

Exclusion, SEN and disability

Support Sheet 9

Exclusion for over 15 days when there is a Statement which does not quantify the special educational provision

Exclusion 'rules'

1. The Head must write immediately giving length and reason for exclusion.
2. The Head must inform Governors and LEA.
3. The Governors must meet between 6 and 15 days following the exclusion (unless an external exam requires them to meet sooner) & parents may attend.
4. Parents have the right to make 'written representations' which **must** be considered by governors and to attend the meeting
5. School must set & mark work for first 5 days - then arrange suitable full-time provision (see also Support Sheet 13).
6. School or LEA may ask parent to sign a Parenting Contract or apply to Magistrates' Court for a Parenting Order.
7. Head must hold 'reintegration' interview with parents.

SEN questions

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

1. *Requesting an urgent Annual Review of the Statement.*
2. *Requesting amendments to the statement in order to quantify the provision.*
3. *Complaining to the Secretary of State or the Local Government Ombudsman that the LEA is in breach of s324 of the Education Act 1996 if some of the provision in Part 3 of the Statement is not being arranged.*
4. *Requesting fresh statutory assessment.*
5. *Check paragraphs 63 to 67 in [Guidance on Exclusion from Schools and Pupil Referral Units \[September 2008\]](#)*
6. *For further advice on your child's special educational needs call IPSEA's free phone number 0800 018 4016.*

Disability discrimination questions

1. Is my child disabled (as defined by the Equality Act) and were the school aware of the disability?
2. Was the exclusion solely because my child is disabled?
3. Was the exclusion for a reason arising from my child's disability; or as a result of a policy or practice operated by the school which disadvantaged my child compared to its effect on a child who is not disabled?
4. Was the exclusion a proportionate way for the Head Teacher to achieve a legitimate aim?
5. Were there any reasonable steps which could have been taken to prevent the exclusion e.g. increasing support, training staff, placing on School Action or Action Plus, requesting statutory assessment?
6. Check paragraphs 68 to 72 in [Guidance on Exclusion from Schools and Pupil Referral Units \[September 2008\]](#)

Legally, no child may be excluded for more than 45 days in a school year.

During the first 5 days of any exclusion a parent must ensure that the child is not present in a public place during school hours without reasonable justification. Parents can be given a fixed penalty notice of £50 if they fail to do this.

Advice on writing 'written representations' to the Governors ...

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

- For example, find something positive to say early on in your written statement, e.g.:
"We have been really impressed with the quality of help Matthew has received from his class teacher and with her level of commitment to him ..."
- If you accept that your child's behaviour was a real problem, then say so, e.g.:
"We have made it very clear to Matthew that we are not at all happy with his behaviour. We are trying hard to back the school."
- If you believe that the school has problems due to lack of resources, then say so, e.g.:
"Of course we are aware that there are real problems with resources in schools ..."

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

- For example, if the school is aware of Matthew's difficulties, point this out, e.g.:
"Matthew's Statement specifies that it is important for staff to be aware of his needs."

If you can, give a positive example of how the exclusion might have been avoided, e.g.:

"It would have helped if he had been allowed time to calm down. He reacts badly to orders when he is agitated and he detests physical contact. This is described in the EP's Advice, which the school has a copy of. Ordering him to shake hands with the pupil who'd been taunting him was not the best way to handle him."

- Refer to the Government's guidance to head teachers (in [Guidance on Exclusion from Schools and Pupil Referral Units \[September 2008\]](#)):

"The Secretary of State's guidance to schools says that exclusion should normally only happen: 'if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.' Matthew did not pose a threat to anyone or to himself. In addition, the guidance says: 'Schools should also make every effort to avoid excluding pupils who are being supported under the Special Educational Needs Code of Practice.' It seems to us that Matthew was excluded without this guidance being considered."

- Refer to the Disability Discrimination Act:

"It seems to us that Matthew's exclusion arose from his disability and was not a proportionate way of dealing with the situation and that there were 'reasonable steps' which could have been taken to avoid the exclusion. Your policy of [] puts children such as Matthew at a substantial disadvantage in comparison with persons who are not disabled. For these reasons, the exclusion might have constituted 'disability discrimination' under the Equality Act 2010. However, rather than going down the legal route, we would prefer to work with the school in order to obtain the right kind and amount of provision to support the school in meeting Matthew's needs. For example, Matthew's Statement fails to specify the provision he is entitled to receive and we would welcome the governors' support for our request for an early Annual Review in order that this fault can be brought to the LEA's attention and corrected."

For further advice on challenging exclusion call ACE on 020 7704 9822 and ask for a copy of the free booklet [Fixed Period Exclusion 2009](#)