

Exclusion, SEN and disability

Support Sheet 5

Exclusion for between 5 days and 15 days when there is a Statement which is quantified (i.e. a 'good Statement')

Exclusion 'rules'

1. The Head must write immediately giving length and reason for exclusion.
2. The Head must inform the Governors.
3. The Governors must meet only if:
 - (a) an external exam would be missed, **or**
 - (b) the total days excluded in the term are over 15, **or**
 - (c) the total is between 5 and 15 and the parents request a meeting.
4. Parents have the right to make 'written representations' which **must** be considered by governors and/or to attend the meeting.
5. The Head must inform the LEA.
6. The school must set and mark work for the child.

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:

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 to 'arrange' the special education provision.*
2. *Whether the provision quantified in Part 3 is the right kind of provision, or whether there is enough of it. If not, you should write to the LEA asking for an emergency Review of the Statement.*

Disability discrimination questions

If you believe that the exclusion was unfair, you should consider these issues:

1. Is my child disabled (as defined by the Disability Discrimination Act)?
2. Was the exclusion for a reason related to my child's disability?
3. Was the exclusion justified e.g. were there other actions which you think the school could have taken, instead of excluding your child?
4. Can you think of any reasonable steps which the school could have taken to prevent the situation which led to the exclusion e.g. providing extra support, asking the LEA to provide additional training for staff, informing the LEA that the provision specified in the Statement is not being arranged?

Note: no child should be excluded for a fixed period if as a result they would have been excluded for more than 45 days in that school year.

**See over for advice on writing your 'written representation' to the Governors.
If you need further advice, call IPSEA on Freephone 0800 018 4016.**

Advice on writing 'written representations' for 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."
- Acknowledge that teachers in schools have a difficult job, e.g.:
"We understand the pressures that there are on class teachers in schools nowadays ..."
- 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 all staff to be aware of Matthew's special 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 clearly described in the Educational Psychologist's Advice, which the school has a copy of. Ordering him immediately 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 *Improving Behaviour and Attendance*):
"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 was not justified and that there were 'reasonable steps' which could have been taken to avoid it. For these reasons, and because Matthew is disabled, the exclusion could have been 'disability discrimination' under the Disability Discrimination Act 1995. 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 is not currently getting the provision which is specified on his Statement and we would welcome the governors' support in bringing this to the LEA's attention."