

PERMANENT EXCLUSION REVIEWS

A parents' guide

For further information

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This Guidance only applies to permanent exclusions from schools and Pupil Referral Units maintained by the Local Authority, Academy schools and alternative provision Academies which occur on or after 1 September 2017.

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Introduction

The Education Act 2002 (as amended by the Education Act 2011), requires all Local Authorities (LAs) and Academies to make arrangements for enabling parents to apply for a review of the decision of a Governing Body or Proprietor of an Academy not to reinstate a pupil who has been permanently excluded from a school maintained by an LA or Academy.

This guide will help you decide whether or not to apply for a review of the decision to permanently exclude your son/daughter.

SHOULD I APPEAL / APPLY FOR REVIEW?

1. Who has the right to apply for a review?

The relevant person:

- (i) Where a pupil has reached the age of 18 it is the pupil him/herself; or
- (ii) Where a pupil is **under 18**, it is his/her parent.

IMPORTANT

Under the Education Act, the definition of “parent” is broad. In addition to a child’s birth parents, it includes any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person who the child lives with e.g. a foster carer.

2. Is there any point in applying for a review?

It is for you to decide but it is **important you know that:**

1. **You may have the decision reviewed by an Independent Review Panel (IRP) even if you do not want your son/daughter to return the school.**
2. The role of the IRP is to review the Governing Body’s decision NOT to reinstate a permanently excluded pupil, or is it to “wipe the excluded pupil’s slate clean”.
3. You can apply for a review even if you did not make a case to, or attend, the meeting at which the Governors considered your child’s permanent exclusion.
4. An IRP of three people who have **no connections with the school/Academy/PRU** will hear your review.
5. The IRP carefully considers your case and that of school/Academy/PRU.
6. If you think that your child’s may have or has special educational needs (SEN) have not properly been taken into account or the Governors’ meeting was unfair in any way you should consider applying for a review.

3. Are there circumstances where I do not have a right to a review hearing?

Yes. There are two:

- 1 You lose your right to a review hearing if your application is received after the 15th school day after the day on which you are informed, in writing, of the Governors’ decision not to reinstate your child.

2 If you withdraw your application for a review, you also lose your right to a hearing.

IMPORTANT

- Make sure you **send your application for review as soon as possible** after you receive the letter from the Governors telling you your son/daughter has not been reinstated.
- **Give the matter careful consideration** before you withdraw your application.

4. If my child is disabled (physically or otherwise e.g. Aspergers, Autism, Tourette's Syndrome etc), what should I do if I think that my son/daughter has been excluded for a reason related to their disability?

In addition to the right to apply for a review to be heard by an IRP, if you believe the exclusion has occurred for a reason related to your child's disability, under the Equality Act 2010, you can make a disability discrimination claim to the First-tier Tribunal (Special Educational Needs and Disability). You **MUST** lodge your claim within 6 months of the date your child was permanently excluded.

IMPORTANT

If your claim is successful, the First-tier Tribunal can direct the school/academy/PRU to reinstate your son / daughter.

Alternatively, you can choose to make this claim to the IRP. However the IRP **does not** have the power to direct reinstatement.

If you make a claim to the IRP, you should put the reasons for claiming disability discrimination in writing on the application form (or letter). You may also wish to contact the Equality & Human Rights Commission (EHRC) for further help and advice (see Appendix).

You can make a claim of discrimination to the First-tier Tribunal (& County Court - see Question 5) before deciding to apply for a review hearing. Where this is the case you **MUST** apply for a review hearing within 15 school days of the date the discrimination claim is finally determined.

Where you make such claims at the same time as applying for the IRP to review the decision to permanently exclude your child, the arrangements for the review hearing must not be delayed or postponed.

5. What should I do if I think that my son/daughter was discriminated against on racial or other grounds when excluded?

The same provisions apply as in Question 5 **except** that you must make your claim of discrimination to the County Court.

6. When will my review be heard?

The IRP must meet to consider your application for review no later than the 15th school day after the day on which your application was received. However, an IRP may adjourn the hearing if there is good reason e.g. |SEN expert unavailable to attend or there are parallel criminal proceedings.

PLEASE NOTE

Two or more reviews may be combined and dealt with in the same hearing if the IRP considers that it would be fair and expedient to do so because the issues raised by the reviews are (a) the same or connected and (b) the parties to each review agree. Please note this is a decision for the IRP.

7. Who will be at the Review Hearing?

- You and your spouse/partner; where requested, a friend; representative or legal adviser.
- The IRP actively encourages your son/daughter to attend the hearing.
- The IRP (3 members).
- The Clerk to the IRP.
- The Head Teacher/Principal of your son's/daughter's school/academy/PRU, who may also have a legal representative.
- A Governor of the school.
- Any witnesses called by either the school/academy/ PRU or by you.
- If school/PRU is maintained by the LA, an LA representative may attend.
- If school is an Academy, an LA representative may attend at your request but may only make representations with the consent of the Academy.
- An SEN expert, but only when you have requested one attends. You must make this clear when you submit your appeal form. (Section 18).
- If attending, and where relevant, the alleged victim or his/her representative may be present for part of the review hearing.
- Sometimes there is also an observer. This may be someone who is training to be an Independent Review Panel member or Clerk to Panel. You will be asked if you object to an observer being present for any part of your review hearing.

HOW DO I APPEAL AND CAN I GET ANY HELP?

8. How do I apply for a review?

There are 5 steps to follow:

- 1 You must **fill in the enclosed appeal form and complete ALL sections.**
- 2 You **must** set out your reasons for applying for a review (it says this clearly in the regulations under schedule 1) and, if relevant, state how you consider your child's SEN are relevant to the exclusion.

IMPORTANT: *Whether or not your child has recognised special educational needs, you have a right to require that the Local Authority/Academy appoint a SEN expert to attend the review.*

- 3 You must request a SEN expert attends the review hearing at the time you apply for a review of the Governors' decision.

- 4 Sign and date the form or letter, then:
- 5 Send it to: The Clerk to the Independent Review Panel at the address given.

9. Who is the SEN expert?

The SEN expert will be someone with appropriate expertise and experience of special educational needs (SEN). He/she does **NOT ACT AS AN ADOVATE FOR THE FAMILY.**

Although the SEN expert may work for the LA, he/she will not have had any direct connection with your child or the incident leading to the exclusion. The SEN expert will not assess your child, but will advise the IPR on how SEN matters may have affected the decision to permanently exclude. He/she must act independently and not act in such a way that might raise doubts about his/her ability to act impartially.

IMPORTANT

The SEN expert's role will **not** include making an assessment of your child's special educational needs.

10. What happens if I need an interpreter/signer or other help?

You may have an interpreter or signer at your review hearing. If you would like the Clerk to arrange this for you, please complete section 15 on the appeal form. **Some parents prefer and feel more comfortable to bring a friend or relative to translate. The choice is yours.**

11. Should I attend the review?

Yes: if at all possible: You are best placed to tell the IRP why you think the decision to permanently exclude your child was flawed.

12. Can I bring someone with me to help me?

Yes: You may bring a family member or friend, character witness or a representative with you. They can simply support you or speak on your behalf.

You will need to tell the Clerk in advance of the Review who you will be bringing and in what capacity.

13. Is there anyone who can help me with preparing for my review hearing?

The CORAM children's advice centre. Tel 0808 802 0008. Monday to Friday 8am to 8pm.

You can view a copy of the Secretary of State for Education's Guidance to IPR members. <http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusions/g00210521/statutory-guidance-regs-2012>

INDEPENDENT REVIEW PANEL

14. Who are the IRP members?

The IRP will have three members and:

- One member must be, or have been within the previous five years, a Head Teacher/Principal;
- One member must be, or have been a governor of a school provided they have served in that capacity for at least 12 consecutive months within the last 5 years, and they have not been a teacher or Head Teacher during the last 5 years;
- One member must be a lay person, that is, someone who has never worked in a school in a paid capacity (disregarding any experience as a school governor or volunteer). This member will be the Chair of the panel.

IMPORTANT

Anyone who has, or has had, a connection with the school or with any of the parties involved in the case **cannot** sit on the IRP. All IPR members and the Clerk must have been trained and re-trained every two years.

15. What powers does the IRP have?

The IRP can decide to:

- uphold the exclusion i.e. refuse your application; or
- recommend that the governing body reconsiders their decision; or
- quash the decision and direct that the governing body reconsiders their decision.

PLEASE NOTE

The IRP cannot reinstate your child or “wipe the excluded pupil’s slate clean”.

IMPORTANT

The IRP may only quash the decision on the principles applicable to judicial review. Therefore, the IRP should apply the following tests:

- **Illegality** e.g. did the Head Teacher/Principal acted outside the scope of his/her legal powers in taking the decision to exclude?
- **Irrationality** e.g. was the decision of the Governors or the Headteacher so unreasonable that it was not one a sensible person could have made?
- **Procedural Impropriety** - was the process of exclusion and/or the Governors’ consideration so unfair or flawed that justice was clearly not done?

NOTE

Procedural impropriety means not simply a breach of minor points of procedure but something that has a significant impact on the quality of the decision making process. The Department for Education's Guidance gives the following examples:

- Bias;
- Failing to notify parents of their right to make representations;
- Governors/Proprietor making a decision without having given parents an opportunity to make representations;
- Failing to give reasons for a decision; or
- Being a judge in your own cause e.g. if the Head Teacher who took the decision to exclude were also to vote on whether to uphold the exclusion.

The IRP may also:

- (a) direct the governing body to place a note on your child's educational record;
- (b) in the case of a governing body's decision, the panel may order that a readjustment be made to the school's budget or, in the case of an Academy, order that the Academy must make a payment directly to the local authority in which the Academy is located, in the sum of £4,000 if, following a decision by the IRP to quash the original decision, the governing body / academy trust:
 - (i) reconsiders the exclusion and decides not to reinstate your child (where you want your child to be reinstated), or
 - (ii) fails to reconsider the exclusion within 10 school days after notification of the IRP's decision.

THE REVIEW

16. Should I bring my son/daughter to the review?

Yes: Your son/daughter should be encouraged to attend so their voice can be heard.

17. What happens if I do not attend the review?

Due to the fact there is a statutory deadline in place i.e. IRP has to meet within **15 school days** of your review request being received by the Clerk. The Panel will meet, whether you are there or not. If you have a genuine reason for not being there, the IRP may consider adjourning the Review. However, if you provide no genuine reason and offer no explanation for your absence, the IRP may carry on with the Review in your absence.

18. What information will be available at the review?

Where possible the Clerk will circulate to all those involved paperwork for the Review. This may include:

a. Copies of the relevant papers such as:

- the Governing Body (GB) decision letter
- the minutes of the GB meeting
- your application for a Review
- any policies or documents that the GB was required to consider when making their decision
- Witness statements (these should be signed and dated, but can be anonymised if there is fear of retaliation)
- Physical evidence could also be made available if your child was caught with a weapon in their bag while in school.
- If documents have been requested and not provided, the Panel will have to consider adjourning the hearing.

19. Late paperwork is this allowed?

Submitting paperwork on the day of the Review should be avoided, as this could result in an adjournment. Please let the Clerk have any additional paperwork at least 5 working days before the hearing.

20. Can new evidence be put forward?

YES: But school cannot introduce new reasons for permanently excluding your child.

21. Can IRP's be combined?

Yes: If your child and another pupil were permanently excluded for the same incident the two Reviews can be combined. This is a decision for the IRP.

22. Where will the IRP Hearing take place?

The venue will be independent of the school.

23. How is the IRP conducted?

The key aim is to apply the rules of natural justice so all parties are able to put their case and the Review is conducted in such a way that no outsider could consider there was any unfairness or bias.

The structure of the Review would be:

- a. Chairman's Introduction
- b. Case for Governing Body – this could be delivered by the Governors and/or the Headteacher/Principal.
- c. Questions to the school from the appellant (you)
- d. Questions to the school from the panel.
- e. Local Authority view (for Academies with the agreement of the Academy Governors)
- f. Questions to the Local Authority from the appellant
- g. Questions to the Local Authority from the panel
- h. Alleged victim's statement (if required)
- i. Parent's case including your child's view
- j. Questions to parent's and pupil from the panel
- k. Questions to parent's and pupil from the school
- l. SEN Expert view (if applicable)
- m. Questions to the SEN expert from the panel.
- n. Summing up the school
- o. Summing up Parent's.
- p. Closing questions
- q. Close of meeting

24. What standard of proof do the IRP apply?

The IRP will apply the Civil Standard of proof i.e. on the balance of probabilities it is more likely than not that a fact is true.

They do **not** apply the Criminal Standard of proof of beyond reasonable doubt.

25. When will I hear the outcome of my review?

The Clerk will write or e mail the result by the next working day. A full letter will usually follow with the IRP's reasons within a further 5 working days.

26. Is the IRP's decision binding on anybody?

Yes. The parent/child, the Governors, the Head Teacher/Principal and the LA are bound by the IRP's decision.

27. Police Involvement and Parallel Criminal Proceedings

Just because the Police are involved in the incident or parallel criminal proceedings are taking place does not mean that the IRP cannot progress the Review. The IRP would need to consider whether:

- Whether any charge has been brought against the pupil and, if so, what the charge is;
- Whether relevant witnesses statements and documents are available;
- The likelihood of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the school; and
- Whether an adjournment or declining to adjourn, might result in injustice.

28. What can I do if I am unhappy about the review process?

For schools other than Academies you can ask the Local Government Ombudsman (LGO) to investigate. This **is not** a right of appeal as the LGO can only investigate written complaints about procedural flaws in how the Review was conducted. You

have 12 months in which to approach the LGO. He cannot overturn the panel's decision and he cannot re-instate your child back to school.

You can employ a solicitor and seek a Judicial Review in the High Court. This must be done within 3 months but please be aware that this could be costly. Once again, the Judge cannot re-instate your child back to school.

In relation Academy schools, you would need to contact the Education and Skills Funding Agency.