

School exclusions

What is legal?



National Children's
Bureau



School exclusions: What is legal?

Pupils can experience school exclusion in many different ways and the language used to describe exclusions can itself be confusing.

In this context, it can be difficult to notice where exclusions are used in a way that is not consistent with the law.

We believe that schools, parents, carers and pupils will all benefit from clear information about their legal powers and rights.

This factsheet defines the different terms that are used to describe exclusions and what their legal basis is.



National Children's
Bureau

For more than 50 years, the National Children's Bureau has worked to champion the rights of children and young people, interrogating policy and generating evidence to shape future legislation. We take the voices of children to the heart of Government, bringing people and organisations together to drive change in society and deliver a better childhood for the UK.



ASCL is a leading professional body representing about 19,000 school and college leaders in all phases across the UK. Our members are responsible for the education of more than four million young people. ASCL works to shape national education policy, provides advice and support to members and delivers first-class professional development.



IPSEA offers free and independent legally based information, advice and support to help get the right education for children and young people with all kinds of special educational needs and disabilities (SEND). We also provide training on the SEND legal framework to parents and carers, professionals and other organisations.

Which schools does this guide apply to?

Except where stated otherwise, this guide applies to all maintained schools, academy schools (including free schools but not 16-19 academies), alternative provision academies (including alternative provision free schools), and PRUs.

This guide does not apply to independent schools (other than the academies listed above), city technology colleges, city colleges for the technology of the arts, sixth form colleges or 16-19 academies.

The term 'school' in this document is used to describe any school to which the guidance applies.

Fixed period or temporary exclusion

A fixed period exclusion is when a pupil is formally and temporarily removed from school for a fixed period of time for disciplinary reasons.

Schools should set and mark work for the first 5 school days of the period the pupil is excluded for and if the exclusion is longer than 5 school days, the school must arrange suitable full-time education.

A fixed-period exclusion can also be for parts of the school day (for example, a lunchtime exclusion counts as a half-day exclusion).

When added together over a year, the total of fixed term exclusions cannot exceed 45 days even if the pupil changes school. During the fixed term exclusion, the pupil remains on the school roll.

The total of fixed term exclusions in any school year cannot exceed **45 days** even if the pupil changes school.

A head teacher can only exclude a pupil for a fixed period for disciplinary reasons and the exclusion must be lawful, proportionate and fair.

A fixed period exclusion can be applied for any breach of a school's behaviour policy where it is considered to be the appropriate level of sanction.

Whenever a head teacher excludes a pupil they must, without delay, notify the parents/carers of the period of the exclusion and the reason(s) for it.

Further, to be lawful, compliance with the Equality Act 2010 will be required, including in the way that school behavioural policies are created and applied.

Legal basis



Permanent exclusion

A permanent exclusion is when a pupil is removed from school permanently and their name is taken off the school roll.

However they must remain on the Admissions Register until the parents/carers have been through, or declined to go through, the independent review process that they are entitled to request.

In these cases the relevant Local Authority must arrange full-time education for the pupil from the sixth school day.

Pupils must remain on the Admissions Register until the parents/carers have been through or declined the independent review process.

A head teacher can only permanently exclude a pupil for disciplinary reasons and a decision can only be taken if the pupil is found to be in serious breach of the school's behavioural policies and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

Note that both limbs of the test have to be satisfied in order for a permanent exclusion to be legal and, as with fixed term exclusions, the exclusion must be lawful, proportionate and fair. Permanent exclusion should only be used as a last resort.

Further, to be lawful, compliance with the Equality Act 2010 will be required, including in the way that school behavioural policies are created and applied.

Legal basis



Informal or unofficial exclusion

Informal or unofficial exclusions are those that are not recorded formally.

An example is a pupil being sent home for a short period of time for a 'cooling off period.'

Informal or unofficial exclusions are always unlawful, even with the agreement of the pupil, parent or carer. To be lawful, the correct formal process must be followed including the exclusion being followed up in writing to the parent/carer informing them of their rights, including their right to representation.

Legal basis



Part-time timetables

A 'part-time timetable' is when a pupil is asked to attend school for only part of the school day, such as starting or leaving school at lunchtime.

All children are entitled to a full-time education and as a rule, schools cannot place a pupil on a part-time timetable.

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In very exceptional circumstances a school may put in place a temporary part-time timetable to meet a pupil's individual need. Generally, this will only be where a medical condition prevents a pupil from attending full-time education although a part-time timetable may also be considered as part of a reintegration package.

In agreeing to a part-time timetable, a school has agreed to a pupil being absent from school for part of the week or day and therefore must record it as authorised absence. Schools will also need to consider their wider legal duties, for example under the Equality Act 2010.

Legal basis



Internal exclusion/seclusion/isolation

'Internal exclusion' is when a pupil is excluded within the school for disciplinary reasons. This may include being removed from their class to a separate room or booth within the school.

Schools can adopt a policy which allows pupils to be placed in an area away from other pupils for a limited period.

If a school uses seclusion or isolation rooms as a disciplinary penalty this should be made clear in their behaviour policy. Pupils should be in isolation no longer than is necessary and their health, safety and welfare must always be put first.

Again, the creation and application of behaviour policies has to be in accordance with the Equality Act 2010.

Legal basis



Managed move

A 'managed move' is a voluntary agreement - between a pupil's current school, their parents/carers and a new school - for a pupil to move from one school to another.

Once a pupil is registered at the new school, their name can be removed from the Admission Register of the original school.

The threat of exclusion must not be used to influence parents/carers to remove their child from the school.

A pupil can transfer to another school as part of a 'managed move' if this occurs with the consent of the parties involved, including the parent/carers and the admission authority of the new school.

The threat of exclusion must not be used to influence parents/carers to remove their child from the school.

Legal basis



Off-rolling and gaming

'Off-rolling' is described by Ofsted as the practice of a school removing a pupil from a school roll in the perceived interests of the school rather than the pupil.

'Gaming' is similar and describes any process when a school's actions or decisions - to exclude, not to exclude or during the process of excluding a pupil - are made in order to favour the school or academic league tables.

Any such exclusion is unlawful where a school removes a pupil from the Admissions Register for any reason not set out in Regulation 8 of The Education (Pupil Registration) (England) Regulations 2006.

'Off-rolling' and 'gaming' are unlawful permanent exclusions. Any such exclusion is unlawful where a school removes a pupil from the Admissions Register for any reason not set out in Regulation 8 of The Education (Pupil Registration) (England) Regulations 2006.

Legal basis



Elective home education

Elective home education is a term used to describe a choice by parents/carers to provide education for their children at home or in some other way which they choose, instead of sending them to school.

Parents/carers have the right to educate their children at home.

However, schools should not try to persuade parents/carers to educate their pupils at home as a way of avoiding an exclusion, because the pupil has a poor attendance record or as an alternative to securing additional support which the pupil may require.

Legal basis



Referral off site to alternative provision

This is where a pupil is referred to another educational setting for some or all of their education for the purpose of improving their behaviour.

Sometimes this will be in a Pupil Referral Unit and sometimes in some other setting.

Regulations require that the governing body must ensure parents/carers are given clear information about the placement: why, when, where, and how it will be reviewed...

Maintained schools have the power to direct a pupil off-site for education to improve their behaviour. Regulations require that the governing body must ensure that parents/carers are given clear information about the placement: why, when, where, and how it will be reviewed and keep the placement under review.

This legislation does not apply to Academies. They can arrange off-site provision under their general powers, set out in the Academy Trust's Articles of Association. Though the regulations and guidance do not apply to academies, the Department for Education states that they can provide Academies with an example of good practice.

Legal basis



Sources

The above information is based on the following sources:

Department for Children, Schools and Families, 2007, Elective Home Education – Guidelines for Local Authorities:

<https://bit.ly/2uFqoGL>

Department for Education, 2013, Alternative Provision – Statutory guidance for local authorities:

<http://bit.ly/2TgrcKw>

Department for Education, 2016, Behaviour and discipline in schools – advice for headteachers and school staff:

<http://bit.ly/2JsyNGn>

Department for Education, 2017, Exclusion from maintained schools, academies and pupil referral units in England – Statutory guidance for those with legal responsibilities in relation to exclusion:

<http://bit.ly/2HJBGzZ>

Department for Education, 2018, School attendance – Guidance for maintained schools, academies, independent schools and local authorities:

<http://bit.ly/2WeXozT>

The Education Act 1996:

<http://bit.ly/2Cwxkss>

The Education (Pupil Registration) (England) Regulations 2006:

<http://bit.ly/2FpuDuD>

The Equality Act 2010:

<http://bit.ly/2JquWcA>

Ofsted, 2019, The Education inspection framework (draft):

<http://bit.ly/2ULhRMf>

Sources of further help with exclusions

For disabled children and those with SEN:

Council for Disabled Children, The Information, Advice and Support Services Network: <http://bit.ly/2VE7bTm>

Find your local Information and Advice Service (IAS) (including phone number and e-mail address): <http://bit.ly/2DFgtaC>

ISPEA: www.ipsea.org.uk

Book an advice line appointment: www.ipsea.org.uk/advice-line

For all children:

Coram Children's Legal Centre Child Law Advice Service: www.childrenslegalcentre.com/get-legal-advice/education/

Education advice phone number: 0300 330 5485

E-mail advice: childlawadvice.org.uk/email-advice-education/

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