

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 Exclusion from Schools and Pupil Referral Units(Circular 1/2004) the National Assembly for Wales (NAW) explains the law and what the Assembly expects from schools, governing bodies, local education authorities and appeal panels when pupils are excluded from school. This should be followed unless there is good reason not to. In Circular 47/2006, Inclusion and Pupil Support the NAW covers behavioural issues. This is good practice guidance but has not as high status in law as Circular 1/2004 which is statutory guidance. **ACE strongly advises parents to get free copies of the Circulars** (see page 12).

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 extended or made permanent, this counts as a new exclusion.

Exclusion should not be used for: minor incidents such as not doing homework; poor academic performance; lateness or truancy; pregnancy; breaking school uniform rules or rules on appearance including jewellery and hairstyle (except possibly where persistent and in open defiance of these rules and when all other avenues have been exhausted); the behaviour of parents; parents' refusal to come to a meeting.

Schools should set and mark work for the first 15 school days of the exclusion. They should plan with the local education authority for full-time suitable education to begin after that.

School governing bodies must set up a **discipline committee** to review exclusions. Schools must have a **discipline/behaviour policy** which should include rewards for good behaviour and a scale of punishments for bad behaviour. It should say what the school will do to avoid children with additional learning needs being excluded more than others..

An **independent appeal panel**, of three or five members, is set up by the local education authority (LEA) 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 difficult 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 discipline committee which is made up of school governors. Children aged 11 and over also have the right to appeal in their own right.

The committee can return your child to school (this is **reinstatement**). If they do not reinstate your child, you (and your child if 11 and over) 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

(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: should your child 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.

Exclusion should not be used if alternative solutions are available.

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 there is a clear link between that behaviour and maintaining good behaviour in the school.

If you feel that your child's actions should not have led to exclusion, explain why briefly. 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. In exceptional cases a fixed period exclusion may be made longer or permanent.

Before deciding to exclude your child the Head should:

- ✓ make sure that an appropriate investigation has been carried out
- ✓ give your child a chance to say what happened
- ✓ think carefully about the evidence available
- ✓ take into account the school's behaviour and equal opportunities policies and, if appropriate, the Race Relations Act and Disability Discrimination Act (see page 16)
- ✓ check whether bullying or racial or sexual harassment of your child led to your child's actions
- ✓ if necessary consult others

The Head must:

- publicise the school's behaviour policy to parents and pupils each year *and*
- let you know as soon as possible (usually by telephone) about the exclusion and your rights.

The Head may exclude a child if they feel that on 'the balance of probabilities' they did what they are accused of - that is, it is more likely than not that they did it. the more serious the behaviour your child is accused of, the stronger the evidence needs to be. This could include your child's past behaviour.

Within one school day the Head should send a letter which must include:

- That the exclusion is permanent
- The reasons for the exclusion
- Your right (and your child's right if aged 11 or over) to state your case to the discipline committee and how to go about this.

The letter should also include:

- How your child can continue their education – arrangements for setting and marking work
- The latest date for the governors to meet
- Your right to have a copy of your child's school record
- The name and phone number of someone in the local education authority (LEA) who can advise you
- The phone number of ACE's helpline.

If the exclusion was not in line with any of these points, explain what happened and how this may affect your child.

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 tape 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 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.
- If there are important disagreements between the statements mark them. 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

You may want to say a little 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 official like a playgroup leader, doctor or youth worker or perhaps a neighbour 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?

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 local education authority may be able to tell you this. The LEA'sr number should be in the exclusion letter.

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 have additional learning needs?

These include children who:

- are changing schools
- are from minority ethnic backgrounds
- are in public care (looked after)
- refugees
- travellers
- young carers
- have disabilities and/or special educational needs including emotional and behavioural difficulties
- are gifted and talented
- are from families in difficult circumstances.

Circular 47/06 says that children with additional learning needs are “**at greater risk of disengagement from school**”. It explains how schools should monitor the impact of policies, for example if children from ethnic minority families are punished or excluded more than others, schools should take steps to put this right. Circular 1/2004 gives more advice on children in public care.

If you think your child was in a group at particular risk, write down why and what support they needed.

Step 7: Strategies to improve behaviour

Permanent exclusion should normally be a last resort when a school has tried all available strategies. Circular 1/2004 expects that usually a child will not be permanently excluded unless a wide range of strategies has been tried without success.

Schools generally have access to behaviour specialists. Circular 47/06 says pupils who are in danger of permanent exclusion or disaffection should have a Pastoral Support Programme (PSP) to help them manage their behaviour.

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 learning coach, etc? Did staff need advice on dealing with your child's behaviour?

Could this incident have been avoided if your child had been given the right support at school? Add to your case.

Step 8: Does your child have emotional and behavioural difficulties or another 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.

If your child is on School Action or School Action Plus or being assessed for a statement, the school should make every effort to avoid permanent 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 local education authority (LEA) 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 listed on page 16.

If you feel your child has ESB 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 affected 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-time or one-off serious offence where such behaviour can affect the discipline and well-being of the school community as a whole eg:

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

If the discipline committee or an appeal panel believe that your child has carried out such an offence, Circular 1/2004 says they should not normally reinstate your child.

It is very important to look at whether the accusation accurately describes or exaggerates the severity of what your child has done. If 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 for the Head and governors 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 both the policy and the precise circumstances of the case and evidence.

Circular 1/2004 says that in some cases fixed period exclusion will be more appropriate than permanent exclusion. Assembly guidance on drugs says schools should not use harsher punishments than the law.

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 applies, among other things, 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 might apply. Concerns about these issues can be referred to the Commission for Racial Equality complaints team (see page 16).

If you feel that your child's exclusion was linked in some way to their disability the Disability Discrimination Act might apply. Schools are expected to take reasonable steps to prevent a child being treated less favourably than other pupils for a reason which relates to their disability. If you can show that the school could have taken action to avoid excluding your child, you may have a disability discrimination claim. This is a complex area so see ACE's booklet *Disability Discrimination*. More information from the Disability Rights Commission Helpline (see page 16).

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 help on all these issues, see page 16.

Step 12: Alternative solutions

Exclusion should not be used if alternative solutions are available, for example:

- giving your child extra support through a Pastoral Support Programme drawn up with you, your child and outside agencies such as the LEA.
- using a restorative justice process, which allows your child to put right any harm done.
- internal exclusion (also known as internal seclusion). This could mean your child being moved 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, but only with your full knowledge and co-operation and where it is in your child's best interests.

You should not be pressured into removing your children from school under threat of a permanent exclusion.

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 (or yourself) 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. If you have other children in the school, for example, you have a very strong reason for getting on with the Head and school staff.

This is very important because, in exceptional circumstances, even where the appeal panel disagrees with the exclusion, they will not reinstate a child if they believe there is a breakdown which cannot be repaired. 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 the school community.

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 the summary briefly repeats all your points from steps 2-13 and any other important points you have made.

Are there parts of the Circulars 1/04 or 47/06 which may not have been followed? Remember, they should not be ignored. You could include the relevant pages with the parts highlighted. You can take or send enough copies for everyone at the meeting.

Our model summary on the next page helps you outline your case. Pick out those points which apply to your cases.

Your summary

I feel the school, without good reason, has not acted in line with some of the National Assembly's guidance in Circular 1/2004 and/or Circular 47/06. 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 discipline policy and if they seriously harm the education or welfare of themselves or others and that exclusion should not be used if there is an alternative solution.

In my child's case this was not a serious breach of the school's discipline 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 also 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 should not lead to exclusion...
- Was affected by bullying and/or harassment...
- Has additional learning needs but is not getting all the help that s/he needs...(say if you feel race or disability discrimination was involved and if you are making a claim)

I also feel that:

- This was a one-off/first offence which was not serious...
- The school has not exhausted all 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...

Step 15: Stating your case

The meeting 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 better to be there in person.

Before the meeting:

- Write or type out your case to read at the meeting. If you give out copies at the meeting it may help the governors remember your points.
- 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.

Who will be at the meeting?

- Generally three or five governors who make up the discipline committee (none should have any involvement which could make them biased).
- A clerk to take notes and advise the governors on procedure.
- A LEA representative will be invited to give their comments.
- The Head to put their case.
- Possibly, witnesses.

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.

ACE advises 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.

Must my child go to the meeting?

No, children often do not attend and cannot be made to do so. Your child has a right to have his or her views heard but this could be through a written statement. 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 to make a statement, or apologise and leave. Make clear to the governors which it will be. Remember, if your child is aged 11 and over they can decide to make their case in their own right and must be allowed to attend.

Step 16: The governors decide

When the governors makes their decision they must:

- consider the circumstances of the exclusion
- consider your case and the views of the local education authority
- decide if they will reinstate your child if is practical (eg they cannot reinstate your child if they have left the school).
- consider any points made by your child

And should:

- consider whether the Head has followed the exclusion procedure and Circular 1/2004
- ask what support the local education authority can give towards reintegration.

However the governors 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).

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, based on the evidence, whether the Head's decision to exclude your child was justified. The governors should put their view on your child's school record. They must also agree to put your appeal case on your child's record if you ask for this.

Step 17: The independent appeal

You cannot appeal if you miss the deadline. You have 15 school days to write back and say that you want to appeal and give your reasons. These could be your summary plus any new points from the meeting or anything that you think of afterwards. The school's discipline committee or the Head should not give new reasons for the exclusion. New evidence can be presented. 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 fair and not too formal. The same points apply as for the discipline committee meeting except that a governor can also put the committee's case and have a legal representative. Any alleged victim may put their views in writing, through a representative or in person.

The panel should:

- Decide, on the balance of probabilities, if your child did what they are accused of – that is whether it is more likely than not that they did it.
- Check whether the Head and discipline committee followed the law and guidance. They must not reinstate a child just because they have not been followed. But the panel could reinstate if important factors were not taken account of, or justice was not done because procedures were not followed.
- Check whether your child had help from a Pastoral Support Programme or whether they had received the extra help specified in a statement of SEN.
- Check whether the Head's decision took into account: the school's behaviour policy, equal opportunities policy and, if appropriate, anti-bullying policy, special educational needs policy, and race equality policy.
- Consider the fairness of the exclusion compared to treatment of other pupils involved in the same incident.
- Decide if permanent exclusion of your child was reasonable.

The panel may decide:

1. to reinstate and on what date
2. to uphold the exclusion
3. that while reinstatement is justified it 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*
- should balance the interests of your child against the interests of the school community.

The panel should not normally reinstate a child if they agree that:

- the child carried out a serious offence that affects the discipline and well-being of the school community as a whole.

The panel decides reinstatement is justified but not practical

The panel may decide that reinstating your child is justified but not practical because there are exceptional circumstances where it is not sensible, or in the best interests of all concerned.

Exceptional circumstances can include where there has been an irretrievable breakdown in relations:

- between the child and teachers
- between the parent and the school
- between the child and other pupils.

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 would have been justified but is not practical, they should 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 you are making a claim alleging disability or race discrimination in the exclusion of your child: the panel must decide whether there has been unlawful discrimination under the Disability Discrimination Act or the Race Relations Act. See page 16 for where to go for help on discrimination issues.

If the permanent exclusion is upheld, the LEA may offer you a Parenting Contract. Generally this is when they think you need support with your child's behaviour. Signing a contract must not be used as a condition of admission to another school. In some cases where the LEA believes you are unwilling or unable to deal with your child's behaviour, they may apply for a Parenting Order (see Circular 47/06 Annex 3i).

ACE advises:

Whether or not your child returns to school, goes to another school, or goes to a pupil referral unit, they will need some support. Contact the local education authority immediately to discuss your next steps.

More help

From ACE:

Advice lines: exclusion – 0808 8000327 general – 0808 8005793

ACE guides: Tackling Bullying, Disability Discrimination, Getting Extra Help, £1.70 each and Special Education Handbook, £17.99

Booklets and other advice also on ACE website: www.ace-ed.org.uk

From the National Assembly for Wales:

Tel: 029 2082 1556 for free copies of **Exclusion from Schools and Pupil Referral Units (Circular 1/04)** downloadable from www.learning.wales.gov.uk; **Pupil Support and Social Inclusion (Circular 47/06)**; **SEN Code of Practice on SEN**; **Substance Misuse: Children and Young People (Circular 17/02)** also from www.learning.wales.gov.uk

From Commission for Racial Equality:

Code of Practice on the Duty to Promote Race Equality. CRE website: www.cre.gov.uk or from the CRE Tel: 020 7828 7022

From Disability Rights Commission Helpline:

Code of Practice for Schools – The Disability Discrimination Act 1995: Part 4 Tel : 08457 622 633 or www.drc-gb.org



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