

Exclusion - Support Sheet 11

Permanent Exclusion when 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. For a permanent exclusion, if the pupil lives outside the local authority in which the school is located, the head teacher must also advise the 'home authority' of the exclusion without delay.
3. The Governors must meet within 15 days of receiving the notice of exclusion (NB if the exclusion will result in the pupil missing an external or National Curriculum exam they must make reasonable steps to meet before the date of the exam) and parents have the right to attend.
4. Parents have the right to make 'written representations' which **must** be considered by governors.
5. School must take reasonable steps to set and mark work for the first five days of a period of exclusion. Local Authorities are required to arrange educational provision for excluded pupils of compulsory school age from all institutions from the sixth day of a permanent exclusion. (See support sheet 14).
6. Where parents (or excluded pupil if aged 18 or over) dispute the decision of a governing body not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review panel.

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. *If 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, in the case of a Statement an emergency Annual Review. In the case of an EHC plan ask for an interim review of the plan.*
3. *Checking paragraph 72 of the Statutory guidance: Exclusion from maintained schools, Academies and pupil referral units in England which sets out the matters of which you must be notified by the governing body*
4. *Consider whether or not you want to use your right to have an SEN expert present at the independent review panel.*

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)).

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.

Advice on writing 'written representations' to the Governors

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. To this extent, we do not believe the exclusion to be lawful, proportionate or fair."

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