



IPSEA

Independent Parental Special Education Advice

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My son/daughter has SEN and has been excluded/is at risk of exclusion. What are the rules?

There is statutory guidance (to which schools and Local Authorities 'must have regard') on exclusions that you can find here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/269681/Exclusion_from_maintained_schools_academies_and_pupil_referral_units.pdf

Informal exclusions

You'll see that Paragraph 13 says,

“‘Informal’ or ‘unofficial’ exclusions, such as sending pupils home ‘to cool off’, are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.”

It is important to remember that placing on a part-time timetable, or asking a parent to collect them at lunchtime, for example will also be a form of exclusion and if a school is not allowing a child to attend school for a full school day, then they are, in law, excluding them. The only circumstances in which a child should be offered a reduced timetable are those where the child cannot attend school full-time for medical reasons, for example. In those circumstances, if it would not be in the child's best interests to have full-time education, for a reason relating to their medical condition, then a part-time timetable might be appropriate. In all other circumstances, if a child is able to attend school, but the Head teacher is refusing to let them, then this will be an exclusion and should be registered as one.

When a child is excluded, the Head teacher **must** notify the parents in writing, explaining the reasons for the exclusion and the parents' right to 'make representations' to the governing body about the exclusion (which will usually be when the parents believe the exclusion to be unjustified). If the Head hasn't followed these procedures, the exclusion would be unlawful and many 'informal' exclusions fall into this category.

Repeated exclusions for a child with SEN

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If the school is repeatedly resorting to exclusion, they are not addressing the underlying problem (and if repeated exclusion does not act as a deterrent, then clearly something else is called for). A school should be considering very carefully what support needs to be put in place to help a child avoid the triggers that lead to the behaviours for which he is excluded, and whether different or increased support needs to be put in place.

Paragraph 24 of the guidance says,

“Where a school has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with a statement of SEN or a looked after child it should, in partnership with others (including the local authority 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. Where a pupil has a statement of SEN, schools should consider requesting an early annual review or interim / emergency review.”

School are proposing that our son/daughter be moved elsewhere

The exclusions guidance also contains useful directions on the use of “managed moves” by schools to which you might want to refer. Paragraph 14 states:

“Maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour. A pupil can also transfer to another school as part of a ‘managed move’ where this occurs with the consent of the parties involved, including the parents. However, the threat of exclusion must never be used to influence parents to remove their child from the school.”

Exclusion for non-disciplinary reasons

Paragraph 12 of the guidance makes clear that:

“It is unlawful to exclude or to increase the severity of an exclusion 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. Pupils who repeatedly disobey their teachers’ academic instructions could, however, be subject to exclusion.”

Remember the Equality Act 2010

A child or young person is disabled under the Equality Act 2010 (section 6) if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. This is actually a low test to meet as “substantial” means

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more than minor or trivial and “long term” means lasting more than one year or likely to last more than one year. Many children with SEN will fall within this definition, including those with conditions such as autism or ADHD, for example.

Paragraphs 8-11 of the guidance refer to schools’ duties under the Equality Act 2010 as they relate to exclusion and discipline policies. For example, paragraph 10 states:

“Schools must also ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion. Provisions within the Equality Act allow schools to take positive action to deal with particular disadvantages affecting one group, where this can be shown to be a proportionate way of dealing with such issues.”

Early years settings, schools, colleges and Local Authorities have clear legal duties to act to prevent unlawful discrimination, whether directly or indirectly. They must ensure that they do not treat children and young people with disabilities less favourably than others and may have to adapt their behaviour or disciplinary policies to make sure that they do not discriminate against those with disabilities. Schools also have duties to make reasonable adjustments to take account of a child’s disabilities and this might include, for example, modifying the application of certain policies (such as behaviour or discipline policies) to take account of their disabilities. A school might be entitled to defend a claim that they have failed to make reasonable adjustments on the basis that they were pursuing a legitimate aim, such as the need to maintain discipline, and that the way they applied their policy was a ‘proportionate’ means of doing that. However, a ‘blanket’ application of a behaviour policy without any kind of consideration being given to a child’s disability / SEN is unlikely to be consistent with a school’s duties under the EQA 2010.

What can I do?

If your child has a statement or EHC Plan then there is a risk that the provision in that statement/EHC Plan is either not appropriately specified, or is not being properly secured by the LA

You might also want to read our “Provision of SEP factsheet” which accompanies this factsheet.

If you think that the provision in the EHC plan is not appropriately specific, and you think that changes might need to be made, the best time to ask for those would be as part of the annual review process, because there would then be a right of appeal to the SEND Tribunal if the LA refused to make the changes. In a situation where a child is at risk of exclusion or where they have been excluded already, you could ask for an early annual review of the EHC plan. There are resources on the website about that (including a model letter to write to the LA to ask them to hold such a review) here:

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<https://www.ipsea.org.uk/what-you-need-to-know/changing-an-ehc-plan/annual-review/asking-for-an-early-review-of-an-ehc-plan>

If your child does not yet have an EHC plan, then you might consider making a request for one and you should see the resources on doing so (including a model letter to make the request) on our website here:

<https://www.ipsea.org.uk/what-you-need-to-know/ehc-needs-assessments>

It might also be helpful to read through our exclusion support sheets. They cover more detail on the actions that you might wish to take in particular situations and are found here::

<https://www.ipsea.org.uk/what-you-need-to-know/exclusion-from-school/exclusion-support-sheets>

If school has not complied with the law relating to exclusions it is open to you to complain to the governing body of the school and insist that the law be applied.

We can only provide information through this service, rather than offer direct advice. So if you need this, or you wish to discuss the situation with someone, you should book a call with one of our Advice Line volunteers:

<https://www.ipsea.org.uk/contact/advice-and-support/advice-line>