

Permanent exclusion

When a child is permanently excluded from school it's a serious thing for everyone involved. Many parents, and children, find it very stressful and can feel angry, ashamed and upset by it. This can be especially true if you have a child with special educational needs.

There are legal procedures that schools must follow when a child is permanently excluded. This information sets out what those are and what should happen to your child before and after the exclusion. There is also information about how to go about challenging the decision to permanently exclude.

What is permanent exclusion?

A permanent exclusion is when your child is no longer allowed to go to their current school.

This means they will be taken off the school roll. However, the head teacher can't take a child's name off the School Admissions Register until an Independent Review Panel has met and made their decision. You can find out more about this later on.

Permanent exclusion should only be used in the most serious of circumstances and is meant to be a last resort. The decision to exclude a child permanently should only be taken:

- If there has been a serious breach or persistent breaches of the school's behaviour policy; and
- where allowing a child to stay at school would seriously harm their education or welfare, or that of others such as staff or other children in the school.

It's much less common for a child to be permanently excluded than suspended. There are around 2,000 permanent exclusions in England each school term, compared to 200,000 suspensions.

What is the law about permanent exclusion?

In order for a permanent exclusion to be lawful it must be reasonable, proportionate and fair. Any decision to permanently exclude a child should be made in an individual, case-by-case way.

These are the main things that the legal guidance says about permanent exclusion.

- Only a head teacher, or someone who is deputising for them, can take the final decision to exclude your child. The headteacher starts off the permanent exclusion process, but for it to be completed, it must be upheld by the governing body. You can find out more about this later on.
- A child can only be permanently excluded for a disciplinary reason. A child cannot be excluded for any other reason.
- The headteacher should take account of any contributing factors that might have led to the behaviour, such as home circumstances, anxiety or bullying. The headteacher should also talk to your child to get their views about what happened and anything that led up to an incident.
- Your child can be permanently excluded for something that happens outside school as well as in school.
- When they're exploring the facts about what happened, the headteacher and the governing body must decide whether something is likely to be true

- or not. This is called on the ‘balance of probabilities’ and is about deciding whether it is more likely than not that something is true.
- For the first five school days after your child has been excluded, it’s your responsibility to make sure your child stays at home. They cannot be in a public place during normal school hours unless there is a good reason – for example, if they’re going to a doctor’s appointment. This applies to children of compulsory school age (between 5 and 16).

You can find out more about the law and permanent exclusion on the Child Law website, the IPSEA website or in the Department for Education guidance. Details are at the end of the factsheet.

Can a child with special educational needs or a disability be permanently excluded?

Children and young people with SEND can be permanently excluded.

However, schools do have a legal duty not to discriminate against a child by excluding them from school because of their disability. School staff should make reasonable adjustments to a child’s school life, and to their school policies and procedures, in order to prevent them from being discriminated against.

In other words, if a child’s behaviour is a direct result of their SEND, and appropriate support wasn’t in place and given, permanently excluding them may be discriminatory.

The law that includes this duty is the Equality Act 2010. If you think that this may have happened, and want to discuss it, contact us for advice. You can also find more information about exclusion and disability discrimination on the IPSEA website.

It’s not always the case that a child’s SEND is a factor in their behaviour. But school staff should think about whether your child’s special educational needs contributed to the breaking of the school rules. If they think that’s the case, they should consider whether it is right and lawful to permanently exclude them. If your child has an EHC plan, then school staff should do an early review of the plan if they are concerned about behaviour or things are escalating.

Schools must also make sure they do not discriminate against disabled children and young people by increasing their risk of exclusion more than other pupils.

In the Behaviour in Schools Guidance, the Department for Education says

“Schools should consider whether a pupil’s SEND has contributed to the misbehaviour and if so, whether it is appropriate and lawful to sanction the pupil. In considering this, schools should refer to the Equality Act 2010 and schools guidance.”

“The school should also consider whether any reasonable adjustments need to be made to the sanction in response to any disability the pupil may have. It is also important for the schools to seek to try and understand the underlying causes of behaviour and whether additional support is needed.”

How is a permanent exclusion given?

The following things should happen when your child is permanently excluded.

- The headteacher (or their deputy) must tell you by phone or in person, why your child has been permanently excluded. This should be done straightaway. The headteacher will also tell the school’s governing body.
- Then the headteacher must also write to you, by email or letter, to explain what you can do if you disagree with the exclusion. You have a right to say why you object to it and give your views. You should also be given details about information, advice and support services to contact for help, such as DiAS.
- You should be told about how to ‘make representation’ to the governing body of the school about the exclusion. This is a way of challenging the decision to permanently exclude your child. You can find out more about this later on.
- The headteacher must tell the local authority about the exclusion. If your child has a social worker, they must be told as well. Information is also shared with the virtual school for all children in care who are permanently excluded.
- If the school has arranged for your child to go to an ‘alternative provider’ for their education, then they

should give you information about that in the letter too. That should include when that starts, where it is and who to speak to about it. This information should be sent to you no later than 48 hours before it's due to start. You can find out more about alternative provision in the section about education after an exclusion below.

What happens about my child's education after they have been excluded?

If your child has been permanently excluded, you should have contact with, and support from, a member of [Devon's inclusion team](#). They can help you and your child to find a new school as quickly as possible and to make sure that education is in place until then.

Straight after an exclusion

Immediately after your child had been excluded, and for the first five days, the school's headteacher should arrange for work to be set for your child and then marked. This can include using online learning such as Google Classroom or Oak National Academy.

The only exception to this is if your child is going straight to an **alternative provider (see below)**.

In the longer term

After those first five days, the responsibility to arrange your child's education passes to the local authority.

To start with, the usual process is for your child to go to an **alternative provision** setting. The aim of that is to support them to learn to manage their behaviour and help them move to their next permanent placement. That could be a mainstream or special school or some other form of education.

Alternative providers are places that provide education for children who can't go to a mainstream school. Pupil referral units (PRUs) are one type of alternative provider, and your child would usually go to one of these if they have been permanently excluded. There are three PRUs in Devon that take permanently excluded children – one in Exeter, one in north Devon and one in south Devon.

Pupil referral units are meant to be short-term school places while something permanent is found for your child to move on to. It's the local authority's duty to find a new permanent school place for your child and an inclusion officer can help with this. If there is no place available for your child at a PRU, the inclusion team may organise home learning or other support until a permanent school place can be found.



Being in a pupil referral unit

Some children manage well at a Pupil Referral Unit, whereas others find it hard. Sometimes the behaviour of other children at a PRU can be challenging and the learning environment can be very different from the average school. If you're worried that your child may find it difficult or it may have a negative impact on them, talk to your inclusion officer. You can talk to us for advice too.

You can also apply directly to schools for a place for your child. However, a school can refuse to accept a child if they have been permanently excluded twice or more within the last two years. The main exception to this is if your child has an EHC plan which names the school. In some circumstances they can also refuse to admit your child if they have challenging behaviour.

Whatever education your child has it must be 'full time' and it must be 'suitable.' That means it should be the same amount of education as they would get in a maintained school. It could be a mixture of direct teaching and supervised learning or e-learning. Whatever it is, it must be suitable for your child's age, ability and the special educational needs they have.



Important to know

For children with SEND, wherever school or setting they are in, the legal duties for their education stay in place. That means staff must make reasonable adjustments to support them. That could mean giving extra or different support to help your child do the work they have been set at home or making sure all support is in place in a new school.

What if my child has an EHC plan?

When your child is no longer able to go to their previous school, you will need to choose a new school to name in the EHC plan. The local authority must make that decision with you.

When your child has been excluded, it's a good idea to have a look at their EHC plan and the needs and support set out in it. If you think they may have been excluded because their needs were not met, and/or the support wasn't given properly, the plan may need to be reviewed. This will help to increase the chances that the next school they go to will be giving support that helps your child to manage and do well. These are the things to think about.

- If you think that the **support** set out in the EHC plan **isn't right or isn't enough**, you can ask the local authority to do an early review of it. As part of that review, you can ask for changes to the support, or make sure the description of the support is clear enough.
- If the EHC plan **doesn't properly describe your child's needs or the support** they need, and you think that new information is needed to work this out, you could ask for a re-assessment.

Make sure that the support that's in your child's EHC plan is also in place at the alternative provider. If the alternative provider can't do that, the local authority must arrange for the support to be given another way.

Getting a school place after a permanent exclusion

Some parents are happy for their child to stay at a PRU for a while, until they have been assessed or a new school place has been arranged by the local authority. Other parents try to find a place in a new school as soon as possible themselves. You can apply for a school yourself under the normal admissions system. You can find out how to do that in our information about finding and choosing a school.

In most cases, you can appeal if the school you want is full. Every local authority has something called a fair access protocol (FAP). This is a local agreement for getting children without a school place back into school

as quickly as possible. Permanently excluded children are covered by this. Children can be placed under the FAP even if a school is full.

Can a permanent exclusion be cancelled?

The headteacher can cancel any permanent exclusion that has already started or one that has not yet begun. This can only happen if the governing board hasn't already met to talk about whether your child should be reinstated.

If the exclusion is cancelled, the headteacher must tell you straightaway. You and your child should be offered the chance to meet with the headteacher to talk about the circumstances that led to the exclusion. Your child should be able to go back into school straightaway.



Important to know

A permanent exclusion cannot be cancelled if your child has already been excluded for more than 45 school days in a school year or if they will have been so by the time the cancellation takes effect.

What if I disagree with the decision to exclude my child?

If you disagree with the exclusion, you have the right to challenge the decision.

The first step is to ask the headteacher to reconsider. You can share any evidence you have that your child's SEND may have affected their behaviour and what happened.

If that does not work, the second step is called making a '**representation**' and you must do that in writing. Information about how to do this, and who to send it to, should be in the letter you get from the headteacher about the exclusion. IPSEA also has some advice about what to put in the letter and how to write it. Letters of representation are sent to the governing board for the school.

The governing board must decide whether or not to go ahead and exclude your child within 15 school days of being told about it. If being excluded would mean your child misses a public exam, such as a GCSE or a SATs test, the governing body should do their best to meet before the exam to make their decision.

What happens at the meeting of the Governing Board?

The governing board meets to discuss every permanent exclusion. This is to make sure that the correct legal process has been followed. As a parent, you have a right to attend this meeting. You and your child should be invited to share your views, regardless of whether you have written a letter of representation.

The board can decide whether to reinstate a child after a decision to permanently exclude them has been made by the head teacher. If the Board was to decide to reinstate your child, it would mean they would be allowed back into the school and the permanent exclusion would not go ahead.

The board meets to discuss the exclusion, and the following people must also be invited, be allowed to share information and have a say:

- parents – if you ask for one, you can also take a friend or someone to represent you
- your young person, if they're over 18
- the headteacher
- a representative of the local authority, if the school is a maintained one or a PRU – a maintained school is one run by the local authority
- your child's social worker if they have one
- someone from the virtual school if the child is in care

Governing board meetings, and the things discussed within them, are confidential. Before the meeting the board will ask for written evidence about your child and the circumstances of the exclusion. That can include witness statements, your child's school records, their SEND support plan and/or EHC Plan. Witness statements can come from your child, their teachers, the school safeguarding lead, the headteacher and anyone else relevant. Where possible, this information should be shared with the people going to the meeting at least five days before it.

If they're under 18, your child can be invited to the meeting as a witness. Someone from the board must ask your permission for this to happen. If your child is going to the meeting, the board members must do whatever they can to support them, including making adjustments for communication difficulties or a disability. If your child can't go to the meeting, they will be given the chance to share their views in a different way, such as writing or recording a statement.

Notes are taken during the meeting so that there is an accurate record of what was said. When discussions have finished, the meeting will end. The board members will make their decision once everyone else has left the meeting, including the headteacher.

Making the decision

When the governing board members are making their decision, they should consider whether the decision to permanently exclude your child was lawful, reasonable, and fair.

They should also think about what's in

- the best interests of your child
- the best interest of other pupils, school staff, and the wider school community.

The governing board can then either

- reinstate your child, straightaway or at a later date
- decide not to reinstate your child, in which case the permanent exclusion will go ahead.

Sometimes a child may not want to go back to the school even if they are reinstated. If that's the case, the governing board must still meet to consider whether your child should or would have been officially allowed back into the school.

After the decision

If the governing board decides your child **should be reinstated**, what happens next depends on whether your child wants to return to the school. Sometimes the relationship between a family and the school staff may have broken down to such a point that the family feels it would not be the best choice to go back.

- If you decide your child won't be going back to the school, a new school place will need to be found.
- If your child is going back to the school, you should be given information about when that will be. It could be straightaway or on a specific date. You should also be offered [a reintegration meeting](#).

If the governors decide **not to reinstate** your child in school, they won't be able to return to school and they will be taken off the school's roll/register. You can appeal the decision and ask for it to be reviewed by an Independent Review Panel (IRP). The IRP does not have the power to reinstate your child but may tell the governors to look at their decision again. You can find out more about this below.

What is an Independent Review Panel (IRP)?

If the governing board decides not to reinstate your child, you have the right to ask for an independent review panel to review the decision. You must apply within 15 school days of hearing about the governing board's decision. If you apply for an IRP after 15 days, it will be turned down.

The panel reviews the governing board's decision not to reinstate your child. They do not have the direct power to reinstate your child though. The panel can only decide to:

- uphold the governing board's decision not to reinstate;
- recommend that the governing board reconsiders reinstatement; or
- quash the governing board's decision and direct that the governing board thinks again about reinstating your child – quash means saying officially that an earlier official decision is no longer to be accepted

You have to put all the information you want to share with the panel in writing and send it to them before the meeting. You can send new evidence, but the panel can only make their decision based on what the governing body saw or was available at the time.

The independent review panel members should be independent and impartial. The panel will be made up of a:

- lay member who chairs the panel – this means someone who doesn't and hasn't worked as an education professional
- one or two current or past head teachers
- one or two current or past school governors

These people will be from another school, not the one your child has been excluded from.

You and your child, if they're able to and want to, have a right to take part in the meeting. During the meeting the panel must consider

- the interests and circumstances of your child
- the circumstances in which your child was permanently excluded
- the interests of other pupils and people working at the school

SEN expert

You can also ask for an SEN expert to be part of the panel. You can do that even if the school doesn't recognise that your child has SEND. There is no cost to you to have the SEN expert there. Where there is an SEN expert at the panel meeting, the panel must ask for and listen to their views about how SEN may be relevant to your child's exclusion.

The SEN expert's role is similar to that of an expert witness. They are there to give impartial specialist advice about how special educational needs might be relevant. The focus of their advice should be on whether the school's SEN and other policies, and how they were applied in relation to your child, were lawful, reasonable and fair.

Challenging a school's decision to permanently exclude your child can be complex, so if you would like further advice or information contact us. You can find out more about how a panel should make decisions in the Department for Education Guidance on suspensions and exclusions (Part 10). You can find out more about independent review panels on the Child Law Advice website.

Need more information?

SEND Code of Practice

Department for Education guidance on the special educational needs and disability system
www.gov.uk/government/publications/send-code-of-practice-0-to-25

IPSEA

SEND law charity
www.ipsea.org.uk

Child Law Advice

childlawadvice.org.uk

Devon County Council Education Inclusion Service

www.devon.gov.uk/educationandfamilies/school-information/education-inclusion-service

Department for Education Guidance on suspensions and exclusions

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



DiAS information that may be helpful.

These resources are on our website or available as a document by contacting us.

- About suspension and permanent exclusion
- Managing difficult conversations
- Getting the most out of meetings

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