others in the school
- there was an alternative solution etc. [give examples]

I disagree with my child's exclusion, because s/he:

[add your main points and give brief details, for example:]

- did not do what s/he is accused of...
- did something that shouldn't lead to permanent 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:

- this was a one-off/first offence and not serious...
- the school has not exhausted all alternative strategies to improve my child's behaviour before resorting to exclusion...
- there may have been misunderstandings...
- if my child cannot return I am worried that...

Before the meeting:

- Write or type out your case to read at the meeting.
- 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.

Who will be at the meeting?

- Generally three or five governors (none should have any involvement which could make them biased).
- Clerk to take notes and advise the governors on procedure.
- LA representative will be invited to give their comments.
- 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 beforehand. 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 it out. If at the end of the meeting you are asked to “sum up”, you can read your summary out again. You could add any important new points. You can also give out copies of your full case at the meeting. It may help the panel remember your points and you can ask for a copy of it to go on your child’s school record.

Must my child go to the meeting?

No, children often do not 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 for all or part of the time? 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 any papers sent round beforehand.

Step 16: The governors decide

The governors must:

- consider the circumstances in which your child was excluded
- consider any representations made by you and the LA
- decide if your child should be reinstated

And the governors should:

- consider any representations made by your child (if appropriate)
- consider if, on a balance of probabilities, your child did what s/he is alleged to have done *and*
- consider if the Head has complied with the law on exclusion and had regard to the Exclusions Guidance
- ask the LA what support they can give towards reintegrating your child

The governors should not normally reinstate if they agree that:

- your child carried out a serious offence that affects the discipline and wellbeing of the school community as a whole (*see Step 9*) or
- your child has persistently and defiantly misbehaved. This includes bullying or repeated possession and/or use of an illegal drug on school premises.

If the governors do not overturn the exclusion they must write to you immediately giving their reasons and details about the appeal process. Even if you do not wish your child to return to the school, or if they are now too old, the governors must decide whether the exclusion was justified.

Step 17: The independent appeal

You cannot appeal if you miss the deadline. You have 15 school days from receiving the governors' letter to write back and say that you want to appeal and give your reasons e.g. the main points in your summary plus any new points. The school's governing body or the Head should not give new reasons for the exclusion but you can all present new evidence. The hearing must be held no later than 15 school days after your letter is received.

You should be told the order of the hearing and it should be conducted fairly. It is the same procedure as for the governors' meeting, except that a governor can also put their case. They and the Head can be legally represented. An alleged victim can attend as a witness, put their views in writing, or through a representative.

The panel should:

- decide on the balance of probabilities if your child did what the school says
- think carefully about whether the Head and governors followed the law and guidance. They must not reinstate a child just because procedures in the law or guidance have not been followed. But the panel could reinstate if important factors were not taken account of, or justice was not done at the governors' hearing, for example, because procedures were not followed
- consider any claims of racial or disability discrimination you make
- think carefully about the Head's decision taking into account school policies covering behaviour, equal opportunities, anti-bullying, special educational needs, and race and disability equality
- consider the fairness of the exclusion compared to the treatment of other pupils involved in the same incident
- decide if permanent exclusion of your child was proportionate, i.e. was it reasonable or too severe in relation to your child's actions?
- consider evidence from the school as to why they excluded AND as to why reinstatement should not be directed

The panel must decide whether or not:

1. to uphold the exclusion
2. to direct reinstatement and on what date
3. reinstatement is justified but is not practical

To decide whether to reinstate your child, the panel **must**:

- take into account the interests of your child and the interests of all the rest of the school community *and*
- balance the interests of your child against those of the school community.

The panel should **not normally reinstate** if they agree that:

- your child carried out a serious offence that affects the discipline and well-being of the school community as a whole (*see step 9*) *or*
- your child has persistently and defiantly misbehaved.

There may be exceptional circumstances where the panel decide reinstatement is justified but **not practical** in the best interests of all concerned. If the school's reasons for excluding and objecting to reinstatement are the same, and the exclusion is not upheld, the panel is likely to direct reinstatement as well.

Exceptional circumstances can include where there has been an irretrievable breakdown in relations: between the child and teachers or between the child and other pupils involved in the exclusion or appeal.

Before deciding this the panel should ask what efforts have been made to improve relations. You should be allowed to give your views (*see Step 13*).

The panel may also decide that reinstating your child is justified but not practical because you have said that you do not want your child to go back to the school or because your child is now too old for the school.

If the panel decides that reinstatement is justified but not practical, they **must** indicate this in their decision letter and explain why they decided not to reinstate. The letter should be added to your child's school record.

If the permanent exclusion is upheld, the school or LA may either offer you a **Parenting Contract**, if they think you need support with your child's behaviour (you cannot be made to sign a contract and it must not be used as a condition of admission to another school), or they may apply to a magistrate's court for a **Parenting Order**, which could require you to attend parenting classes if they believe you are unwilling or unable to deal with your child's behaviour. (*See Further help page 16*)

ACE advises:

ACE is a charity and depends on grants and donations to run our advice service. If you have found our advice helpful, please consider sending ACE a donation, however small, to the address below.

Further help

From ACE: Advice Lines: Exclusion 0808 800 0327 Other matters 0808 800 5793
Publications including guides on school admissions, bullying, disability discrimination, special educational needs, attendance and complaints, available from address or website below

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 (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 2001 (DCSF/581/2001)

www.teachernet.gov.uk/wholeschool/sen/sencodeintro

Web based School Discipline and Pupil Behaviour Policies guidance

www.teachernet.gov.uk/wholeschool/behaviour/schooldisciplinepupilbehaviourpolicies

Guidance on Education-Related Parenting Contracts, Parenting Orders and Penalty Notices (00530-2007BKT-EN)

www.dcsf.gov.uk/schoolattendance/uploads/Parenting%20ContractGuidance%20PNsPCsPOs%20FINAL2007.pdf

From Equality and Human Rights Commission

www.equalityhumanrights.com

Code of Practice on the Duty to Promote Race Equality

Tel: 08457 622 633

Code of Practice on Duty to Promote Disability Equality

Tel: 0845 604 6610

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