

To Exclude or not to Exclude - that is the question.

Management of behaviour in schools is an operational role for the Senior Leadership Team but it is one that as governors, we have a statutory duty to consider instances when pupils may become excluded, to make judgement on whether a decision should be upheld or the pupil reinstated.

Consideration of permanent exclusions is probably (in my experience,) one of the most challenging roles that we as governors fulfill. Whether the decision to exclude is upheld or not, implications on the future of the pupil, educational entitlement and the relationship between Head, staff and governors, is all brought into question.

There are two types of exclusion;

Fixed Term (Period) – a pupil can be excluded for a fixed period of one or more school days – however they cannot be excluded for more than 45 days cumulatively in a school year.

Permanent Exclusions – where a pupil is removed from the School Register and the Local Authority (LA) then have a statutory requirement to find alternative provision for that pupil. Both the Governing Board and the LA must be notified immediately of any such occurrence. In the former no details regarding the grounds for the exclusion should be shared for reasons I will cover later.

Permanent Exclusions are very much a 'last resort' and as such many GBs may rarely find themselves asked to consider such actions. Having said that, figures nationally would seem to indicate Permanent Exclusions are showing an upward trend.

In the statutory guidance there are two tests to consider for making a permanent exclusion decision;

- in response to a serious breach or persistent breach of the school behaviour policy
- where allowing a pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school

Both of these criteria must be met in order for a permanent exclusion to be legal, ensuring that governors are able to satisfy themselves that a Headteacher's actions were appropriate. These criteria do not apply to fixed term exclusions but if a fixed term exclusion is made for a reason other than these criteria, the exclusion may be brought into question – the exclusion should be made on disciplinary grounds, there being no other justification.

Pupils cannot be removed from schools for any other reason than a formal exclusion – they cannot be asked to 'stay away', work at home, even if parental engagement has been sought and agreed.

The majority of 'illegal' exclusions involve pupils with Special Educational Needs (SEN) accounting for around 70% of all exclusions taking place. Schools should be intervening early, working with parents, external agencies, carers etc to prevent behavioural problems in school that might lead to a situation escalating into one that cannot easily be resolved.

A school's Behaviour Policy is a critical tool in deciding upon the outcomes of incidents; there should be a clear statement of the types of incident that would result in a consideration of exclusion taking place. i.e bullying, weapon carrying on school premises, repeated acts of violence, damage to property, disruption to lessons etc. The Behaviour policy is the responsibility of the Headteacher but in maintained schools this is informed by the statement of behaviour principles as set out by the GB.

Any decision to exclude must be lawful, reasonable and fair – (Exclusion from Maintained Schools, Academies and Pupil Referral Units in England 2017). This updated guidance provides greater confidence to Headteachers in their use of exclusions and provides greater clarity to GBs and Independent Review Panels when considering exclusion decisions.

A school Behaviour Policy should be very much a 'working document', understood by all staff, governors, pupils and parents and should reflect the ethos by which the school or establishment functions and which is applied consistently. The Policy should be ;

Fair - consistent application of the policy, but not necessarily equal treatment.

Reasonable – the law here only defines 'unreasonableness' and characterizes it as being a "*decision that is illogical, irrational or outside the valid options available at the time* "

Practical - can it be implemented and can it work for the establishment in question

Issuing a Permanent Exclusion Notice

The decision to issue a permanent exclusion notice should only be made by the Headteacher but not in the heat of the moment or as a knee jerk reaction to an incident.

- A thorough investigation should be undertaken and all the available evidence considered carefully and recorded accurately

- Take account of policies in place, the law and relevant procedures
- Allow/encourage the pupil to give their version of events (rarely happens in my experience)
- Check to ensure there were no other reasons for the incident i.e provocation
- Consult with others involved
- Keep a written record of the actions taken and the incident itself, dated with times etc but if others pupils involved ensure their anonymity
- Allowing for all this if the evidence gathered is sufficient, on the balance of probabilities, the exclusion notice can be issued.

Governor Disciplinary Meeting

Before the meeting is convened, the School has a statutory requirement to ensure that all paperwork is made available to Parents, Governors and the LA (if necessary) at least 10 days before a meeting is convened. This allows for parents/carers etc to arrange for possible legal /moral representation at the hearing.

I would suggest that all papers be either hand delivered or sent recorded post to make sure of this happening.

There should be three governors on the panel, a clerk, LA representative (not needed if an academy). Head Teacher and parental involvement.

The chair of the panel, a governor, should have had training in the whole exclusion process and it may be useful to have a clerk that has legal knowledge of the process and understanding of the issues around the exclusion process.

The panel must not have had any previous involvement with the pupil, as this may cloud judgement, nor may they be a Teacher Governor or Parent Governor at the establishment and above all should have attended exclusion training.

For those GBs with relatively small numbers of Governors, this process may prove difficult, but help can be sought from other GBs if it proves difficult providing substitutes have undertaken the relevant training.

Exclusion Panel Meeting

The Chair of the Panel should ;

- Ask members present to formally identify themselves and their role within the

meeting

- Chair should invite the Headteacher to present report
- Chair invites questions from Governors to Headteacher
- Chair asks parents/guardians/carers of pupil if they have any questions of the Headteacher
- Chair asks parents /legal guardian/carers to make their representations to the panel
- Chair invites questions to the parent/guardian/cares
- Chair invites Headteacher to question parents/guardian/carers
- Chair invites LA representative to remind panel members of the legal requirements
- Chair then asks everyone to leave except the governors and clerk to consider the paperwork, submissions to make a decision.

The decision of the Panel may take considerable time to arrive at, so parents can be told that a decision will be made known to them the following day.

Decision Making

The panel must consider if the actions are;

- In breach of the Establishments Behaviour Policy
- Is/has there been clear support for the pupil with regard to;
 - LAC
 - SEN
 - Disability Discrimination Act
 - Unmet needs
- Would allowing the pupil to remain in the establishment seriously harm the education or welfare of other pupils or staff

Evidence to support these factors must have been demonstrated by the Headteacher to the panel. Lack of support, initiatives or alternatives, environmental and family changes put into place to support the pupil must all be factored into the decision making process.

The panel should consider whether the investigations have been thorough, unbiased,

relevant to the actions of the pupil and met all the legal requirements.

Has the pupil been given the opportunity to give their version of events to the Headteacher -if so these should be presented to the panel.

Was there provocation or reasons for the actions of the pupil,

The legal test uses the balance of probability – is it more likely than not for the evidence given for exclusion to be as presented.

The panel then only have one of two possible decisions to make

- to uphold the decision to permanently exclude
- to reinstate the pupil with immediate effect

If the pupil is excluded and of suitable age, then they will be placed in a suitable short stay unit or similar or access a new school through the Fair Access Panel for the area (Parental preference is still intact after the first exclusion).

KS4 pupils will be placed in alternative provision.

Where the parents or legal guardians dispute the decision made by the panel not to reinstate, they can ask for an Independent Review Panel (IRP) in the first instance. This panel should consist of three independent members

- a lay person
- two headteachers

The IRP is very much a review of the process taken to exclude the pupil in the first instance – it is not an appeal panel as they will only scrutinize the minutes of the exclusion meeting to check due diligence and legality of proceedings.

Whether or not a school recognizes that a pupil has SEN, all parents /pupils, if aged over 18 have a right to request the presence of an SEN expert.

If requested the LA or Academy Trust will need to appoint an SEN expert to attend the IRP meeting.

The IRP does not have the power to direct a GB to reinstate an excluded pupil. If the IRP decides that the decision made by the GB is flawed it can direct the GB to reconsider the decision.

If the GB does not subsequently reinstate the pupil, the panel will be expected to order the establishment to make an additional payment of £4000 to the LA for alternative provision. The LA has the power to arrange for a schools budget to be readjusted in such cases.

The Principles of National Justice and Human Rights Act 1995, the Equality Act 2010, Education Act 2001, as amended by Education Act 2011, School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2017, the Education and Inspections Act 2006, and Education (Provision of full time education for Excluded Pupils) (England) Regulation 2007 all play a part in the exclusion process.

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