

Governors Exclusion Briefing

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HILLINGTON
LONDON

Objective:- To equip governors to make secure judgments when asked to ratify Headteachers' decisions to permanently or long fixed term exclude pupils from roll

By the end of the briefing governors will be able to:-

- Be confident with the current legislation and statutory guidance (dated September 2017).
- Be able to contextualise exclusions within their safeguarding and inclusion duties and Ofsted expectations.
- Be able to deliver governor duties while minimising opportunity for successful challenge.
- Be trained to sit on Governor Exclusions Panels.
- Understand schools obligations to excluded pupils resident in Hillingdon.

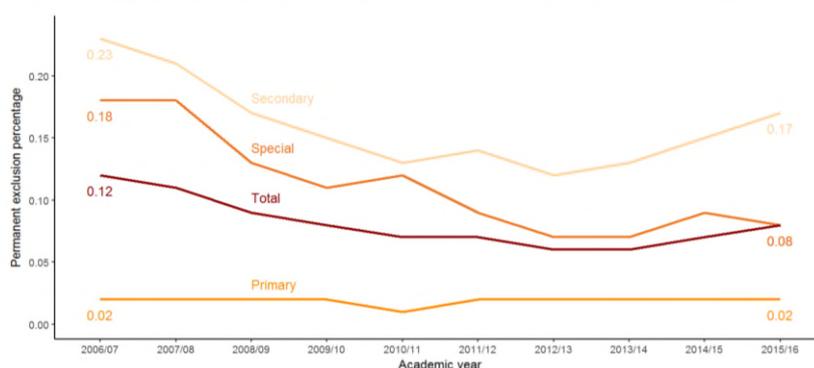
Statutory Guidance

www.gov.uk/government/uploads/system/uploads/attachment_data/file/641418/20170831_Exclusion_Stat_guidance_Web_version.pdf

- **What legislation does this guidance refer to?**
- Section 51A of the Education Act 2002, as inserted by the Education Act 2011
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012
- Sections 100 to 108 of the Education and Inspections Act 2006
- The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007.

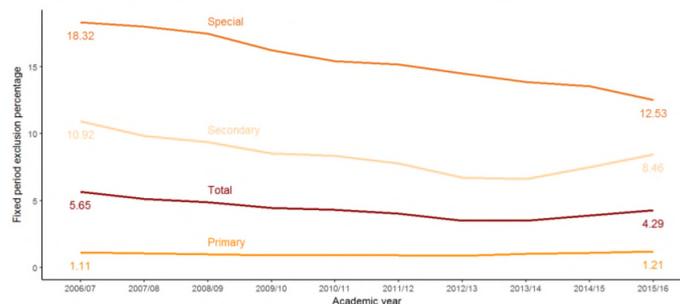
Permanent exclusions against pupil population over time England and Wales up to July 2016

The number and rate of permanent exclusions have increased since last year



Fixed term exclusions against pupil population over time England and Wales up to July 2016

The number and rate of fixed period exclusions have increased since last year



The Hillingdon position

- There were 71 permanent exclusions from Hillingdon schools in 2016-17. This is a 54% increase on the number from 2015-16 (46) which was, at the time, the highest number of permanent exclusions in the borough for 10 years.
- In 2016-17 there were 64 permanent exclusions from secondary schools in Hillingdon compared to 45 in 2015-16.
- In 2016-17 there were 7 permanent exclusions from primary schools in Hillingdon compared to 1 in 2015-16.
- In 2017 -18 there are 47 to date from Hillingdon schools (one primary)

- The most common reason for exclusion was persistent disruptive behaviour, accounting for 32.8 per cent of permanent exclusions and 24.8 per cent of fixed period exclusions from all schools.

Characteristics of excluded pupils

- Boys. The permanent exclusion rate for boys was more than 3 times higher than that for girls. The fixed period exclusion rate for boys was about 3 times higher than that for girls.
- 14 year olds are most likely to be excluded.

Special Educational Needs

- Pupils with SEN with statements are around 7 times more likely to be permanently excluded than those pupils with no SEN. Non-statemented SEN pupils are 7 times more likely to be excluded.
- The number of pupils with statements of SEN receiving one or more fixed period exclusions is six times higher than for pupils with no SEN.
- This raises a question about the use of statement or EHC Plan emergency reviews and inclusive practices.

Free School Meals

- Children who are eligible for free school meals are 4 times more likely to receive a permanent exclusion and around 3 times more likely to receive a fixed period exclusion than children who are not eligible. This remains stable and raises a question about use of Pupil Premium.

Ethnic Groups

- Pupils of Gypsy/Roma and Traveller of Irish Heritage ethnic groups have the highest rates of both permanent and fixed period exclusions, but as the population is relatively small these figures should be treated with some caution.
- Pupils of Black Caribbean and White and Black Caribbean ethnic groups are more than three times more likely to be permanently excluded than the school population as a whole. Pupils of Asian and Chinese ethnic groups have the lowest rates of exclusion.

Governors Disciplinary Committee Duties

- Only Headteachers can exclude. Exclusions can be withdrawn by Headteachers if that decision is made only before Governors Disciplinary Committee considers the matter.
- Governors must convene to review the Headteacher's decision – ASAP (<5 days) if a pupil will miss a public exam or is Looked After, within 15 days if the exclusion is permanent, within 50 days if the exclusion is longer than 15 days or the parent makes representations if over 5 days.
- Whilst clerks are no longer mandatory, their presence is good practice. Their role is to advise on procedural, legal matters and minute but not contribute to the decision making process.
- Governors considering exclusion matters should be trained three yearly, not be staff or parent governors, or have prior knowledge of the child, parent or incident.
- Must sit as a minimum of three with a Chairman.

Fixed period:

- Pupil can be excluded for one or more fixed periods
- Up to maximum of **45 school days** in single academic year
- Does not have to be for continuous period
- Lunchtime exclusions are counted as a half as school day

Permanent exclusions:

- From September 2017, fixed term exclusions cannot be converted to permanent, following investigation.

Governors' deliberations

- Public Law principles apply.
- i.e. must be lawful (re: legislation on exclusions and wider legal duties including Human Rights)
- Rational
- Reasonable
- Fair, including procedurally correct
- Proportionate

- Unofficial exclusions are unlawful “sending home, education from home, cooling off”
 - All exclusions – even for a short period – must be formally recorded. Even if Headteachers’ decision is not upheld by governors, the pupil’s record cannot be rendered silent on the matter.
 - When establishing the facts in relation to an exclusion decision:
 - Head Teacher must apply civil standard i.e. “on the balance of probabilities” it is more likely than not that a fact is true
- NOT the criminal standard of “beyond reasonable doubt”

Not just a ‘rubber stamp’

“A discipline committee was a statutory committee, it was not a token committee. It most certainly was not there to rubber stamp the head teacher’s decision. Unless it acted as an independent reviewing body, unless it acted fairly and unless it appeared to act fairly it served no purpose whatsoever.” (R(A) v Kingsmead School Governors and another (The Times 13th March 2002)

Governors reporting duties

- **To Secretary of State:**
 - Information regarding any exclusions within the last 12 months
- Plus same information to **Local Authorities** – if they are maintained schools or PRUS.
- To the **Local Authority** (home and educating) and **parent** from Day 1 of permanent and 5+ days fixed term exclusions via Headteacher.
- To the **Local Authority** (home and educating) and **parent** via Headteacher from Day 1 following Governors' Disciplinary Panel decision.

What could happen next?

- Parents have a right to request an Independent Review Panel which will scrutinise the Governors' Disciplinary Panel decision.
- Parents have the right to call on the services of an independent SEN expert (whether child has recognised SEN or not).
- If an academy, the costs of the Independent Review Panel and SEN expert fall to that institution.

Consequences of an Independent Review Panel hearing

Not to overturn or endorse the governors decision but:-

- Can uphold the exclusion decision
- Recommend that the Governing Body reconsider their decision or
- Quash the decision and direct that the Governing Body considers the exclusion again.
- IRPs can hear new evidence but not new reasons.
- IRP decisions are binding.

- Independent Review Panels can only quash the Governing Body decision where it considers that it was flawed when considered in the light of the principles available on an application for Judicial review
- E.g. Illegality
- Irrationality
- Procedural impropriety
- In this event, a school is still not obligated to re-admit the excluded pupil, but £4,000 will be withheld from the school's financial settlement.
- If any form of discrimination can be shown, families have a right of recourse to the First Tier Tribunal.
- 2 Hillingdon permanent exclusions have been quashed by independent review to date in 2017-18

How to avoid exclusions

- Ofsted frowns particularly upon Primary exclusions, LAC exclusions, CIN & CP exclusions and exclusions of pupils with SEN (statemented or with an EHC Plan or not).
- Successful challenge is highly likely if the reason for exclusion is persistent disruptive behaviour and the school has not completed an Early Help Assessment and called a 'Team Around the Family', commissioned the Behaviour Support Team or equivalent, conducted the assess, plan, do, review cycle for any unmet SEND, sought alternative provision and considered request for Statutory Assessment.

Further considerations

- Children who are at risk of Child Sexual Exploitation, Radicalisation, CIN and CP, Gang involvement and poor attenders should not be excluded to prioritise their safety.
- Rely on your strong School Behaviour Policy and robust competent staff.
- Parental mitigation cannot be dismissed during your deliberations (i.e bullying, divorce, domestic violence, bereavement etc.)
- Governors must ensure that external support has been sought for vulnerable families and that all inclusion duties have been exhausted where an additional need is known.
- Consider the point in the child's academic career.

Current landscape

- There is a local and national rise in exclusions
- There is also a local and national rise in Elective Home Education rates with 60% of this cohort report being obliged or encouraged to remove their child from a school roll to avoid an exclusion or due to bullying. Hillingdon has the biggest Elective Home Education cohort in London
- The Commons Education Select Committee is scrutinising these trends over the forthcoming months while several children's charities lobby for schools to retain ownership of a child's attainment outcomes following exclusion, plus the cost of alternative provision following a permanent exclusion
- DfE review of exclusions, particularly of vulnerable pupils, is to be undertaken on the advice of the Children's Commissioner was announced last week.

Changes in latest Exclusions Guidance September 2017

- Nursery and 6th Form are explicitly included
- Independent SEN expert may now comment on 'reasonableness'
- Paras. 10& 11 consideration of Mental Health of the child now explicitly required for Governor consideration
- Persistent disruptive behaviour now obliged to trigger an SEN assessment and multi-agency assessment
- Alternative provision arrangements must be shared by Head Teacher to Parents within 48 hours of permanent or 5+ days exclusion

Changes continued

- Fixed term exclusions can not now be converted to permanent exclusions
- Governing Bodies are responsible for commissioning alternative provision for 5+ days fixed term exclusions and ensuring quality assurance processes are robust for alternative provision commissioned
- Local Authority representative must now be invited to all Governors Disciplinary Panels – they must be heard but not necessarily considered

More changes

- Clarity is offered on lawful use of attendance codes in the exclusions process
- The same Governors Disciplinary Panel may hear different but similar matters
- Governors Disciplinary Panel and Independent Review Panel must have different clerks
- Voice of the child must be explicitly sought and recorded
- P.46 offers a flow chart to aid clarity

Consequences of exclusion

- 80% of inmates at Feltham Young Offenders Institute have been excluded from school.
- 76% of NEET young people have exclusions on their record.
- 85% of known Gang members in London have exclusions on their record.

- Yours is a great responsibility when weighing up the position of the Headteacher against the best interests of the child.