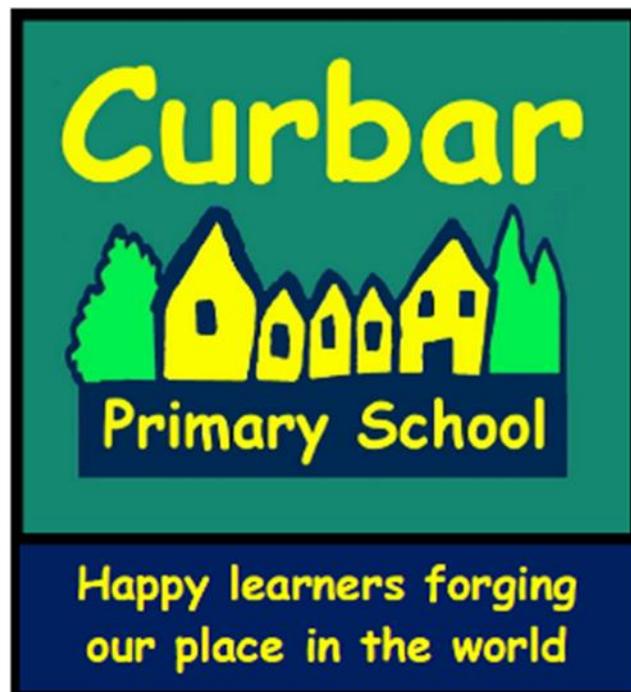

EXCLUSION POLICY



Reviewed/Adopted:	June 2020
Next Review Date:	June 2022
Review Frequency:	Two years
Reviewed By:	FGB

Summary

This document is based on new statutory standards from the Department for Education regarding exclusions (September 2017). 'Changes to the school exclusion process during the coronavirus (COVID-19)' <https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak> should also be referred to if appropriate. It is closely linked to the school's Behaviour Policy and deals with the school's use of exclusion measures. In applying the policy, the school will follow statutory and local authority guidance and advice.

At Curbar Primary School we strive to create a happy, safe and creative school in which everybody can grow and learn new things together. We know that everyone is important whatever their background and whatever their aspirations. Belonging to a safe and nurturing community, we aim for our children to thrive and develop into well-rounded individuals who are equipped to meet the challenges of our modern world with confidence.

Introduction

Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. We expect all members of the school community to act in a reasonable, supportive and respectful manner in ensuring the well-being of our community. Exclusion will be considered when this is compromised by the behaviour of a pupil or parent/carer. The government supports the decisions of Head Teachers and they should be confident in using exclusion where they consider it to be a lawful, reasonable and fair action.

The following forms of exclusion are available to school:

- On site exclusion – access to the site and events is only permitted under certain circumstances
- Fixed Term Exclusion – the pupil is removed from the school for a set period of time at the discretion of the school.
- Permanent Exclusion – the pupil is removed permanently from the school site and the pupil is removed from the school roll.

Exclusions are an extreme sanction and the decision to exclude a pupil is only taken by the Head Teacher (or in their absence, the Senior Teacher). The school will use exclusion as a final sanction in ensuring good order and discipline so that effective learning can take place for all children. Exclusion will be used sparingly in response to serious breaches of school policy and discipline. Permanent exclusion will be used when all other reasonable steps have been taken and when allowing the pupil to remain in school would be seriously detrimental to the education and/or welfare of other pupils or staff. Permanent exclusion may be the only possible response to a single incident of extreme misconduct.

Factors determining decisions about exclusions

In considering whether to exclude a pupil, the Head Teacher should weigh up the seriousness, or persistence, of the pupil's behaviour. If the Headteacher is absent from school, the power to exclude is delegated to the Senior Teacher. The decision to exclude a pupil will be made in response to a child causing significant harm to another pupil or staff member, or if by allowing the pupil to remain in school, the safety or educational or emotional welfare of others would be seriously put at risk.

All decisions to exclude are serious and only taken as a last resort or where the breach of the school rules is serious. The Headteacher will consider the nature of the misbehaviour when deciding upon the length of a fixed term exclusion. In making exclusions, the school must not

discriminate against pupils on the basis of protected characteristics, such as gender, sexual orientation, disability or race. All pupils must be treated fairly and lawfully.

Before deciding whether to exclude a pupil either permanently or for a fixed period the Head Teacher will;

- Ensure appropriate investigations have been carried out
- Consider all the evidence available to support the allegations taking into account the school policies
- Allow the student to give her/his version of events.

Where a school has concerns about the behaviour or risk of exclusion of a child with additional needs, including a pupil with a looked after child, it should, in partnership with others, consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's Special Educational Needs or Disabilities (SEND). Where a pupil has an Education & Health Care Plan (EHCP), schools should consider requesting an early annual review or interim / emergency review.

The following are examples of behaviour which could lead to exclusion. This is not an exhaustive list, and each case is judged in context.

- Repeated failure to comply with a reasonable request from a member of staff
- Verbal abuse of staff, other adults or pupils
- Repeated use of bad language in school
- Failure to comply with the consequences of bad behaviour
- Wilful damage to property
- Repeated bullying
- Violence or the threat of violence towards another pupil or towards an adult
- Repeated fighting
- Theft
- Persistent defiance or disruption in the classroom
- Bringing items to school that may cause harm to other members of the school community
- Making malicious allegations against a member of the school community
- Other serious breaches of school rules

The school has the power to direct a pupil off-site for education to improve their behaviour. A pupil can be transferred to another school as part of a 'managed move' where this occurs with the consent of the parties involved, including the parents and the admission authority of the school. However, the threat of exclusion must never be used to influence parents to remove their child from the school.

Procedures for a Fixed Term Exclusion

Most exclusions are of a fixed term nature and are graduated over time and according to the nature of the behaviour. Government regulations allow the Head Teacher to exclude a pupil for one or more fixed periods not exceeding 45 school days in any one school year. Each case will be determined on its merit and the particular circumstances will be carefully investigated and considered. The degree of severity of the offence, the frequency of occurrence and the likelihood of re-occurrence will be taken into account, as will the student's previous record.

If a student is to be excluded for the first time, the length of the fixed-term exclusion will normally be 1-3 school days. Longer periods may be used for a more serious offence or for a reoccurrence of misbehaviour following an earlier fixed term exclusion. Fixed-term exclusion may be used for a

single occurrence of serious misconduct or for persistent misbehaviour. It will not be appropriate as a response to non-attendance or truancy.

Following exclusion parents are contacted immediately (by phone and/or email) where possible. A letter (Appendix 1) will be sent by post, email or hand delivered on the day of exclusion. The letter sets out:

- the reason(s) for exclusion
- the period of a fixed exclusion or, for permanent exclusion, the fact that it is permanent;
- parents' right to make representations about the exclusions to the governing board and how the pupil may be involved in this;
- how any representations should be made; and
- where there is a legal requirement for the governing board to consider the exclusion, that parents have a right to attend a meeting, to be represented at that meeting (at their own expenses and to bring a friend).

The Head Teacher should ensure that information provided to parents is clear and easily understood. Where the parents' first language is not English, consideration should be given, where practicable, to translating the letter or taking additional steps to ensure that the details of the exclusion and parents' right to make representations to the governing board have been understood.

In some cases, usually where further evidence has come to light, a further fixed term exclusion may be issued or a subsequent permanent exclusion may be issued to begin immediately after the end of the first fixed period. It would, however, be unlawful to impose a Fixed Term Exclusion for an indefinite term of time.

During the course of a Fixed Term Exclusion where the pupil is to be at home, parents are advised that the pupil is not allowed on the school premises, or in public places during school hours and that daytime supervision is their responsibility, as parents/carers. Parents who fail to comply with this duty without reasonable justification commit an offence and may be given a fixed penalty notice or prosecuted.

When a pupil is excluded for more than one day, work should be set by the school within a reasonable timescale and this should be returned to the school when the exclusion is over. If a child is excluded at the end of a school day, then it may not be possible to arrange for work to be set until the following morning. Class teachers will take reasonable steps to set and mark work for pupils during the first five school days of a fixed term exclusion.

A 'return to school meeting' will be held following the expiry of the fixed term exclusion and this will involve the Headteacher or Senior Teacher.

A Fixed term exclusion does not have to be for a continuous term; for example, where pupils attend more than one school then the exclusion could relate only to the days on which they attend the school at which an incident occurred. A fixed term exclusion can also involve a part of the school day; for example, if pupils' behaviour at lunchtime is disruptive, they may be excluded from the school premises for the duration of the lunchtime session.

Representations to the Governing Body concerning fixed-term exclusions will normally be made in the first instance to the Chair of Governors. If the matter cannot be resolved by the Chair of Governors, s/he may decide to refer the matter to an informal sub-committee of the Governors.

Where the governing board is legally required to consider the reinstatement of an excluded pupil they should:

- not discuss the exclusion with any party outside the meeting;

- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school such as those relating to a pupil's SEN);
- where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting;
- allow parents and the pupil to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing board should first seek parental consent and invite the parents to accompany their child to the meeting);
- comply with their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that has an impact upon their ability to attend the meeting or to make representations); and
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding; or how the excluded pupil may feed in their views by other means if attending the exclusion meeting is not possible.

Although it will normally not be necessary, the school reserves the right to use fixed-term exclusion up to the maximum period allowed in current legislation. In the case of fixed-term exclusions exceeding the maximum period, the appropriate meeting of a Governors subcommittee will be called.

The Headteacher must, without delay, notify the governing board and the local authority of:

- any permanent exclusion (including where a fixed period exclusion is followed by decision to permanently exclude the pupil);
- any exclusion which would result in the pupil being excluded for a total of more than five school days (or more than ten lunchtimes) in a term; and any exclusion which would result in the pupil missing a public examination or national curriculum test.

The Headteacher must also notify the local authority and governing board once per term of any other exclusions not already notified. Notifications must include the reason(s) for the exclusion and the duration of any fixed period exclusion.

For a fixed-period exclusion of more than five school days, the governing board (or local authority in relation to a pupil excluded from a PRU) must arrange suitable full-time education for any pupil of compulsory school age. This provision must begin no later than the sixth school day of the exclusion. Where a child receives consecutive fixed-period exclusions, these are regarded as a cumulative period of exclusion for the purposes of this duty. This means that if a child has more than five consecutive school days of exclusion, then education must be arranged for the sixth school day of exclusion, regardless of whether this is as a result of one fixed-period or more than one fixed-period exclusion.

Procedures for a Permanent Exclusion

The decision to exclude a student permanently is a serious one. There are two main types of situation in which permanent exclusion may be considered:

The Head Teacher alone may decide if a pupil is to be permanently excluded. If the Head Teacher is temporarily absent from school and an incident occurs in which the appropriate Senior Teacher feels that permanent exclusion may be the appropriate response, the Senior Teacher may exclude the student concerned for a fixed-term long enough to allow the Head Teacher to consider the case on his/her return.

Permanent exclusion is seen as a very serious matter and will only be used as a last resort. It is likely to be applied only after all other sanctions, including fixed-term exclusion, have failed to produce the desired response in the student. It may, however, be an appropriate response to a single incident of extreme misconduct, for example, extreme violence towards a fellow student or an assault upon a member of staff.

Following exclusion parents are contacted immediately (by phone and/or email) where possible. A letter (Appendix 2) will be sent by post, email or hand delivered on the day of exclusion. The letter sets out:

- the reason(s) for exclusion
- for permanent exclusion, the fact that it is permanent;
- parents' right to make representations about the exclusion to the governing board and how the pupil may be involved in this;
- how any representations should be made; and
- where there is a legal requirement for the governing board to consider the exclusion, that parents have a right to attend a meeting, to be represented at that meeting (at their own expenses and to bring a friend).

The Head Teacher, via the clerk to governors, will make arrangements for a hearing before a governing board committee to take place within fifteen days of the date of the exclusion. Normally, three members of the Discipline Committee will hear the case. No Governor who has any prior knowledge of the case will participate in the hearing.

The purpose of the governing board's meeting is to consider whether to uphold the head teacher's decision to exclude the pupil, or direct reinstatement (relevant for permanent exclusions and all fixed period exclusions of 5 days and above in total within a school term). The governors must consider in each individual case whether or not to uphold the decision. A minimum of three governors are required to attend the governors meeting (this function is sometimes delegated to a designated sub-committee). Where there are differing views expressed amongst the governors, and there is an even split decision the governor chairing the meeting has the casting vote.

The governors can either overturn the exclusion (so the child will be able to go back to school i.e. 'reinstated'), or uphold the decision (so the child will not be allowed back). When a permanent exclusion is upheld, the Local Authority will be in touch with the parent, and meetings will be called to discuss options for the next stage of education for the child. Governors will inform parents in writing. (Appendix 5). If the governors uphold the decision, and the parent disagree with the decision, the parent can go to an Independent Review Panel (IRP). It would be expected that a representative of the governing board (who reviewed the head teacher's original decision) as well as the head teacher would attend the IRP. This is because the primary role of the IRP is to review the governing board's decision.

Please refer to The Guidance for Governors document (Appendix 3) that sets out in detail the role of the governing body in the case of permanent exclusion.

Where reinstatement would make no practical difference because for example, the pupil has already returned to school following the expiry of a fixed-period exclusion or the parents make clear they do not want their child reinstated, the governing board must still consider whether the pupil should be officially reinstated. If it decides against reinstatement of a pupil who has been permanently excluded the parents can request an independent review.

For permanent exclusion, the local authority must arrange suitable full-time education for the pupil to begin no later than the sixth day of the exclusion. This will be the pupil's "home authority" in cases where the school is maintained by (or located within) a different local authority.

Where a pupil has an EHC plan, the local authority may need to review the plan or reassess the child's needs, in consultation with parents, with a view to identifying a new placement.

Appendix 1

Dear

I am writing to inform you of my decision to exclude ***** for a fixed period of *****. This means that ***** will not be allowed in school for this period. The exclusion will begin on ***** and will end on ***** when he will return to school at 9am.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude ***** has not been taken lightly. ***** has been excluded for this fixed period because of *****.

You have a duty to ensure that your child is not present in a public place in school hours during this exclusion unless there is reasonable justification for this. I must advise you that you may be prosecuted or receive a fixed penalty notice from the local authority if your child is present in a public place during school hours on the specified dates. If so, it will be for you to show reasonable justification.

We will set work for ***** to be completed on the day specified in the first paragraph. Please ensure that work set by the school is completed and returned to us promptly for marking.

You have the right to make representations about this decision to the governing body/management committee. If you wish to make representations please contact the Chair of Governors (Jane Taylor) as soon as possible. Whilst the governing board has no power to direct reinstatement, they must consider any representations you make and may place a copy of their findings on your child's school record.

You should also be aware that if you think the exclusion occurred as a result of discrimination, you can make a claim under the Equality Act 2010 to the First Tier Tribunal (Special Educational Needs and Disability) in the case of disability discrimination, or the County Court in the case of other forms of discrimination. If you wish to make a claim of discrimination, please be aware that such a claim must be lodged within six months of the date in which the discrimination is alleged to have taken place.

Information on disability discrimination and other forms of discrimination claims are available on the HM Courts and Tribunal Service website at:

<http://www.justice.gov.uk/tribunals/send>

Making claim would not affect your right to make representations to the governing body.

You also have the right to see a copy of ***** school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of records. There may be a charge for photocopying.

You may wish to contact **Sharon Neak** at Derbyshire LA at John Hadfield House, Dale Road, Matlock, **Derbyshire, DE4 3RD, 01629 535802**, Sharon.Neak@derbyshire.gov.uk who can provide advice.

Department for Education (DfE) guidance on exclusions can be accessed via:

<http://www.gov.uk/school-discipline-exclusions/exclusions>

<http://www.gov.uk/government/publications/school-exclusion>

You may also find it useful to contact Derbyshire Information, Advice and Support Service for SEND (formerly Parent Partnership), a local organisation that can offer exclusion support. They can be contacted at ias.service@derbyshire.gov.uk or 01629 533668. Alternatively, another useful contact is the Coram Children's Legal Centre who provide free legal advice and information to

parents on education matters. They can be contacted on 0300 330 5485 or via www.childrenslegalcentre.com

***** exclusion expires on ***** and we will be expecting ***** to return back to school on ***** for a re-entry meeting at 9:10am.

Yours sincerely

Headteacher

Appendix 2

Dear

I regret to inform you of my decision to permanently exclude ***** with effect from *****. This means that ***** will not be allowed in this school unless he is reinstated by the governing board. I realise that this exclusion may well be upsetting for ***** and your family, but the decision to permanently exclude ***** has not been taken lightly. ***** has been excluded because *****

Since your child is of compulsory school age you have a duty to ensure that your child is not present in a public place during school hours for the duration of the first 5 school days of this exclusion, i.e. from ***** until ***** unless there is reasonable justification for this. I must inform you that you could be prosecuted or receive a penalty notice if your child is present in a public place during school hours on those dates. It will be for you to show that there is reasonable justification.

Alternative arrangements for *****'s education to continue will be made. For the first five school days of the exclusion we will set work for ***** and would ask you to ensure this work is completed and returned promptly to school for marking. From the sixth school day of the exclusion onwards — i.e. from ***** , the local authority (Derbyshire) will provide suitable full-time education.

For Derbyshire residents only - arrangements for full-time education will be organised by the Integration Pathways Team, who can be contacted on 01629 531651.

As this is a permanent exclusion the governing board must meet to consider it. At the meeting you may make representations to the governing board if you wish and ask them to reinstate your child in school. The governing board has the power to reinstate your child immediately or from a specified date, or, alternatively, they have the power to uphold the exclusion in which case you may have the decision reviewed by an Independent Review Panel. The latest date by which the governing board must meet is ***** — the 15th school day after the date on which the governing board was notified of the exclusion. If you wish to make representations to the governing board and wish to be accompanied by a friend or representative, at your own expense, please contact clerk to governors ***** , as soon as possible.

Your child may also be involved in this meeting to speak on his/her own behalf if it is appropriate, taking into account his/her age and level of understanding. You will, whether you choose to make representations or not, be notified by the clerk to the governing board of the time, date and location of the meeting. Please let us know if you have a disability or special needs so that suitable arrangements may be made for you to attend the meeting at school. Also, please inform the clerk to governors if it would be helpful for you to have an interpreter present at the meeting.

You should also be aware that if you think the exclusion occurred as a result of discrimination, you can make a claim under the Equality Act 2010 to the First Tier Tribunal (Special Educational Needs and Disability) in the case of disability discrimination, or the County Court in the case of other forms of discrimination. If you wish to make a claim of discrimination, please be aware that such a claim must be lodged within six months of the date in which the discrimination is alleged to have taken place.

Information on disability discrimination and other forms of discrimination claims are available on the HM Courts and Tribunal Service website at:

<http://www.justice.gov.uk/tribunals/send>

Making a claim would not affect your right to make representations to the governing board.

You have the right to see a copy of ****'s school record. Due to confidentiality restrictions, you must notify me in writing if you wish to be supplied with a copy of ****'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You may wish to contact for advice and information, Sharon Neak at Derbyshire LA at John Hadfield House, Dale Road, Matlock, Derbyshire, DE4 3RD, 01629 535802 or Sharon.Neak@derbyshire.gov.uk

The Department for Education (DfE) have developed exclusion guidance for parents which can be accessed via the following web links:

<http://www.gov.uk/school-discipline-exclusions/exclusions>
<http://www.gov.uk/government/publications/school-exclusion>

You may also find it useful to contact Derbyshire Information, Advice and Support Service for SEND (formerly Parent Partnership), a local organisation that can offer exclusion support. They can be contacted at ias.service@derbyshire.gov.uk or 01629 533668. Alternatively, other useful contacts that provide impartial advice and information to parents on education matters include:

- The Coram Children's Legal Centre – www.childrenslegalcentre.com
- ACE Education – <http://www.ace-ed.org.uk> or 0300 011 5142
- Independent Parental Special Education Advice – <http://www.ipsea.org.uk/>
- [The National Autistic Society \(NAS\) School Exclusion Service \(England\) – schoolexclusions@nas.org.uk](http://www.nas.org.uk/schoolexclusions) or 0808 800 4002

Yours sincerely

Headteacher

Introduction

All references to governors in this document relate in equal measure to PRU management committees for support centres, and the academy trust, for academies. Responsibilities are far reaching and include policy development and school exclusion. The focus of this guidance is specifically the governors' role in relation to exclusion from school.

This guidance will:

1. clarify the processes and procedures associated with exclusion
2. provide a consistent approach across the authority.

This advice reflects the **Department for Education guidance - Exclusion from maintained schools, academies and pupil referral units in England. A guide for those with legal responsibilities in relation to exclusion (2017)** which can be accessed on:

www.education.gov.uk/government/publications/school-exclusion

The guidance has been refreshed and although there are no fundamental changes to law or policy the majority of the revisions attempt to remove ambiguity and confusion and offer clarity.

There are strict procedures that the school and the local authority (LA) have to follow which make sure the process is fair and in line with government guidance and legislation. If a head teacher is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and needs to be removed from the school site for that reason, formal exclusion is the only legal method of removal. **Informal or unofficial exclusions are illegal** regardless of whether they are done with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.

It is unlawful to exclude for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment/ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated, such as to attend a reintegration meeting. However, a pupil who repeatedly disobeys their teachers' academic instructions could be subject to exclusion.

Some of the basic processes are outlined below.

Exclusion Processes

The head teacher has the authority to exclude a pupil from school, if s/he feels that their behaviour warrants it. The Head teacher must apply the civil standard of proof to when establishing the facts in relation to an exclusion decision. A Head teacher can exclude for either lunch times only, for a fixed period of days (from ½ to 45 school days in an academic year) or permanently. It is important to note that a **pupil** can have a maximum of 45 days exclusion in an academic year, which is particularly relevant if a pupil has transferred schools during that year and has a history of exclusion. A fixed period exclusion does not have to be for a continuous period.

The 2017 guidance has clarified the rules on extending or converting an existing fixed period exclusion. The law does not allow for extending a fixed period exclusion or converting a fixed period exclusion into a permanent. In **exceptional cases, usually where further evidence has come to light**, a further fixed period exclusion may be issued to begin immediately after the first period ends; or a permanent exclusion may be issued to begin immediately after the end of the fixed period.

Step 1- Head teacher’s decision
<p>The head teacher must notify the parent of the exclusion without delay, ideally in person or by phone. For pupils of compulsory school age, the school must alert the family of their parental obligations in relation to pupil access to a public place (see Step 3 for more detail). At the latest this should be done the end of the afternoon session.</p> <p>Without delay written correspondence confirming the exclusion should be sent to the parent. It needs to outline the reasons for exclusion and give advice on the next stage of the process. Standard letters have been produced by the local authority that are in line with DfE exclusion requirements.</p>
Step 2 – Setting school work
<p>Schools should make reasonable steps to set and mark work for pupils during the first five days of an exclusion. Arrangements for collection & return of completed work will need confirmed.</p>
Step 3 – Parents’ responsibility between days 1-5
<p>For pupils of compulsory school age, during the first 5 school days of a fixed period or permanent exclusions, parents must ensure that their child is not present in a public place at any time during normal school hours without reasonable justification.</p> <p>Not complying with this requirement has serious consequences which include either a fixed penalty notice or prosecution.</p>
Step 4 – Governing board & local authority responsibility from day 6
<p>The governing board has a duty to arrange suitable full-time education from (and including) the sixth school day of a fixed period exclusion. Where a pupil receives consecutive fixed period exclusion, these are regarded as a cumulative period of exclusion for the purposes of this duty. This means that if a pupil has more than five consecutive school days of exclusion, then</p>

education must be arranged for the sixth day (regardless of whether this is a result of one or more than one fixed period exclusion).

From the sixth school day of a **permanent** exclusion, the LA must ensure that suitable full-time education is provided. The LA will arrange a meeting with the parents to discuss the next steps for the child's education.

Step 5 – Parental representation & governors' meetings

Parents/carers have the right to present their views in relation to their child's exclusion to the school governors, for their consideration. This is true for any type/length of exclusion, however the requirements on the governing board are different, as outlined below:

For fixed period exclusions that bring the total up to **more than 15 school days in a school term**, or result in a child missing a **public examination**, and for **all permanent** exclusions, the governors must hold a meeting within 15 days, and the clerk will invite the parents to attend.

However, for exclusions that total between **5 and 15 school days in a school term** the parents will need to write to the clerk to ask for the governors to hold a meeting to consider reinstatement. The governors must then arrange a meeting within 50 days.

For exclusions **under 5 days (in total in a school term)**, governors must consider parents views, but don't have to hold a special meeting, and don't have the power to reinstate.

N.B. For exclusion purposes a school term relates to 3 terms (i.e. periods between 31st December to Easter Monday; Easter Monday to 31st July; and 31st July to 31st December)

Purpose of Governors' Meetings for Exclusion

The purpose of the governing board's meeting is to consider **whether** to uphold the head teacher's decision to exclude the pupil, or direct reinstatement (relevant for permanent exclusions and all fixed period exclusions of 5 days and above in total within a school term). The governors must consider in *each individual case* whether or not to uphold the decision. A minimum of three governors are required to attend the governors meeting (this function is sometimes delegated to a designated sub- committee). Where there are differing views expressed amongst the governors, and there is an even split decision the governor chairing the meeting has the casting vote.

Framework for Governor Meetings for Exclusion

The meeting should be fairly formal because a serious matter is under discussion. At the same time however, everything possible should be done to make the parent/carer feel at ease. The advised sequence of the meeting is as follows:

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Outline of the governors' meeting
Introductions by the Chair and explanation of the purpose and conduct of the meeting
Head teacher presents the reason for exclusion and the written evidence/relevant information on which it was based.
Questions to the head teacher from parents/carers, governors
Parent/carer's or pupil's view (parents/carers and pupils can also be supported by a friend or representative if they wish)
Questions to parent/carer and/or pupil from governors, the head teacher
The head teacher and then the parent/carer are each invited to sum up
The governors are left alone, or with their clerk, to consider their decision
Governors come to a decision on whether to reinstate the pupil. Governors cannot extend the length of fixed period exclusion or change a fixed period exclusion to a permanent exclusion.
The governors then invite the other people to join them to inform them of the decision.
If the parent/carer decide to return home prior to the decision, or the Chair feels that the governors' deliberations will be lengthy, the Chair should contact the parent at the end of the meeting and verbally convey the decision.
When giving the decision to parents/carers it is considered good practice for the Chair to advise them of the reasons behind reaching this decision.
This decision must be confirmed in writing within 1 school day. This remains the responsibility of the clerk to governors. The letter should

set out the reasons for the governing board's decision in sufficient detail to enable all parties to understand why the decision was made.

Minutes of the meeting should be placed on the pupil's record with a copy of the head teacher's exclusion letter and relevant papers. The governing board must, as soon as reasonably practicable, make the minutes available to all parties.

Legal considerations

The rules of natural justice must remain at the core of the governing board meeting proceedings. Adhering to the following principles will provide a useful framework to ensure natural justice:

1. Independence and impartiality

It is important that proceedings are conducted in such a way that any party would not consider that there was unfairness or bias on the part of the decision makers (i.e. school governors). The following examples could be used as indicators of good practice:

- A head teacher should not discuss the case with the governors prior to the meeting, since it is important that the governors do not have any knowledge of the incident that led to the exclusion
- It is important that the governors have no specific connection with the pupil (this could include being a member of a previous exclusion governors' meeting for the same pupil) since this could be seen to affect his/her ability to act impartially
- At the meeting governors should avoid discussion of the case without the parent/carer and pupil being present.
- All school/parent representations (whether verbal or written), should be carefully considered before a decision is reached and feedback given to parent/carer.
- Appointment of a clerk of governors whose duties include circulation of papers prior to the meeting, minute-taking and written feedback to parent/carer of the meeting's outcome.

This will ensure that decisions are made on the basis of evidence provided, and *after* full deliberations of all interested parties.

2. Equity and fairness

- Parents/carers must be given full details of the school's case against their child and have it **in advance** of the meeting so that they know the case against them and have ample opportunity to formulate a response or obtain advice. The paperwork should be with the parent, governors and LA at least five school days before the meeting, wherever practical. It would be useful to include in advance, a list of those who will be present at the meeting.
- The parent/carer is invited to bring with them a representative (family friend, parent adviser, legal representative) if they feel that it would be useful to them in presenting their views or providing additional support.
- Where new evidence is submitted at the meeting, parents/carers must be asked whether they have had sufficient time to digest and respond to that information. If this evidence raises new major issues, governors should consider whether to adjourn the meeting.
- Governors should never have access to information which the parent/carer does not.

3. Fair hearing

- The amount of time for a hearing is naturally limited. However, a parent should feel that s/he has been given sufficient time to present a case. This is particularly relevant if the school and parent/carer have different accounts of the incident. It is worth noting that with fixed period exclusions this is the one and only opportunity a parent/carer has to present their views, since there is no right of independent review.

Role of governors

In reaching a decision the governors should consider the following:

Checklist for Exclusion Meetings		
	Yes	No
<p>Was the pupil responsible for the behaviour described?</p> <p>Governors should ask themselves whether there is sufficient proof of the behaviour described to warrant the sanction of exclusion.</p> <p>The head teacher in making the decision to exclude, must apply the civil standard i.e. the balance of probabilities. On reaching a decision to exclude the head teacher has to determine if it is more probable than not that the pupil did what s/he is alleged to have done.</p>		
<p>If the behaviour is proven did it go against the school's published behaviour policy?</p> <p>The behaviour policy should clearly state unacceptable behaviour and sanctions that will be applied, whilst being mindful of appropriate support offered.</p> <p>The DfE has published information regarding school behaviour policies within Behaviour & discipline in schools guide for headteacher and school staff (2014)</p>		
<p>Has the exclusion process been carried out properly and fairly?</p> <p>Governors have to consider whether Exclusion from maintained schools, academies and pupil referral units in England. A guide for those with legal responsibilities in relation to exclusion (2017) has been adhered to, and that the investigation of the incident has been carried out fairly and includes the perspectives of the excluded student and other witnesses.</p>		
<p>Has a multi-agency assessment been considered?</p> <p>The DfE states that disruptive behaviour can be an indication of unmet needs. Where a school has concerns about a pupil's behaviour it should try to identify whether there are any causal factors and intervene early in order to reduce the need for subsequent exclusion. In this</p>		

<p>situation schools should give consideration to a multi-agency assessment that goes beyond the pupil's educational needs.</p>		
<p>Were any appropriate alternatives to the exclusion actively pursued? For example, a managed move, alternative provision, Tailor Made Programme (TMP) or support centre?</p> <p>The LA has produced a managed move protocol that outlines the processes for a young person with a pattern of disruptive behaviour, which may have resulted in internal school sanctions or fixed term exclusion, to move schools. This enables a pupil to have a fresh start in a new school. It is important that all parties are in agreement with this move: exporting and receiving school and parents. It is felt that managed moves are more effectively used as an early intervention strategy prior to a pupil being put forward for a permanent exclusion.</p> <p>Alternative provision may be considered appropriate for some disaffected pupils who are at risk of permanent exclusion. Examples include: college placements, work related learning and work experience.</p> <p>Additionally where schools can evidence a graduated response to meeting a pupil's behavioural needs, and have evidence of reviewed plans and external agencies involvement and interventions, it may be appropriate to apply for a Tailor Made Programme, supported by the Integration Pathways Team whilst continuing to remain on the roll of the school.</p> <p>Support centres provide opportunities for pupils to benefit from an offsite placement which typically is a part time, short term intervention, which focuses on addressing the social/emotional/behavioural elements of a pupil's needs whilst remaining dual registered with the school.</p>		
<p>Have referrals for additional High Needs funding streams such as TAPS/GRIP been considered?</p> <p>There are a number of LA resources that school can apply to in order gain additional funding for young people with Social Emotional & Mental Health (SEMH) needs. Both TAPS and GRIP referrals require schools to evidence their graduated response to meeting a young person's needs. However, if a school's application is successful the LA will transfer additional short term funding to school's budgets to contribute towards the costs of interventions and support personnel.</p>		
<p>Has restorative justice been sought (if appropriate)?</p> <p>This enables the offender to redress harm that has been done to the 'victim', and enables all parties with a stake in the outcome to participate fully in the process. This has been used successfully to resolve situations that could otherwise have resulted in exclusion. All</p>		

<p>the professionals involved in the process need to be thoroughly involved and this can only work with the consent of all parties.</p>		
<p>Is the pupil considered to be at particular risk of exclusion (e.g. Pupils with Special Educational Needs)?</p> <p>Head teachers should as far as possible avoid permanent exclusion for pupils with Education Health Care plans/Statements of Special Educational Needs.</p> <p>The school should in partnership with others (including the LA as necessary) consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN. If it is envisaged that a pupil with a Education Health Care plan/Statement is at risk of permanent exclusion then an interim annual review of his/her plan/statement should be considered.</p>		
<p>Is the pupil considered to be at particular risk of exclusion (e.g. Child in Care)?</p> <p>Head teachers should as far as possible avoid permanently excluding Children in Care (CIC). Schools should engage proactively with foster carers and children's homes workers and the head teacher of Virtual School (of the LA who looks after the child). The school should in partnership with others (including the LA as necessary) consider what additional support or alternative placement may be required.</p> <p>Within Derbyshire LA the Virtual School takes a lead role in supporting Derbyshire CIC who are at risk of exclusion, and also track and monitor the exclusions of this cohort of young people.</p> <p>In cases where a CIC is excluded anyone with parental responsibility will have the right to make representations and to appeal (if the exclusion is permanent). The definition of a parent for the purpose of the Education Acts is broadly drawn and includes:</p> <ul style="list-style-type: none"> ▪ The Local Authority where they have a care order in respect of the child ▪ A person with whom the child lives (e.g. foster carer) ▪ Birth parents <p>This means that there could be a number of people whom the school has to notify about the exclusion and who will have the right to make representations and appeal. However, where a child is subject of a care order, the local authority that has parental responsibility for the child is entitled to determine to what extent the parents exercise their parental responsibility.</p>		

<p>Were there any discriminatory factors involved in the case? Race, gender, religion, disability etc.</p> <p>Under the Equality Act 2010 schools must not discriminate against, harass or victimise pupils because of their sex, race, disability, religion or belief, sexual orientation, because of pregnancy/maternity or because of gender reassignment. For disabled children this includes a duty to make reasonable adjustments to policies and practices.</p>		
<p>Was the incident provoked or were there other mitigating circumstances?</p> <p>It is important to establish whether the incident that led to the exclusion was exacerbated by: bullying, including homophobic bullying, or by racial or sexual harassment. Consideration of whether a pupil has recently suffered a bereavement/or loss, or has mental health issues, could be relevant.</p>		
<p>If other pupils were involved, were they treated differently? If so, was this justified? Are you clear of the particular role taken in the incident by this child?</p> <p>Witness statements are of particular relevance here. All written witness statements must be attributed and signed and dated, unless the school has good reason to wish to protect the anonymity of the pupils, in which case they should at least be dated. The panel must consider what weight to attach to written statements, whether made by adults or pupils.</p>		
<p>Were appropriate screening, searching and confiscation powers used?</p> <p>In certain circumstances pupils can be searched without consent. The school needs reasonable grounds that a pupil has in their possession a prohibited item.</p> <p>More detail is provided in DfE guidance (2014) Screening, searching and confiscation. Advice for headteachers, staff and governing bodies.</p>		
<p>Was there appropriate use of reasonable force?</p>		

<p>School staff have the power to use reasonable force to prevent pupils committing an offence, injuring themselves or others, or damaging property and to maintain good order and discipline in the classroom.</p>		
<p>Further information can be obtained from the DfE, in their guidance Use of reasonable force. Advice for head teachers, staff and governing bodies (2013).</p>		

Post – Governors Meeting Processes

The next stage depends on whether the exclusion was for a **fixed period or permanent**. After a **fixed period** exclusion the pupil will return to school. It is expected that schools will have a strategy for reintegrating pupils that return to school following a fixed period exclusion, and for managing future behaviour.

If the child is **permanently excluded** the governors can either overturn the exclusion (so the child will be able to go back to school i.e. 'reinstated'), or uphold the decision (so the child will not be allowed back). When a permanent exclusion is upheld, the Local Authority will be in touch with the parent, and meetings will be called to discuss options for the next stage of education for the child. If the governors uphold the decision, and the parent disagree with the decision, the parent can go to an Independent Review Panel (IRP). It would be expected that a representative of the governing board (who reviewed the head teacher's original decision) as well as the head teacher would attend the IRP. This is because the primary role of the IRP is to review the governing board's decision. The procedure is outlined below:

Step 6 – Independent Review Panel (IRP) for permanent exclusions

The parent has 15 school days from when they are told the governors' decision to apply for an IRP hearing. Any application made after 15 days must be rejected by the Local Authority or Academy Trust. NB Academies have responsibility for setting up the IRP and may wish to liaise with their Academy Trust or independent clerking services.

The IRP will sit within 15 school days of receiving the parent's request and will consider evidence from the parent, the head teacher, and governing board representative before reaching their decision. Parties who attend the hearing may also bring a representative.

The parent has the right to request that a special educational needs (SEN) expert attends the IRP hearing, regardless of whether the child has been assessed as having SEN. The SEN expert will be a professional with first-hand experience of the assessment and support of SEN, as well as an understanding of the legal requirements on schools in relation to SEN & disability. Their role is to give impartial advice to the IRP on how SEN might be relevant to the exclusion. They will look at school policies and how they've been applied, but can't carry out a SEN assessment of the child.

The IRP can come to one of three decisions:

- uphold the exclusion (i.e. the child does not return to school)
- recommend that the governing body reconsiders its decision
- quash the decision and direct the governing body to consider the exclusion again

The IRP can only make a direction if they feel that the governors' decision was illegal, or irrational, or the process was so unfair or flawed that justice was not done.

The guidance makes it clear that if an IRP decision to direct or recommend reconsideration of an exclusion decision the governing body has a duty to **reconsider** a reinstatement.

It is made explicit that reconsideration must be **conscientiously** undertaken otherwise the governing board may face challenge in the courts if it refuses to reinstate without strong justification. The governing board need to look afresh at the question of reinstating a pupil in light of the IRP's findings.

Where the IRP directs or recommends the governing board reconsider whether a pupil should be reinstated, the LA would recommend that the governing board convenes fresh panel members

The governing board must comply with any direction of the IRP to place a note on the pupil's educational record e.g. if the IRP directs reinstatement but the governing board decides not to.

If the IRP directs the governing body to reconsider, the IRP may also order that the school will have £4000 removed from its budget if the child is not reinstated within 10 days. If after reconsideration, the governing board reinstates the pupil, they will be allowed to return to school.

The IRP is independent of all the parties and its decision is binding on the school, the pupil, parents/carers and the Local Authority. If the parent believes an IRP carrying out a review of an exclusion from a Council maintained school, acted unfairly or incorrectly, the parent can complain to the Local Government Ombudsman (LGO). Details of how to make a complaint can be found on the LGO website: www.lgo.org.uk. Complaints concerning an Academy IRP can be made to the Education Funding Agency (EFA) by using the online school complaints form or by writing to:

The Department for Education
 Sanctuary Buildings
 Great Smith Street
 London
 SW1P 3BT

In cases where no maladministration has occurred but parents or schools want to challenge the decision of an IRP, they may seek a judicial review. Any application for a judicial review should be made within three months of the panel's decision.

If the parent believes the exclusion happened as a result of discrimination, they can make a claim to the County Court or, in cases of disability discrimination only, to the First Tier Tribunal (Special Educational Needs and Disability).

The following contacts will be useful for further information and advice relating to exclusion:

AGENCY:	CAN HELP YOU WITH:	CONTACT DETAILS:
Inclusion Team	General advice on the exclusion process Alternatives to permanent exclusion (managed moves, TAPS etc).	01629 535802
Integration Pathways Team (IPT)	The Integration Pathways Team will contact the parent directly to advise on the education provided by the LA after permanent exclusion (for pupils of statutory school age) Preventative Tailor Made Programmes (TMP) are also supervised and monitored by the IPT.	Integration Pathways Team General Offices: 01629 537277 01246 207709
Derbyshire Information Advice & Support Service for SEND	One to one support in assisting parents through the exclusion process. Where possible attending Governors meetings, as parent adviser for permanent exclusions. Liaising with school and LA departments	Advice line – 01629 533668 Opening hours 9.30-3pm but messages can be left outside these hours ias.service@derbyshire.gov.uk
Coram Children's Legal Centre	Parent- friendly exclusion information. Helpline for child law advice	Coram Children's Legal Centre University of Essex Wivenhoe Park Colchester

		Essex CO4 3SQ www.childrenslegalcentre.com
ACE Education	Parent- friendly exclusion information.	www.ace-ed.org.uk 03000 115 142
Department for Education	Exclusion from maintained schools, academies and pupil referral units in England - A guide for those with legal responsibilities in relation to exclusion (2017). Copies of the SEND Code of Practice: 0-25 years (2015)	Department for Education publications: www.gov.uk/government/publications/school-exclusion Department for Education publications: www.gov.uk/government/publications/send-code-of-practice-0-25

Dear [Parent's name]

The meeting of the governing board at [school's name] on [date] considered the decision by [head teacher] to permanently exclude your son/daughter [name of pupil]. The governing board, after carefully considering both the oral and written representations made by you and the head teacher, and all the available evidence, has decided to uphold [Child's Name]'s exclusion.

The reasons for the governing board's decision are as follows: [give the reasons in as much detail as possible, explaining how they were arrived at.]

You have the right to have the decision of the governing board reviewed by an independent review panel. You must set out the reasons for wanting the review in your application and include any written evidence you wish to submit. If appropriate, you may also include reference to any special educational needs that your child has that is relevant to this exclusion.

If you would like to request a review, please apply in writing to **[choose one of the following options]**:

- **Maintained schools only**- Ivan Walters, Democratic Services, County Hall, Matlock, Derbyshire, DE4 3AG
- **Academies** - provide alternative contact details for the substitute contact deemed appropriate by your academy trust

The request for review must be received by [Democratic Services/Academies' contact], no later than [the 15th school day after parental receipt of this letter]. If you have not lodged an application by [repeat latest date], you will lose your right to have the decision to exclude your child reviewed by an independent review panel. Please advise if you have a disability or special needs so that suitable arrangements may be made for you to attend the review hearing. Also, please inform [name of the contact listed above] if it would be helpful for you to have an interpreter present at the review hearing. You can have someone to make written and/or oral representations to the Independent Review Panel on your behalf and at your own expense. You may also wish to bring a friend with you to the review hearing.

Irrespective of whether the school regards your child as having special educational needs, you are entitled to have a Special Educational Needs (SEN) expert at the review hearing. The role of the SEN expert is to provide impartial specialist advice to the panel on how special educational needs might be relevant to the exclusion, but does not include making an assessment of your child's special educational needs. The SEN expert's advice will focus on whether the school's policies which relate to SEN, or the application of these policies in relation to this case, were lawful, reasonable and procedurally fair. If you wish to have a SEN expert at the review hearing, please clearly indicate this on your application and be aware that the cost of appointment of the SEN expert will be met by the local authority (if maintained school) or Academy Trust (if academy) [amend as appropriate].

Your review hearing will be heard by an independent review panel. A three-member panel will comprise:- one serving, or recently retired (within the last five years), head teacher; one serving, or recently serving, experienced governor/ management committee member; and one lay member who will be the Chairman.

[Use the following paragraph only if there is a possibility that a five-member panel may sit]

[A five-member panel will comprise:- two serving, or recently retired (within the last 5 years), head teachers; two serving, or recently serving, experienced governors / management committee members and one lay member who will be the Chairman.]

The review panel will rehear all the facts of the case — if you have fresh evidence to present to the panel you may do so. The panel must meet no later than the 15th school day after the date on which your application for a review is lodged. In exceptional circumstances panels may adjourn the review hearing until a later date.

In reviewing the governing board's decision to exclude, the panel can make one of three decisions:

- i. they may uphold your child's exclusion;
- ii. they may recommend that the governing board reconsiders their decision; or
- iii. quash the decision and direct that the governing board considers the exclusion again.

In addition to your right to apply for an independent review hearing, if you believe that the exclusion occurred as a result of discrimination, you can make a claim under the Equality Act 2010 to the First Tier Tribunal (Special Educational Needs and Disability) in the case of disability discrimination, or the County Court in the case of other forms of discrimination. If you wish to make a claim of discrimination, please be aware that such a claim must be lodged within six months of the date in which the discrimination is alleged to have taken place.

Information on disability discrimination and other forms of discrimination claims are available on the HM Courts and Tribunal Service website at:

<http://www.justice.gov.uk/tribunals/send>

You may wish to contact for advice and information, Sharon Neak at Derbyshire LA at John Hadfield House, Dale Road, Matlock, Derbyshire, DE4 3RD, 01629 535802, Sharon.Neak@derbyshire.gov.uk.

The Department for Education (DfE) have developed exclusion guidance for parents which can be accessed via the following web links:

<http://www.gov.uk/school-discipline-exclusions/exclusions>
<http://www.gov.uk/government/publications/school-exclusion>

You may also find it useful to contact Derbyshire Information, Advice and Support Service for SEND (formerly Parent Partnership), a local organisation that can offer exclusion support. They can be contacted at ias.service@derbyshire.gov.uk or 01629 533668. Alternatively, other useful contacts that provide impartial advice and information to parents on education matters include:

- The Coram Children's Legal Centre – www.childrenslegalcentre.com
- ACE Education – <http://www.ace-ed.org.uk> or 0300 011 5142
- Independent Parental Special Education Advice – <http://www.ipsea.org.uk/>
- [The National Autistic Society \(NAS\) School Exclusion Service \(England\) – schoolexclusions@nas.org.uk](http://www.nas.org.uk/schoolexclusions) or 0808 800 4002

The arrangements currently being made for [Child's name]'s education will continue. [Specify details here].