

Exclusion for up to 5 days where there is a Statement or EHC plan in which the special educational provision is quantified

Exclusion 'rules'

1. The Head must write immediately giving length and reason for exclusion.
2. The Head must inform the Governors and LA **only if** an external exam or National Curriculum test would be missed or if the total days excluded in that term are more than 5.
3. The Governors must meet only if
 - (a) an external exam or National Curriculum test would be missed **or**
 - (b) the total days excluded in that term is over 5 **and** parents ask for a meeting.
4. If there is a meeting parents have the right to attend.
5. Parents have the right to make 'written representations' which **must** be considered by governors even where there is no requirement for a meeting.
6. School must take reasonable steps to set and mark work for the first five days of a period of exclusion.
7. School or LA may ask parent to sign a Parenting Contract or apply to Magistrates' Court for a Parenting Order.

SEN questions

If you believe that your child has been excluded as a result of their special educational needs not being met, you may need to consider one or more of the following:

1. *Whether the provision quantified in Part 3 of the Statement or Section F of the EHC plan has been arranged. If not, you should write to the LA. For Statements inform them of their failure to fulfil their legal duty under section 324 of the Education Act 1996 to 'arrange' the special educational provision specified in the Statement. For EHC plans refer instead to the duty under Section 42 of the Children and Families Act 2014 to secure the special educational provision specified in the plan.*
2. *Whether the provision quantified in Part 3 of the Statement or Section F of the EHC plan is the right kind of provision, and/or whether there is enough of it. If not, write to the LA asking for an immediate Annual Review.*
3. *Checking paragraph 22 of the Statutory guidance: Exclusion from maintained schools, Academies and pupil referral units in England.*

Disability discrimination questions

1. Is my child disabled (as defined by the Equality Act)? Were the school aware of it?
2. Was the exclusion because my child is disabled or because of something which happened because he is disabled?
3. Did the exclusion arise because of a discriminatory policy of the school's?
4. Was there a legitimate reason for the exclusion such as health and safety?
5. Is the school making the reasonable adjustments it should be making? (e.g. giving the child SEN Support in school (see chapter 6 of the SEN and Disability Code of Practice 2015).

Advice on writing 'written representations' to the Governors

Legally, no child may be excluded for more than 45 days in a school year. During the first 5 days of any exclusion a parent must ensure that the child is not present in a public place during school hours without reasonable justification. Parents can be given a fixed penalty notice of £50 if they fail to do this.

If you can, give credit where it is due, even if you are angry:

- For example, find something positive to say early on in your written statement, e.g.:
“We have been impressed with the help Matthew has received from his class teacher.”

But also make clear why you believe the exclusion was unfair:

- For example, if the school is aware of Matthew’s difficulties, point this out, e.g.:
“We have explained that all staff should be aware of Matthew’s special needs.”
- If you can, give a positive example of how the exclusion might have been avoided, e.g.:
“It would have helped if he had been allowed time to calm down. He reacts badly to orders when he is agitated so ordering him immediately to say ‘sorry’ and shake hands with the pupil who had been taunting him was not the best way to handle him.”

Refer to the Government's Statutory guidance: Exclusion from maintained schools, Academies and pupil referral units in England:

- For example quote what the guidance says about exclusions being lawful reasonable and fair.

The guidance says that the decision to exclude a pupil must be lawful, reasonable and fair. Given that Matthew did not pose a threat to anyone or to himself, we ask whether or not it was reasonable and fair to exclude him.

- Also helpful to mention what the guidance says about groups who are vulnerable to exclusion

The guidance also says that Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion. Matthew has special educational needs and that means he is from a group which is vulnerable to exclusion. It seems to us that Matthew was excluded without this guidance being considered.”

If appropriate refer to the Equality Act:

“It seems to us that Matthew’s exclusion arose from his disability and was not a proportionate way of dealing with the situation and that there were ‘reasonable steps’ which could have been taken to avoid the exclusion. For these reasons, the exclusion might have constituted ‘disability discrimination’ under the Equality Act 2010. However, rather than going down the legal route, we would much prefer to try to work with the school in order to obtain the right kind and amount of provision to support the school in meeting Matthew’s needs. For example, Matthew does not have an EHC plan and we would very much welcome the school’s support with our application to the LA for an EHC needs assessment.”

For further advice on your child’s special educational needs call IPSEA’s free phone number 0800 018 4016