

Exclusion, SEN and disability

Support Sheet 17

Informal or unofficial exclusion when there is a Statement which does not quantify the special educational provision

Exclusion 'rules'

1. Informal exclusions are illegal even if done with the consent of parents or carers.
2. In order to exclude a pupil the head must be satisfied that the pupil has committed a serious disciplinary offence and must use the proper legal procedure.
3. Health and safety reasons can be used only if the child has a diagnosed illness, e.g. a 'notifiable disease', which poses an immediate and serious risk to the health of others at the school.
4. If the head makes an informal exclusion 'formal', parents must be notified in writing of their rights, including that of making 'written representations' (see Exclusion Support Sheets 1 – 12).

SEN questions

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

- 1 *Whether the provision quantified in Part 3 of the Statement has in fact been arranged. If not, you should write to the LEA informing them of their failure to fulfil their legal duty under section 324 of the Education Act 1996 to 'arrange' the special educational provision specified in the Statement.*
- 2 *Whether the provision quantified in Part 3 is the right kind of provision, and/or whether there is enough of it. If not, write to the LEA asking for an emergency Annual Review of the Statement.*
6. Check paragraphs 63 to 67 in [Guidance on Exclusion from Schools and Pupil Referral Units \[September 2008\]](#)
7. 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 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 assessment?
6. Check paragraphs 68 to 72 in [Guidance on Exclusion from Schools and Pupil Referral Units \[September 2008\]](#)

Note: no child should be excluded for an indefinite period, or for a non-disciplinary reason, or without formal notice in writing from the head.

Advice on writing a complaint to the school ...

What follows is based on an exclusion because of a behaviour issue. Schools sometimes use informal exclusions where the child's behaviour is not a discipline problem, e.g. where they have too few people to support the child all the time (this is unlawful in itself, see 'Exclusion rules' overleaf. If this is the case and you have failed to resolve it by speaking to the school, write a short letter of complaint to the school with a copy to the local education authority. Phone IPSEA if you need further help.

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.:
"He reacts badly to orders when he is agitated and he detests physical contact, so ordering him to say 'sorry' and shake hands with the pupil who had been taunting him was not the best way to handle him ..."

Refer to the Government's 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 'informal or unofficial exclusions are illegal' and 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 at School Action or School Action Plus.' It seems to us that Matthew was excluded without this guidance being considered."

- Refer to the Equality Act:
"It seems to us that Matthew's exclusion arose from his disability and was not a proportionate way of dealing with the situation and that there were 'reasonable steps' which could have been taken to avoid the exclusion. 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 much prefer to try 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 Statement fails to specify the provision he is entitled to receive and we would welcome the governors' support for our request for an immediate Annual Review in order that this fault can be brought to the LEA's attention and corrected."