



## Suspension and Permanent Exclusion Toolkit

### Introduction

The Department for Education released updated statutory guidance on Exclusion which took effect from 1 September 2022: <https://www.gov.uk/government/publications/school-exclusion>

**The guidance applies to maintained schools, academies, free schools, alternative provision and pupil referral units.** It does not apply to independent schools, city technology colleges, city colleges for the technology of the arts, sixth form colleges or 16-19 academies, all of which have separate exclusion procedures.

**The law remains the same, although some of the language has changed.** You may still hear the term “fixed term exclusion”, but this has been replaced with the term “suspension”.

**Special Educational Needs and/or Disabilities and Exclusion** - It is known statistically that children with special educational needs (“SEN/D”) and/or disabilities are much more likely to be excluded from school than their classmates.

We recognize that suspension and/or exclusion can be a stressful and emotional time for families. This toolkit aims to support our service users with navigating the different types of exclusion that may occur and what their rights are.

### The Key Definitions

#### Suspension

A **suspension** is where a pupil is temporarily removed from the school. The guidance defines it as essentially a *behaviour* management tool that should be set out within a school’s behaviour policy.

Only the head teacher or acting head teacher has the power to suspend.

Whether the suspensions are consecutive or accumulated over time, suspensions cannot amount to more than 45 days in an academic school year. Being excluded for just part of the school day, for example at lunch time, counts as a half day.

The law does not allow for extending a suspension or 'converting' a suspension into a permanent exclusion except in exceptional circumstances where additional evidence has come to light.

### Permanent Exclusion

A **permanent exclusion** is when a pupil is no longer allowed to attend a school. The decision to exclude a pupil permanently should only be made:

- By the head teacher or acting head teacher
- In response to a serious breach OR persistent breaches of the school's behaviour policy; and
- Where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others such as staff or pupils in the school.

### SEN Children at Risk of further Suspensions or Exclusion

#### The Guidance Says:

- The Equality Act 2010 requires schools to make **reasonable adjustments** for disabled pupils.
- Schools must use their '**best endeavours**' to ensure the appropriate special educational provision is made for pupils with SEN, which will include any support in relation to behaviour management that they need because of their SEN
- Schools should **engage proactively with parents** in supporting the behaviour of pupils with additional needs.
- Schools should have a **reintegration strategy** and offer a **reintegration meeting** for the child/parent following suspension
- The school should **review** with external professionals where appropriate what **support** is needed.
- They may at this point **consider a request for an EHC assessment**.

#### Action - What parent carers can do following a suspension:

- Ensure that any schoolwork set is completed and returned to school
- Arrange somewhere for your child to be looked after during school hours as your child should not be in a public place without a good reason (or you could be fined)
- Ensure that a reintegration meeting is offered, that your child's views are considered as far as they are able to share them and that you are invited to participate. Any plan going forward from a suspension should be seen as a "fresh start" for the child

- Check the school's behaviour and SEN policies, they should be available on the school website. Have the school taken all the necessary steps in their policies as well as the steps set out in the Exclusions Guidance?
- If you have concerns about or are not sure what SEN support is being offered, it can be helpful to write to the head teacher and request a review meeting with the SENDco. See our guides on SEN Support for each of our areas - <https://www.sendandyou.org.uk/resources/download-our-guides-and-toolkits/>
- If your child is continuing to be suspended, you can put your views in writing to the school governors and ask them to review the head teacher's decision. If your child is suspended for more than 5 days, you can ask to attend the governors review meeting.

### Alternative Education after 5+ days suspensions or a permanent exclusion

If your child has been suspended for more than 5 days or permanently excluded, they are entitled to **suitable, alternative education**.

The **duty is to provide 'suitable' education** – this means it **must** meet your child's special educational needs.

If it is a **fixed term suspension the school must arrange the provision**. When a pupil of compulsory school age is suspended from a pupil referral unit (PRU) the Local Authority must arrange suitable full-time education.

For **permanent exclusions, the home Local Authority** becomes responsible to arrange suitable full-time education from the sixth day after the permanent exclusion took place. The Exclusions guidance now makes clear that the school **must** notify the Local Authority about all suspensions and exclusions, regardless of their length.

When a **pupil has an education health and social care plan (EHCP)** - as well as arranging Alternative Provision, a review of the EHCP or a reassessment of the pupil's needs should also be considered. Please see below.

### Children with EHC plans

**The guidance says:**

- Schools should **contact the Local Authority** about any behavioural concerns **at an early stage** and **consider requesting an early annual review** prior to making the decision to suspend or permanently exclude.
- The Local Authority may need to review the EHCP with a view to finding a new placement.

### Action - What parent/carers can do:

- If your child has an EHCP and is at risk of or has received a permanent exclusion, parent carers can contact the LA to request an early/emergency Annual Review. If a

child is frequently suspended, this review can address any issues regarding whether the provision they receive remains suitable.

- Although the LA should be notified, we advise parents make the same request in the case of a permanent exclusion, as it will likely mean the provision in Section F of the EHCP is no longer being delivered as originally agreed:

<https://www.ipsea.org.uk/asking-for-an-early-review-of-an-ehc-plan>

## Reintegration after Suspension

### Reintegration

#### The Guidance says:

27. **The reintegration strategy** should be clearly communicated at a reintegration meeting before or at the beginning of the pupil's return to school. During a **reintegration meeting**, the school should communicate to the pupil that they are valued, and their previous behaviour should not be seen as an obstacle to future success. Where possible this meeting should include the pupil's parents.

28. Where necessary, schools should work with relevant staff and multi-agency organisations, such as teachers, pastoral staff, mentors, social workers, educational psychologists or the safer-schools team, to identify if the pupil has any SEND and/or health needs.

#### Action - What parent carers can do:

- Request an additional meeting with the SENDco if not already offered, asking to review the SEN support that may or may not already be in place.
- If this step has not already been taken, ask the school if they can seek any advice from outside professionals to gain more information on how to support their child's needs, with reference to section 28 of the Exclusions Guidance.

### Part time or Reduced Timetables

The Guidance says under Paragraph 29:

*29. A part-time timetable should not be used to manage a pupil's behaviour and must only be in place for the shortest time necessary. Any pastoral support programme or other agreement should have a time limit by which point the pupil is expected to attend full-time, either at school or alternative provision. There should also be formal arrangements in place for regularly reviewing it with the pupil and their parents. In agreeing to a part-time timetable, a school has agreed to a pupil being absent from school for part of the week or day and therefore must treat absence as authorised.*

#### Action - What parent carers can do:

- Parents can refuse part time timetables by putting it in writing to the school in a constructive way and asking for a follow up meeting to plan support going forward.

- The Local Authority have a duty under the Education Act to provide suitable education for children who may not be receiving education for a period of time due to illness, exclusion or “otherwise”. Parents can alert the LA, quoting the “otherwise” aspect and query if their child is not receiving full time education, should Alternative Provision be considered? For further information: <https://www.ipsea.org.uk/news/the-duty-to-secure-alternative-education>

## Off-rolling and Unlawful Exclusions

Schools **must** formally notify the parent of any decision to suspend or exclude a pupil.

This can include “electronic” notifications such as a text or email if the parent carer has agreed to receive notifications this way.

The **school must make accurate records of the reason for exclusion**, which should be in line with the definitions outlined earlier in this toolkit. If the school does not follow all the necessary steps, the exclusion can be considered unlawful.

### The Guidance Says:

19. Any exclusion of a pupil, even for short periods, **must be formally recorded**. It would also be **unlawful to exclude a pupil simply because they have SEN or a disability that the school feels it is unable to meet** or for a reason such as: academic attainment/ability; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting.

‘**Off-rolling**’ is described by Ofsted as the practice of a school removing a pupil from a school roll in the perceived interests of the school rather than the pupil. This is unlawful and a complaint can be raised if this is perceived to be happening.

### Action - What the parent carer can do:

- Use the **checklist** on ISPEA website to ensure the process was followed correctly: <https://www.ipsea.org.uk/what-steps-does-the-school-have-to-take>
- Use your right to make “parental representations about the suspension/exclusion (see below)
- **Be aware** that choosing to remove a pupil from the school roll to electively home educate must be the parent’s decision and cannot be enforced by the school for non-disciplinary reasons.

## Managed Moves and Directing off site

### Directing Off-Site

This is where a pupil is referred to another educational setting for some or all their education for the **purpose of improving their behaviour**. In many cases this would be a Pupil Referral Unit (PRU).

The **Exclusions Guidance** makes clear that directing education off-site in this instance is for the purpose of improving *future* behaviour rather than punishing the past.

**Maintained schools have the power to make this decision.** This legislation does not apply to academies, so although they can propose an off-site direction, academies cannot insist on this step.

#### Action - What parent carers can do:

- Check that the school has formally notified them in line with the regulations set out here: <https://www.ipsea.org.uk/directing-pupils-off-site>
- Consider whether the proposed placement is able to meet any special educational needs of your child. Are their needs fully identified and have they had an EHC needs assessment?
- If your child has an EHCP- notify the Local Authority

#### Managed Moves

A '**managed move**' is a **voluntary agreement** between a pupil's current school, their parent carers and a new school for a pupil to move from one school to another.

Managed Moves should only occur when they are in the child's best interests.

This may be helpful if another school is identified as having resources or provision that may better suit the pupil's needs.

#### Action - What parent carers can do:

- If in agreement, ask to meet with the proposed school and fact-find about the support offered.
- If you disagree with the decision but the school continues to enforce it, you can make a formal complaint to challenge the decision using the school complaints policy.

### Making Parent Representations and Disability Discrimination

#### Making Representations

##### The Guidance says:

*95. The governing board has a duty to consider parents' representations about a suspension or permanent exclusion. The requirements on a governing board to consider the*

*reinstatement of a suspended or permanently excluded pupil depend upon a number of factors...*

There is a helpful flow chart on page 38 of the Guidance that can help with understanding the steps to be taken in relation to your situation:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1101498/Suspension and Permanent Exclusion from maintained schools academies and pupil referral units in England including pupil movement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1101498/Suspension_and_Permanent_Exclusion_from_maintained_schools_academies_and_pupil_referral_units_in_England_including_pupil_movement.pdf)

For suspensions exceeding 5 days or a permanent exclusion, parent carers have:

- the right to make written representations to the governing body if they do not agree with the reasons for the exclusion;
- a right to attend a meeting with the governing body and should be notified about this in writing.

The governing body can either uphold the exclusion or direct reinstatement with the school. Do consider what outcome you would want to see and the possibility that the process can make continuing relationships with the school difficult.

The pupil also has the right to make their own representations, if appropriate for their age and understanding

#### **Action - What parent carers can do:**

- Refer to the IPSEA guide to written representations  
<https://www.ipsea.org.uk/advice-on-writing-written-representations-to-the-governors>
- An Exclusion **must be lawful, reasonable and procedurally fair**. You may wish to consider the following when thinking about written representation: checking the steps set out in the Exclusion Guidance: -
  - Were the guidance and policies all followed?
  - Could the school have taken any steps to remove a disadvantage due to SEN or disability?
  - Were you formally notified?
  - Did they follow the school behaviour policy?

#### **Disability Discrimination**

A school might discriminate against a disabled child if they were aware of the child's disability, and the exclusion was because the child is disabled or because of something which happened because of their disability.

It is possible to make a discrimination claim through Judicial Review, but please be aware this can be very costly and does not necessarily lead to improved relations with the school. For more detailed information see: <https://www.ipsea.org.uk/disability-discrimination-and-exclusions>

## Independent Review Panel

If the governors decline to reinstate a young person, then the family can request that the exclusion be heard by an **independent review panel** (IRP). The IRP does not have the power to overturn the decision but can assess whether the decision taken was procedurally fair and tell the Governing Body to consider their decision. Whether or not a school recognises a pupil as having SEN, parents can ask for an SEN expert to attend the review meeting.

We advise reading the full guidance if you are considering requesting an IRP.

## Still concerned?

If you are still unclear after reading the toolkit or have any further questions about any other aspect of Special Educational Needs & Disabilities (SEND), you have the following options:

Call SEND And You Information, Advice and Support line on 0117 989 7725

There is a 24-hour answer phone

SEND And You is available on Monday to Friday from 9.30am to 4.30pm

Or get in touch via our website at <https://www.sendandyou.org.uk/contact-us/>