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### **SCE Exclusions Guidance 2013**

This guidance accompanies the SCE Exclusion Policy 2013 is based on the DfE 2012 statutory guidance, 'Exclusion from maintained schools, Academies and pupil referral units in England - A guide for those with legal responsibilities in relation to exclusion'.

#### **1. Introduction**

- 1.1 Good discipline in schools is essential to ensure that all pupils can benefit from the opportunities provided by education. HQ SCE supports head teachers in using exclusion as a sanction where it is warranted. However, permanent exclusion should only be used as a last resort, in response to a serious breach, or persistent breaches, of the school's behaviour policy; and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.
- 1.2 The decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race. Schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.
- 1.3 Disruptive behaviour can be an indication of unmet needs. Where a school has concerns about a pupil's behaviour it should try to identify whether there are any causal factors and intervene early in order to reduce the need for a subsequent exclusion. In this situation schools should give consideration to a multi-agency assessment that goes beyond the pupil's educational needs which can include multi disciplinary support provided by HQ SCE through Pupil and Family Services (P&FS) as well as other organisations covering health and social care (e.g. SSAFA, BFG HS, BFSWS), welfare organisations (e.g. UWOs and AWS) as well as voluntary organisations (e.g. Homestart etc)
- 1.4 Every SCE school should have a strategy for reintegrating pupils that return to school following a fixed period exclusion, and for managing their future behaviour.
- 1.5 All children have a right to an education. Schools should take reasonable steps to set and mark work for pupils during the first five school days of an exclusion. In England a local authority must make alternative provision from the sixth day. Alternative provision overseas can be complex, particularly in isolated locations and as such any arrangement from the sixth day will include an individually arranged plan for that pupil agreed by HQ SCE and the school. This may require work to be set for extended periods by the school. If necessary, the power to direct a resolution between HQ SCE and the school regarding alternative provision for any individual pupil will rest with the Director of Education.
- 1.6 Where parents (or excluded pupil, if aged 18 or over) dispute the decision of the Exclusion Appeal Panel not to reinstate a permanently excluded pupil, they can ask for this decision to be reviewed by an independent review meeting, convened by HQ SCE. Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed-period or permanent exclusion, parents overseas do not have access to the First-tier Tribunal (for disability discrimination) and do not have access to a County Court (for other forms of discrimination). This places great responsibility on any decision maker and it requires particular care and professional due process to ensure equality issues are protected.
- 1.7 An independent review meeting does not have the power to direct an Exclusion Appeal Panel to reinstate an excluded pupil. However, where a panel decides that the EAP decision is flawed (i.e. illegal, illogical or discriminatory) it can direct a EAP to reconsider its decision. If the EAP does not subsequently offer to reinstate a pupil, there will be no financial sanction overseas (in England this is a £4,000 payment to the local authority towards the costs of providing alternative provision). This is because the EAP is within the authority of HQ SCE as the responsible body'. While there is no financial penalty for a SCE school there is expected to be clear accountability for decision making between the head teacher and Director of Education. There is expected, in these circumstances, to be continued partnership between the school and HQ SCE to make alternative provision, for example which can result in head teachers identifying locally available supply staff which can be employed by HQ SCE to deliver the alternative provision.

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- 1.8 Whether or not a school recognises that a pupil has special educational needs (SEN), all parents (or pupils if aged 18 or over) have the right to request the presence of a SEN expert at an EAP and at an independent review panel. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion; for example, whether the school acted reasonably in relation to its legal duties when excluding the pupil.
- 1.9 Excluded pupils should be enabled and encouraged to participate at all stages of the exclusion process, taking into account their age and understanding.
- 2. The power of the head teacher to exclude**
  - 2.1 Only the head teacher of a school can exclude a pupil and this must be on disciplinary grounds. A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in a single academic year), or permanently. A fixed period exclusion does not have to be for a continuous period.
  - 2.2 In exceptional cases, usually where further evidence has come to light, a fixed period exclusion may be extended or converted to a permanent exclusion. Exceptionally a fixed period exclusion may be extended at a reintegration meeting if agreement is not reached, e.g. regarding future conduct.
  - 2.3 Pupils whose behaviour at lunchtime is disruptive may be excluded from the school premises for the duration of the lunchtime period. In such cases the legal requirements in relation to exclusion, such as the head teacher's duty to notify parents, still apply. Lunchtime exclusions are counted as half a school day for statistical purposes.
  - 2.4 The behaviour of pupils outside school can be considered as grounds for exclusion. This will be a matter of judgement for the head teacher in accordance with the school's published behaviour policy.
  - 2.5 The head teacher may withdraw an exclusion that has not been reviewed by the EAP.
  - 2.6 Any decision of a school, including exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention on Human Rights); rational; reasonable; fair; and proportionate.
  - 2.7 Head teachers must take account of their legal duty of care when sending a pupil home following an exclusion.
  - 2.8 When establishing the facts in relation to an exclusion decision the head teacher must apply the civil standard of proof, i.e. 'on the balance of probabilities' it is more likely than not that a fact is true, rather than the criminal standard of 'beyond reasonable doubt'.
  - 2.9 Under the Equality Act 2010 ("the Equality Act") schools must not discriminate against, harass or victimise pupils because of their: sex; race; disability; religion or belief; sexual orientation; because of a pregnancy / maternity; or because of a gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices. The MoD and SCE expects all employees and decision makers to follow the requirements of this legislation.
  - 2.10 SCE has a duty to eliminate discrimination and other conduct that is prohibited by the Equality Act;
  - 2.11 advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
  - 2.12 foster good relations across all characteristics – between people who share a protected characteristic and people who do not share it.
  - 2.13 Head teachers need to take account of that duty when deciding whether to exclude a pupil. Schools and SGCs must also ensure that the school policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion.

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- 2.14 Head teachers and EAPs must take account of the statutory duties in relation to special educational needs (SEN) when administering the exclusion process. This includes having regard to the SEN Code of Practice, making reasonable adjustments for pupils, having a 'graduated response' to a pupil's emerging need, making use of routinely allocated additional support (e.g. delegation of funds for Senco release time) etc
- 2.15 It is unlawful to exclude or to increase the severity of an exclusion for a non-disciplinary reason. For example, it would be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, or for a reason such as: academic attainment/ability; the action of a pupil's parents; or the failure of a pupil to meet specific conditions before they are reinstated. Pupils who repeatedly disobey their teachers; academic instructions could, however, be subject to exclusion.
- 2.16 'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers.
- 2.17 Any exclusion of a pupil, even for short periods of time, must be formally recorded.
- SCE schools do not have the power to direct a pupil off-site for education to improve his or her behaviour, this is exceptionally rare and must be following discussion with HQ SCE through the AEO (SEN). A pupil can also
  - transfer to another school as part of a 'managed move' where this occurs with the consent of the parties involved, including the parents and follows the SCE 'managed move' protocol. However, the threat of exclusion must never be used to influence parents to remove their child from the school.
- 3. Guidance on factors that a head teacher should take into account before taking the decision to exclude**
- 3.1 A decision to exclude a pupil permanently has profound implications for the likely outcomes for any child or young person. The decision to permanently exclude should only be taken:
- in response to a serious breach, or persistent breaches, of the school's behaviour policy; and
  - where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in school.
- 3.2 the decision on whether to exclude is for a head teacher to take. However, where practical, head teachers should give pupils an opportunity to present their case before taking the decision to exclude.
- 3.3 Whilst an exclusion may still be an appropriate sanction, head teachers should take account of any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it comes to light that a pupil has suffered bereavement, has mental health issues or has been subject to bullying. It is particularly important for SCE pupils that a head teacher takes account of whether a parent is currently deployed on operational duties. Specific information should be sought as to whether a parent has recently returned home for R&R or has recently returned to an operational tour following R&R. This should be recorded alongside any decision to exclude.
- 3.4 Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. Head teachers should also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems. It should include consideration of all available support systems, e.g. P&FS, health and social care etc
- 3.5 Where a pupil has received multiple exclusions or is approaching the legal limit of 45 school days of fixed period exclusion in an academic year, head teachers should consider whether exclusion is providing an effective sanction.

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4. **Guidance to head teachers on the exclusion of pupils from groups with disproportionately high rates of exclusion**
  - 4.1 The exclusion rates for certain groups of pupils in the UK are consistently higher than average, including pupils with SEN. Other groups should also be carefully considered by head teachers and SGCs including looked after children, pupils from non European passport groups and pupils with a parent deployed on an operational tour.
  - 4.2 In addition to the approaches on early intervention set out above, head teachers should consider what extra support might be needed to identify and address the needs of groups of pupils in order to reduce their risk of exclusion. For example, schools can include risk of exclusion within any deployment support planning they will undertake with local units and linked P&FS 'team around the school'.
5. **Guidance to head teachers on the exclusion of pupils with statements of SEN and looked after children**
  - 5.1 As well as having disproportionately high rates of exclusion, there are certain groups of pupils with additional needs who are particularly vulnerable to the impacts of exclusion. This includes pupils with statements of special educational needs (SEN) and looked after children. Head teachers should, as far as possible, avoid excluding permanently any pupil with a statement of SEN or a looked after child.
  - 5.2 Schools should engage proactively with parents in supporting the behaviour of pupils with additional needs. In relation to looked after children, schools should co-operate proactively with foster carers and social care providers (i.e. BFSWS and SSAFA) that looks after the child.
  - 5.3 Where a school has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with a statement of SEN or a looked after child it should, in partnership with others (including the local authority as necessary), consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN. Where a pupil has a statement of SEN, schools should consider requesting an early annual review or interim / emergency review.
6. **The head teacher's duty to inform parties about an exclusion**
  - 6.1 Whenever a head teacher excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reasons for it.
  - 6.2 They must also, without delay, provide parents with the following information in writing:
    - The reasons for the exclusion;
    - The period of a fixed period exclusion or, for a permanent exclusion, the fact that it is permanent; as well as the cumulative total number of days of exclusion for that academic term
    - Parents' right to make representations about the exclusion to an EAP and how the pupil may be involved in this;
    - How any representations should be made, providing contact details for the SGC and HQ SCE
    - Their right to attend meetings, be represented (at their own expense) and to bring a friend for support
  - 6.3 Written notification of the information in point 6 can be provided by: delivering it directly to the parents; leaving it at their last known address; or by posting it to this address.

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- 6.4 Where an excluded pupil is of compulsory school age the head teacher must also notify parents without delay, and by the end of the afternoon session
- That for the first five school days of an exclusion (or until the start date of any alternative provision where this is earlier) parents are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that the chain of command will be notified if they fail to do so.
- 6.5 Where alternative provision has been arranged in partnership between the school and HQ SCE then the following information must be included with this notice where it can reasonably be found out within the timescale:
- The start date for any alternative provision for the pupil during the exclusion;
  - The start and finish times for any such provision, including the times for morning and afternoon sessions where relevant
  - The address at which the provision will take place;
- 6.6 Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session it may be provided in a subsequent notice, but it must be provided without delay and no later than 48 hours before the provision is due to start. Alternative provision in an overseas context is a partnership between the school and HQ SCE.
- 6.7 The failure of a head teacher to give notice of the information in paragraphs 6.5 and 6.6 by the required time does not relieve the head of the duty to serve the notice. A notice is not made invalid solely because it has not been given by the required time.
- 6.8 Parents must be informed where a fixed period exclusion has been extended or converted to a permanent exclusion. In such cases the head teacher must write again to the parents explaining the reasons for the change and providing any additional information.
- 7. The head teacher's duty to inform the SGC and HQ SCE about an exclusion**
- 7.1 The head teacher must, without delay, notify the SGC and HQ SCE of:
- A permanent exclusion (including where fixed period exclusion is made permanent);
  - Exclusions which would result in the pupil being excluded for more than five school days (or more than ten lunchtimes) in a term; and
  - Exclusions which would result in the pupil missing a public examination or national curriculum test.
- 7.2 For all other exclusions the head teacher must routinely copy notifications of exclusions to the SGC and HQ SCE and provide a composite summary on all exclusions within that academic term to the SGC and HQ SCE once a term.
- 7.3 Notifications must include the reasons for the exclusion and the duration of any fixed period exclusion, a date for a reintegration meeting and a cumulative total of days of exclusion for that academic term.
- 7.4 In addition, within 14 days of a request, head teachers, SGCs and HQ SCE must provide the Director of Education with a report and associated data about any exclusions within the last 12 months. This is to inform a reply in response to a ministerial request for information, e.g. from the MoD or DfE.

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**8. The SGC and HQ SCE duty with regard to alternative arrangements for the education for excluded pupils**

- 8.1 The geographical location of many SCE schools results in a difference in guidance and policy between the statutory duties in place for English local authorities and the provision available overseas.
- 8.2 For a fixed term exclusion of any length a SCE school remains responsible for arranging suitable education for that excluded pupil. A partnership of managing that arrangement exists between the school and HQ SCE, co-ordinated through the AEO (SEN). Limited HQ SCE resources are available to support this planning and delivery, e.g. the Pupil Support Teacher (EOTAS) post line managed by the AEO (SEN).
- 8.3 For permanent exclusions, HQ SCE will work in partnership with a school to identify and arrange locally available alternative provision, for example through employing locally available supply teachers or at a distant through support from the pupil support teacher, utilising web based resources.
- 8.4 In addition, where a pupil has a statement of SEN, the school in consultation with HQ SCE and parents must ensure that an appropriate full-time provision is identified in consultation with the parents. A 'managed move' may be possible overseas where other SCE schools are locally available. However, access to other schools may require a family to have to move and any posting is the sole responsibility of the chain of command. The SCE Managed Move protocol should be consulted and all discussions must be directed through the AEO (SEN) before any local decisions are finalised.
- 8.5 Great care should be given to avoiding any potential conflict of interests. Any discussion on availability of alternatives and any implication for the posting of a service parent should be undertaken in a transparent process involving the school, HQ SCE, chair of the SGC and any command level structures for any consideration, for example the Command and Additional Needs panel in BFG and parallel structures in other overseas commands.
- 8.6 Provision does not have to be arranged by either the school or by HQ SCE for pupils in the final year of compulsory education who do not have any further public examinations.
- 8.7 Within point 8.2 schools should take reasonable steps to set and mark work for pupils. Work that is provided should be accessible and achievable by pupils outside of school.

**9. The Exclusion Appeal Panel duty to consider an exclusion**

- 9.1 The SGC and HQ SCE have a duty to consider parents' representations about an exclusion. The requirements on a SGC to consider an exclusion depend upon a number of factors (these requirements are illustrated by the diagram in Annex A of this guidance, *A summary of the governing body's duties to review the head teacher's exclusion decision*).
- 9.2 The Exclusion Appeal Panel (EAP) will have a minimum of two and maximum of four members appointed by the SCE Chief Executive (or any other such future title of that post). The EAP will contain a chair at the level of Assistant Director, SAEO, or above and the chair of the SGC of the school involved. The additional members of the EAP will be, where available, a SCE head teacher of a school covering the same age group as the excluded pupil and a SGC member from a school covering the same age group as the excluded pupil. In the case of a split decision the casting vote on decisions is that of the chair.

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- 9.3 The EAP must consider the reinstatement of an excluded pupil within 15 school days of receiving notice of the exclusion if:
- the exclusion is permanent;
  - it is a fixed period exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term; or
  - it would result in a pupil missing a public examination or national curriculum test.
- 9.4 If requested to do so by the parents, the EAP must consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion if a pupil would be excluded from school for more than five school days, but not more than 15, in a single term.
- 9.5 Where an exclusion would result in a pupil missing a public examination or national curriculum test there is a further requirement for an EAP, so far as is reasonably practicable, to consider the exclusion before the date of the examination or test. If this is not practicable, the chair of the EAP may consider the exclusion independently and decide whether or not to reinstate the pupil. These are the only circumstances in which the chair can review an exclusion decision alone. In such cases parents still have the right to make representations to the EAP and must be made aware of this right.
- The following parties must be invited to a meeting of the EAP and allowed to make representations:
- parents;
  - the head teacher; and
  - a representative of HQ SCE (not to be the same member nominated to the EAP by the Chief Executive).
- 9.6 The EAP must make reasonable endeavours to arrange the meeting for a date and time that is convenient to all parties, but in compliance with the relevant guidance and policy. Its decision will not be invalid simply on the grounds that it was not made within these time limits.
- 9.7. In the case of a fixed period exclusion which does not bring the pupil's total number of days of exclusion to more than five in a term, the EAP must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

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**10. Guidance to EAPs in preparing for the consideration of an exclusion decision**

10.1 Where the EAP considers the decision of a head teacher to exclude a pupil they should:

- not discuss the exclusion with any party outside of the meeting;
- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school, such as those relating to a pupil's SEN).
- Where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting.
- Allow parents and pupils to be accompanied by a friend or representative (where a pupil under 18 is to be invited as witness, the EAP should first seek parental consent and invite the parents to accompany their child to the meeting);
- Have regard to their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that impacts upon their ability to attend the meeting or to make representations);
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on his/her own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding 18; or how the excluded pupil may feed in his / her views by other means if attending the exclusion meeting is not possible.

**11. Guidance to EAPs on exclusions that would result in a pupil missing a public examination or national curriculum test**

11.1 There is no automatic right for an excluded pupil to take an examination or test on the excluding school's premises, however the EAP should consider whether it would be appropriate to exercise their discretion to allow an excluded pupil on the premises for the sole purpose of taking the examination or test.

11.2 Consideration should be given as to whether there is a realistic prospect of the excluded pupil disrupting the examination of other pupils and if so whether alternative arrangements can be made within the school for the excluded pupil to be enabled to sit the examination.

**12. The requirements on an EAP when considering the reinstatement of an excluded pupil**

12.1 Where the EAP considers an exclusion they must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

12.2 The EAP must also consider any representations made by:

- parents;
- the head teacher; and
- a representative of HQ SCE (other than the panel member nominated by the Chief Executive)

12.3 When establishing the facts in relation to an exclusion decision the governing body must apply the civil standard of proof; i.e. 'on the balance of probabilities' it is more likely than not that a fact is true rather than the criminal standard of 'beyond reasonable doubt'. In the light of their consideration, the EAP can either:

- uphold an exclusion; or
- direct reinstatement of the pupil immediately or on a particular date.

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12.4 Where reinstatement is not practical because for example, the pupil has already returned to school following the expiry of a fixed period exclusion or the parents make clear they do not want their child reinstated, the EAP must, in any event, consider whether the head teacher's decision to exclude the child was justified based on the evidence.

### **13. Guidance to EAPs on the consideration of an exclusion decision**

13.1 The EAP should identify the steps they will take to ensure all parties will be supported to participate in their consideration and have their views properly heard. This is particularly important where pupils under 18 are speaking about their own exclusion or giving evidence to the EAP.

13.2 The EAP should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the EAP. These minutes should be made available to all parties on request through the Business Support Team, HQ SCE.

13.3 The EAP should ask all parties to withdraw before making a decision. Where present a minute taker/clerk may stay to help the EAP by reference to his / her notes of the meeting and with the wording of the decision letter.

13.4 In reaching a decision on whether or not to reinstate a pupil, the EAP should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the head teacher's legal duties.

13.5 The EAP should note the outcome of their consideration for inclusion on the pupil's educational record, along with copies of relevant papers for future reference.

13.6 In cases where the EAP considers parents' representations but does not have the power to direct a pupil's reinstatement, they should consider whether it would be appropriate to place a note of their findings on the pupil's educational record. (For example, if a family have already moved from the overseas location at the point that an appeal is heard.)

13.7 Claims of discrimination in England can be made to the First-tier Tribunal or County Court up to six months after the discrimination is alleged to have occurred. Where practicable, schools should retain records and evidence relating to an exclusion for at least six months in case such a claim is made. While there is no automatic access to the Tribunal for overseas issues legal advice should be taken by all parties should discrimination be alleged to have taken place.

### **14. The EAP's duty to notify people after their consideration of an exclusion**

14.1 Where consideration of an exclusion has taken place, the EAP must notify parents, the head teacher and HQ SCE of their decision, and the reasons for their decision, in writing and without delay.

14.2. In the case of a permanent exclusion the EAP's notification must also include the information below.

- The fact that it is permanent.
- Notice of parents' right to ask for the decision to be reviewed by an independent review meeting to be convened by HQ SCE and the following information:
  - a) the date by which an application for a review must be made (i.e. 15 school days from the date on which notice in writing of the EAP decision was given to parents – see paragraph 14.4);
  - b) the name and address to whom an application for an independent review (and any written evidence) should be submitted; (AD P&FS, HQ SCE)
  - c) that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's special educational needs are considered to be relevant to the exclusion;

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- d) that, regardless of whether the excluded pupil has recognised special educational needs, parents have a right to require HQ SCE to appoint an SEN expert to attend the review;
- e) details of the role of the SEN expert and that there would be no cost to parents for this appointment;
- f) that parents must make clear if they wish for a SEN expert to be appointed in any application for a review; and
- g) that parents may, at their own expense, appoint someone to make written and / or oral representations to the panel and that parents may also bring a friend to the review.
- h) That, in addition to the right to apply for an independent review, if parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the Equality Act 2010 within six months of the date on which the discrimination is alleged to have taken place, e.g. the day on which the pupil was excluded.

14.3 The EAP may provide the above information by: delivering it directly to parents; leaving it at their last known address; or by posting it to this address. In exceptional circumstances it can be delivered through the UWO.

14.4. Notice is deemed to have been given on the same day if it is delivered directly, or on the second working day after posting if it is sent by first class mail.

### **15. Guidance to EAPs on providing information to parents following their consideration of an exclusion**

15.1 The EAP should set out the reasons for their decision in sufficient detail to enable all parties to understand why the decision was made.

15.2 Where relevant, it will be for schools to confirm the details of where the parents' application for an independent review panel should be sent. This is normally be the AD P&FS, HQ SCE.

15.3 In providing details of the role of the SEN expert, the EAP should refer to any guidance provided to SEN experts in England and should discuss with AEO (SEN) if unclear.

15.4 Where the EAP decides to uphold an exclusion they should draw the attention of parents to any relevant sources of impartial information that will allow them to make an informed decision on whether and, if so, how to seek a review of the decision, for example from the Parent Partnership Service.

### **16. The head teacher's duty to remove a permanently excluded pupil's name from the school register**

16.1 The head teacher must remove a pupil's name from the school admissions register if:

- 15 school days have passed since the parents were notified of the EAP's decision to uphold a permanent exclusion and no application has been made for an independent review ; or
- the parents have stated in writing that they will not be applying for an independent review.

16.2 Where an application for an independent review panel has been made within 15 school days, the head teacher must wait until the review has been completed before removing a pupil's name from the register.

### **17. Guidance to schools on marking attendance registers following exclusion**

17.1 Whilst an excluded pupil's name remains on a school's admissions register the pupil should be marked using the appropriate attendance code. Where alternative provision has been made that meets the requirements of the pupil registration regulations, and the pupil attends it, an appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual Registration) should be used. Where pupils are not attending alternative provision they should be marked absent using Code E.

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**18. HQ SCE's duty to arrange an independent review panel**

18.1 Arranging a date and venue

18.2 If applied for by parents within the policy time frame, HQ SCE will arrange for an independent review meeting to review the decision of a SGC not to reinstate a permanently excluded pupil.

18.3 The policy time frame for an application is:

- within 15 school days of notice being given to the parents by the EAP of their decision to uphold a permanent exclusion
- where an application has not been made within this time frame, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion

18.4 Any application made outside of the time frame may be rejected by HQ SCE.

18.5 HQ SCE must not delay or postpone arranging an independent review meeting where parents also make a claim of discrimination.

18.6 Parents may request an independent review panel even if they did not make a case to, or attend, the meeting at which the SGC considered the exclusion.

18.7 HQ SCE must take reasonable steps to identify a date for the review that all parties are able to attend. However, the review must begin within 15 school days of the day on which HQ SCE received the parent's application for a review (panels have the power to adjourn a hearing if required).

18.8 HQ SCE must arrange a venue for hearing the review, which must be in private unless the panel directs otherwise. Exceptional circumstances may require the meeting to be held via VTC (for example for isolated areas). Equality of access to the hearing is vital and should one party be required to attend via VTC then so will all parties. In case that a meeting is held in a geographical area other than the place of residence or school and should public funds be made available for attendance for one party then they should be made available for all parties.

18.9 Where the issues raised by two or more applications for review are the same, or connected, the panel may combine the reviews if, after consultation with all parties, there are no objections.

**19. Guidance to HQ SCE on arranging a date and venue for an independent review**

19.1 HQ SCE must take all reasonable steps to ensure the venue for the review is appropriate, accessible to the parties, and has a suitable area for the parties to wait separately from the panel before the review.

19.2. Where the issues raised by two or more applications for review are the same, or connected, but the panel does not combine the reviews then HQ SCE should take reasonable steps to ensure fairness and consistency. Where possible, the same panel members should hear all related reviews.

This guidance within this document should not be followed.



## **20. Appointing panel members**

20.1 HQ SCE must constitute the independent review with a minimum of two members representing the categories below.

- A 'lay member' to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer. The lay member should not be in the chain of command of either the parent or the chair of the SGC. The lay member can be from a military or civilian background and should have experience of managing meetings at a suitable level, as determined by the Chief Executive.
- A member of a SGC covering the same age group as the school which has excluded the pupil

20.1 A person may not serve as a member of a review panel if they are:

- an employee of SCE
- have, or at any time have had, any connection with the school; parents or pupil; or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality or
- have not had the required training within the last two years (minimum training through Behaviour and Exclusions training film 2013) plus any bespoke face to face training as agreed by the Chief Executive.

## **21. Guidance to HQ SCE on appointing independent review panel members**

21.1 Every care should be taken to avoid bias or an appearance of bias. HQ SCE should request that prospective panel members declare any conflict of interest at the earliest opportunity.

21.2 Where possible, panel members who are SGC members or educationalists should reflect the phase of education (primary / secondary) and type of school from which the pupil was excluded.

21.3 HQ SCE should consider whether the chair should be someone with a legal qualification or other legal experience, or will have access to suitable legal advice. This is particularly important in the SCE context where a clerk will not be providing legal expertise to the panel.

21.4 In order to meet their duties within the statutory time frame, HQ SCE should identify a number of eligible individuals in each of the different categories required to constitute an independent review panel in advance of an application for a review. It is noted that due to high levels of mobility within the overseas community that may not always be possible.

## **22. Appointing a clerk and the clerk's role**

22.1 HQ SCE may appoint a clerk to provide advice to the panel and parties to the review on procedure, legislation and statutory guidance on exclusions. This person may be a member of the HQ SCE Business Support Team and/or member of other business areas.

22.2 Where appointed the clerk must perform the following additional functions.

- Make reasonable efforts to inform the following people that they are entitled to: make written representations to the panel; attend and make oral representations to the panel; be represented; and (in the case of a parent), to bring a friend:
  - a) the parents;
  - b) the head teacher (where an excluding head teacher has left the school, the panel may use its discretion in deciding whether also to invite this person to make representations);
  - c) the SGC; and
  - d) HQ SCE.

This guidance within this document should not be followed.



## Service Children's Education

- Make reasonable efforts to circulate to all parties, including to panel members and the SEN expert, copies of relevant papers 5 school days in advance of the review. These papers must include:

- 1) the EAP's decision;
- 2) the parents' application for a review; and
- 3) any policies or documents that the EAP was required to have regard to in making their decision.

- Give all parties details of those attending and their role, once the position is clear.
- Attend the review and ensure that minutes are produced in accordance with instructions from the panel

22.3 The clerk should not have served as clerk to the governing body meeting

### **23. Guidance to the clerk on preparing for an independent review**

23.1 The clerk should identify in advance of the meeting whether the pupil will be attending. Where an excluded pupil is attending the hearing, consideration should be given in advance as to the steps that will be taken to support his / her participation. If the excluded pupil is not attending it should be made clear that he / she may feed in their views through a representative or by submitting a written statement.

23.2 In order to review the EAP's decision the panel will generally need to hear from those involved in the incident, or incidents, leading to the exclusion. The clerk should also try to ascertain whether an alleged victim, if there is one, wishes to be given a voice at the review. This could be in person, through a representative or by submitting a written statement.

23.3 In the case of witnesses who are pupils of the school it will normally be more appropriate for the panel to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and with their parents' consent. In such cases, that pupil's parents should be invited to attend the meeting in support of their child.

23.4 Where character witnesses are proposed the clerk should seek the agreement of the panel, but this should be allowed unless there is good reason to refuse.

23.5 All written witness statements should be attributed, signed and dated, unless the school has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements. The general principle remains that excluded pupils are entitled to know the substance behind the reason for their exclusion.

23.6 Parties attending the hearing have the right to be represented. Representatives may make written or oral representations to the panel. If any of the parties wish to bring more than one friend or representative, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the review. However, all parents may attend, if they wish to do so, and each can make representations and be represented.

23.7 In addition to written witness statements, the clerk should request written evidence from the school in order to circulate it in advance of the meeting, such as policies and documents of the school which the governing body would reasonably have been expected to take account of in reaching their decision on the exclusion.

23.8 Where the school's case rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the panel. Where there are difficulties in retaining physical evidence, photographs or signed witness statements should be used.

23.9 The clerk should notify the panel where requested documents have not been provided so that the panel can take a decision on whether to adjourn the hearing.

This guidance within this document should not be followed.



**24. Ensuring that panel members and clerks are trained**

24.1 HQ SCE must ensure that all panel members and clerks have received training within the two years prior to the date of the review. This training is expected to be covered through the Behaviour and Exclusions training film 2013, together with any bespoke training as agreed by the Chief Executive which covers:

- the requirements of the primary legislation, regulations and statutory guidance governing exclusions (which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision making);
- the need for the panel to observe procedural fairness and the rules of natural justice;
- the role of the chair of a review panel;
- the role of the clerk to a review panel;
- the duties of head teachers, governing bodies and the panel under the Equality Act 2010; and
- the effect of section 6 of the Human Rights Act 1998 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act in a manner compatible with human rights protected by that Act.

**25. Appointing a SEN expert**

25.1 If requested by parents in their application for an independent review panel, HQ SCE must appoint a SEN expert to attend the panel and cover the associated costs of this appointment arranged through the office of the AEO (SEN).

25.2 HQ SCE must make arrangements to indemnify the SEN expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.

25.3 Parents have a right to request the attendance of a SEN expert at a review, regardless of whether the school recognises that their child has SEN.

25.4 Individuals may not serve as a SEN expert if they have, or at any time have had, any connection with the school, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially. However, an individual is not taken to have such a connection solely because he / she is an employee of HQ SCE.

**26. Guidance to HQ SCE on appointing a SEN expert**

26.1 The SEN expert should be a professional with first-hand experience of the assessment and support of SEN, as well as an understanding of the legal requirements on schools in relation to SEN and disability. Examples of suitable individuals might include educational psychologists; specialist SEN teachers; special educational needs coordinators (SENCOs); and behaviour support teachers. Recently retired individuals are not precluded from fulfilling this role, though HQ SCE would need to assure itself that the individual had a good understanding of current practice and the legal requirements on schools in relation to SEN.

26.2 Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by HQ SCE they should not have had any previous involvement in the assessment or support of SEN for the excluded pupil, or siblings of the excluded pupil. HQ SCE should request that prospective SEN experts declare any conflict of interest at the earliest opportunity.

This guidance within this document should not be followed.



## Service Children's Education

26.3 The final decision on the appointment of an SEN expert is for HQ SCE to make but it should take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEN expert. Where possible, this may include offering parents a choice of SEN expert. In order to meet its duties within the statutory time frame, HQ SCE should consider maintaining a list of individuals capable of performing the role of SEN expert in advance of a request.

### **27. The duties of independent review panel members, the clerk and the SEN expert in the conduct of an independent review panel**

27.1 Panel members and, if appointed, the SEN expert must declare any known conflict of interest before the start of the review.

27.2 The role of the panel is to review the EAP's decision not to reinstate a permanently excluded pupil. In reviewing the decision the panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

27.3 The panel must apply the civil standard of proof, (i.e. 'on the balance of probabilities' it is more likely than not that a fact is true) rather than the criminal standard of 'beyond reasonable doubt'.

27.4 Following its review the panel can decide to:

- uphold the exclusion decision;
- recommend that the governing body reconsiders their decision, or
- quash the decision and direct that the EAP considers the exclusion again

27.5 The review decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied decision the chair has the casting vote.

27.6 The independent review's decision is binding on the: pupil; parents; EAP; head teacher; HQ SCE.

27.7 The review may only quash the decision where it considers that it was flawed when considered in the light of the principles applicable that the decision was illegal, illogical or discriminatory.

27.8 New evidence may be presented to the panel, though the school may not introduce new reasons for the exclusion and panels must disregard any new reasons that are introduced.

27.9 In deciding whether the EAP's decision was flawed, and therefore whether to quash the decision, the panel must only take account of the evidence that was available to the EAP at the time of making their decision. This includes any evidence which the panel considers would, or should, have been available to the EAP body if they had been acting reasonably.

27.10 If evidence is presented that the panel considers is unreasonable to have expected the EAP to have been aware of at the time of their decision, the panel can take account of the evidence when deciding whether to recommend that the SGC reconsider their decision.

27.11 Where present, the panel must seek and have regard to the SEN expert's view of how SEN might be relevant to the pupil's exclusion. Where a SEN expert has been requested but is not present, the panel should make parents aware of their right to request that the review is adjourned until such time as an SEN expert can attend.

27.12 The jurisdiction or otherwise of the First-tier Tribunal (Special Educational Needs and Disability) and County Court to overseas locations, to hear claims of discrimination relating to a permanent exclusion does not preclude an independent review panel from considering issues of discrimination in reaching its decision.

27.13 The review may adjourn on more than one occasion, if necessary. However, consideration must be given to the effect of adjournment on the parties to the review, the excluded pupil and any victim.

27.14 A review cannot continue if the panel no longer has representation from each of the three categories of members required. In this event, the panel must be adjourned until the number can be restored.

This document has now been withdrawn and is no longer accurate.

This guidance within this document should not be followed.



27.15 Once a review has begun, no panel member may be substituted by a new member for any reason. Accordingly, if the required representation cannot be restored from the original members, a new panel must be constituted to conduct the review afresh.

27.16 Following the review, the panel must issue written notification to all parties without delay. This notification must include:

- the review's decision and the reasons for it;
- any information that must be recorded on the pupil's educational record to reflect the decision (in particular, where a governing body does not decide to reinstate a pupil following a direction to reconsider, it must be noted that the exclusion will not count towards the rule that an admission authority may refuse to admit a child who has been excluded twice; or in the case of a community or voluntary controlled school, that the governing body may appeal against the decision of the local authority as the admission authority to admit the child).

**28. Guidance to independent review panel members on the conduct of an independent review panel**

28.1 The chair should outline the procedure to be followed and explain to all parties that the panel is independent of the school and HQ SCE.

28.2 The panel should support all parties to participate in the review and ensure that their views are properly heard. The independent review should be conducted in an accessible, non-threatening and non-adversarial manner.

28.3 It is for the panel to decide whether any witnesses should stay for the rest of the review, but they should not be present before giving evidence.

28.4 In the interests of propriety, care should be taken to ensure that no party, other than the clerk, is present with the panel in the absence of the other parties. This includes the SEN expert. The panel should ask all parties, apart from the clerk, to withdraw before making a decision. The clerk may stay to help the panel by referring to the notes of the meeting and providing advice on the wording of the decision letter.

**29. Guidance to independent review panel members on coming to a decision**

29.1 When considering EAP's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:

- Illegality – did the head teacher and / or EAP act outside the scope of their legal powers in taking the decision to exclude?
- Irrationality – was the decision of the EAP not to reinstate the pupil so unreasonable that it was not one a sensible person could have made?
- Procedural impropriety – was the process of exclusion and the EAP's consideration so unfair or flawed that justice was clearly not done?

29.2 Procedural impropriety means not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision making process. This will be a judgement for the panel to make but the following are examples of the types of things that could give rise to procedural impropriety: bias; failing to notify parents of their right to make representations; the governing body making a decision without having given parents an opportunity to make representations; failing to give reasons for a decision; or being a judge in your own cause (for example, if the head teacher who took who took the decision to exclude were also to vote on whether to uphold the exclusion).

This guidance within this document should not be followed.



## Service Children's Education

29.3 Where the criteria for quashing a decision have not been met the panel should consider whether it would be appropriate to recommend that a governing body reconsiders their decision not to reinstate the pupil. This should not be the default option, but should be used where evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision but which the panel believe justify a reconsideration of the governing body's decision.

29.4 In all other cases the panel should uphold the exclusion.

### **30. Guidance to SEN experts on their conduct during an independent review panel**

30.1 The SEN expert's role is analogous to an expert witness, providing impartial advice to the panel on how special educational needs might be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel. The SEN expert's role does not include making an assessment of the pupil's special educational needs.

30.2 The focus of the SEN expert's advice should be on whether the school's policies which relate to SEN, or the application of these policies in relation to the excluded pupil, were legal, reasonable and procedurally fair. If the SEN expert believes that this was not the case he / she should, where possible, advise the panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

30.3 Where the school does not recognise that a pupil has SEN, the SEN expert should advise the panel on whether he / she believes the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any special educational needs that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.

30.4 The SEN expert should not criticise a school's policies or actions simply because he / she believes a different approach should have been followed or because another school might have taken a different approach.

### **31. Guidance to the clerk and HQ SCE on the record of the proceedings of a review panel**

31.1 The clerk to a review panel should ensure that minutes of the proceedings are taken, including details of the attendance, the voting and the decision.

31.2 The minutes are not public documents but should be retained by HQ SCE for a period of at least five years, as they may need to be seen by a court or other body, such as any Ombudsman which may have jurisdiction.

31.3 HQ SCE and the clerk should be aware of their duties under the Freedom of Information Act 2000 and the Data Protection Act 1998 when retaining information.

### **32. Guidance to the independent review panel and clerk on notifying parties of the outcome of the review**

32.1 If the panel upholds the permanent exclusion, the clerk should immediately report this to HQ SCE. This includes any situation where parents withdraw or abandon their application for a review.

This document has now been withdrawn and is no longer accurate.

This guidance within this document should not be followed.



**33. The EAP's duty to reconsider an exclusion decision following a review**

33.1 Where the independent review directs or recommends that the EAP reconsiders their decision, the EAP must reconvene to do so within 10 school days of being given notice of the panel's decision. Notice is deemed to have been given on the same day if it is delivered directly or on the second working day after posting if it is sent by first class mail.

33.2 In the case of either a recommended or directed reconsideration, the EAP must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:

- the parents;
- the head teacher;
- HQ SCE.

**34. Guidance to head teachers, EAPs, independent review panel members and clerks on police involvement and parallel criminal proceedings**

34.1 Head teachers need not postpone taking a decision on an exclusion solely because a police investigation is underway and / or any criminal proceedings may be brought. In such circumstances, head teachers will need to take a decision on the evidence available to them at the time.

34.2 Where the evidence is limited by a police investigation or criminal proceedings, head teachers should give particular consideration to ensuring that the decision to exclude is fair. However, the final decision on whether to exclude is for the head teacher to make.

34.3 Where the EAP is required to consider a head teacher's decision in these circumstances they cannot postpone their meeting and must decide whether or not to reinstate the pupil on the evidence available.

34.4 The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:

- whether any charge has been brought against the pupil and, if so, what the charge is;
- whether relevant witnesses and documents are available;
- the likelihood of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the school; and
- whether an adjournment or declining to adjourn, might result in injustice.

34.5 Where a panel decides to adjourn, the clerk (or HQ SCE where a clerk is not appointed) will be responsible for monitoring the progress of any police investigation and / or criminal proceedings, as well as for reconvening the panel at the earliest opportunity. If necessary the panel may adjourn more than once.

This document has now been withdrawn and is no longer accurate.

This guidance within this document should not be followed.



## Service Children's Education

### **Appendix A**

**Decision:** Head teacher, or acting head teacher, takes the decision to exclude a pupil for a fixed period.

**Contact parent:** The head teacher should ensure that a parent/carer has been contacted immediately, ideally by telephone and is available, if appropriate, to arrange collection and supervision of the pupil. The child's welfare must always be the prime consideration

**Lunchtime exclusion:** Pupils who are disruptive during the lunch time may be excluded just for the duration of the lunch time. Lunchtime exclusion will count as half a day for statistical purpose and for parents to make representation.

**Exclusion during morning session:** the exclusion takes effect from the afternoon session, notice must be given to the parent before the start of the afternoon session.

**Exclusion during afternoon session:** - if the exclusion takes effect from the next school day. Notice to the parent must be given before the start of that school day. - If the exclusion takes place from that afternoon, the notice must be given at the end of the afternoon session

**Written notice:** The head teacher must give a written notice to the parents informing them of: the precise period and the reasons for the exclusion;

- the parent's duties during the exclusion period;
- the parents right to make representation to an Exclusion Appeal Panel (EAP) where applicable and how the pupil may be involved in this;
- The person the parent should contact if they wish to make such representation;
- The arrangement made by the school to set and mark work for the pupil during the period of exclusion;
- if relevant, the school day on which the pupil will be provided with full-time education; and
- details of a reintegration interview.

The head must inform the School Governance Committee if a pupil is being excluded for more than 15 days in any one term. Pupil's can be excluded for one or more fixed periods, which when aggregated, do not exceed 45 school days in any one school year.

### **Educational provision during the exclusion:**

- The school has a duty to enable the pupil to continue education by setting work throughout the period of a fixed-term exclusion, for the first five school days of a permanent exclusion and in partnership with HQ SCE in all other circumstances.

### **Reintegration interview:**

The head teacher or a senior member of staff will arrange and conduct a reintegration interview with a parent and the pupil at the end of the exclusion at a date and time convenient for the parent on the school premises. The notice for a reintegration interview must be given at the time of the exclusion decision (it can be combined with the notice of the exclusion) or immediately that arrangements have been made (e.g. due to availability of parent etc)

If the parent fails to attend, the school must keep a record of the failure as well as any explanation given as it can be one factor taken into account by the Chain of Command when deciding whether formal action needs to be taken to secure parental co-operation.

If the school or SCE considers that parental influence could be better brought to bear in the behaviour of the pupil, a parenting contract may be offered. If the parent fails to engage with the school or SCE in attempting to improve the child's behaviour, the school or SCE may consider applying to the Chain of Command.

This document has now been withdrawn and is no longer accurate.

This guidance within this document should not be followed.



## Service Children's Education

### Appendix B

#### Model letter from the headteacher notifying a parent of a fixed period of exclusion, and where a public examination is not missed.

[Child's name, DOB and/or School Year]

Dear [Parent's name]

I am writing to inform you of my decision to exclude [Child's Name] for a fixed period of [specify period]. This means that he/she will not be allowed in school for this period. The exclusion begins/began on [date] and ends on [date].

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude [Child's Name] has not been taken lightly. [Child's Name] has been excluded for this fixed period because [note reason for exclusion].

This exclusion brings the total number of days that [Child's Name] been excluded during this academic year to [number of days]

#### [following paragraph to be included in letter for pupils of compulsory school age]

You have a duty to ensure that your child is not present in a public place in school hours during this exclusion on [specify dates] unless there is reasonable justification for this. We will set work for [Child's Name] to be completed on the days specified in the previous paragraph as school days during the period of his/her exclusion when you must ensure that he/she is not present in a public place without reasonable justification. [detail the arrangement for this]. Please ensure that work set by the school is completed and returned to us promptly for marking.

You have the right to make representations about this decision to the school governance committee. If you wish to make representations please contact [Name of Contact] on/at [contact details – address, phone number, email], as soon as possible. Whilst the school governance committee has no power to direct reinstatement, they must consider any representations you make and may place a copy of their findings on your child's school record.

You [and your child or pupil's name] are requested to attend a reintegration interview with me [alternatively, specify the name of another staff member] at [place] on [date] at [time]. If that is not convenient please contact the school [within the next ten days] to arrange a suitable alternative date and time. The purpose of the reintegration interview is to discuss how best your child's return to school can be managed.

You also have the right to see a copy of [Child's Name]'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of [Child's Name]'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

You should be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you can write to the Assistant Education Officer (Special and Additional Educational Needs) within SCE, who will arrange for your appeal to be heard. The contact address is AEO (SEN), Pupil and Family Services, Service Children's Education, Building 3, Dempsey Barracks, Sennelager BFPO 16)

You may also wish to contact the Assistant Education Officer (SEN) in SCE if you would like further advice or support from the Pupil and Family Services team.

[Child's Name]'s exclusion expires on [date] and we expect [Child's Name] to be back in school on [date] at [time].

Yours sincerely

[Name]

Headteacher

Copies to;

AEO(SEN)

Senior EP, P&FS link office

Chair, SGC

This document has now been withdrawn and is no longer accurate.

This guidance within this document should not be followed.



## Appendix C

### Model letter from the head teacher of a primary or secondary school notifying parent(s) of that pupil's permanent exclusion.

[Child's name, DOB and/or School Year]

Dear [Parent's name]

I am writing to inform you of my decision to permanently exclude [Child's Name] with effect from [date].

This means that [Child's Name] will not be allowed in this school unless he/she is reinstated by the school governance committee (SGC). You are advised that the appeal procedure against this decision is directly to the Chair of the (SGC), whose contact details are listed later in this letter.

I realise that this exclusion is potentially upsetting and will have a significant impact for you and your family.

The decision to exclude [Child's Name] permanently has not been taken lightly. [Child's Name] has been excluded because [reasons for the exclusion – include any other relevant previous history].

#### [For pupils of compulsory school age]

You have a duty to ensure that your child is not present in a public place in school hours unless there is reasonable justification.

Alternative arrangements for [Child's Name]'s education to continue will need to be made. For the first five school days of the exclusion we will set work for [Child's Name] and would ask you to ensure this work is completed and returned promptly to school for marking [this may be different if supervised education is being provided elsewhere earlier than the sixth day]. From the sixth school day of the exclusion onwards – i.e. from [specify date] we will need to plan the next steps of provision together with HQ Service Children's Education (SCE), so that we can determine what provision can be made. [set out the arrangements if known at time of writing, if not known say that the arrangements will be notified shortly by a further letter.]

I have also today informed the Assistant Education Officer (Special and Additional Needs) within SCE of your child's permanent exclusion. You can contact them at [give contact details].

As this is a permanent exclusion the school governance committee (SGC) must meet to consider it, regardless of whether you appeal against the decision. You are able to appeal and in those circumstances an Exclusion Appeal Panel (EAP) will consider your application to reinstate your child into school. You have the right to request that an independent Special Educational Needs advisor be appointed by HQ SCE, in order to provide independent advice to the EAP.

The EAP has the power to reinstate your child immediately or from a specified date, or alternatively, they have the power to uphold the exclusion in which case you may request a review of that decision which will be considered by an Independent Review Panel.

The latest date by which the EAP must meet is [specify the date – the 15th school day after the date on which the SGC was notified of the exclusion]. If you wish to make representations to the EAP and wish to be accompanied by a friend or representative, please contact [name of clerk to the EAP – address, phone number, email], as soon as possible. You will, whether you choose to make representations or not, be notified of the time, date and location of the meeting. Please let us know if you have a disability or special needs which would affect your ability to attend or take part in a meeting at the school. Also, please inform [contact] if it would be helpful for you to have an interpreter present at the meeting.

If you think this exclusion relates to a disability your child has, and you think discrimination has occurred, you may raise the issue with the EAP.

You have the right to see a copy of [Child's Name]'s school record. Due to confidentiality restrictions, you must notify me in writing if you wish to be supplied with a copy of [Child's Name]'s school record.

You may find it helpful to contact the Assistant Education Officer (Special and Additional Educational Needs) within SCE if you would like further advice or support from the Pupil and Family Services team.

The contact address is AEO (SEN), Pupil and Family Services, Service Children's Education, Building 3, Dempsey Barracks, Sennelager BFPO 16)

Yours sincerely

[Name]

Headteacher

Copies to;

Chair SGC

AEO (SEN)

Senior EP, P&FS link office

This document has now been withdrawn and is no longer accurate.

This guidance within this document should not be followed.



#### Appendix D

##### Model letter from the EAP to parent, upholding a permanent exclusion.

Dear **[Parent's name]**

The meeting of the Exclusion Appeal Panel (EAP) at **[school]** on **[date]** considered the decision by **[head teacher]** to permanently exclude your son/daughter **[name of pupil]**. The EAP, after carefully considering the representations made and all the available evidence, has decided to uphold **[name of pupil]**'s exclusion.

The reasons for the EAP's decision are as follows: **[give the reasons in as much detail as possible, explaining how they were arrived at.]**

You have the right to appeal against this decision. If you wish to appeal, please notify the AEO(SEN) at HQ SCE of your wish to appeal. You must set out the reasons for your appeal in writing, and if appropriate may also include reference to any disability discrimination claim you may wish to make, and send this notice of appeal to **[address]** by no later than **[specify the latest date – the 15<sup>th</sup> school day after receipt of this letter]**. If you have not lodged an appeal by **[repeat latest date]**, you will lose your right to appeal. Please advise if you have a disability or special needs which would affect your ability to attend the hearing. Also, please inform **[contact person for the appeal panel]** if it would be helpful for you to have an interpreter present at the hearing.

Your appeal will be heard by an Independent Review Panel, appointed by the SCE Chief Executive and which can be supported by an independent SEN advisor. The appeal panel will rehear all the facts of the case – if you have fresh evidence to present to the panel you may do so. The Independent Review Panel has the right to either a) uphold the decision, b) to quash the decision and require that the EAP rehears the evidence or c) to refer the decision back to the EAP for reconsideration. This is in line with SCE policy, which is informed by the same model introduced for all schools in England in September 2012.

The panel must meet no later than the 15<sup>th</sup> school day after the date on which your appeal is lodged. In exceptional circumstances panels may adjourn the hearing until a later date.

I would advise you of the following sources of advice: **[repeat details from the original exclusion letter]**.

The arrangements currently being made for **[pupil's name]**'s education are **[specify details here]**.

Yours sincerely,

**[Name]**

Chair of the School Governance Committee

Copies to;

Head teacher

AEO (SEN)

Senior EP, Pupil and Family Services link office

This document has now been withdrawn and is no longer accurate.

This guidance within this document should not be followed.



## Appendix E

### Model letter from the Independent Appeal Panel notifying parent (or pupil if aged 18 or over) of the outcome of the appeal.

Dear **[Parent's name]**

Following the hearing of your appeal by the Independent Appeal Panel constituted by SCE Chief Executive on **[date]** at **[location]** against the decision of the EAP of **[Name]** School **[Name]** not to uphold the decision to permanently exclude **[Child's Name]**, I am writing to advise you of the panel's decision. After careful consideration of your representations both oral and written and those of the **[School]** and HQ SCE **[and of others if applicable for example any victim]** and in the light of the available evidence, the panel has decided:

**[Either]**

- (i) .....to uphold the decision to permanently exclude;
- or**
- (ii) .....to quash the decision to permanently exclude **[pupil's name]**'s and to refer the case back to the EAP for review;
- or**
- (iii) ... to refer back to the EAP (without quashing the decision) in order that they reconsider their decision

**[Give reasons in as much detail as possible for the panel's decision)**

The alternative arrangements put in place for **[pupil's name]**'s full-time education will continue for the time being; but the AEO (SEN) will be in touch with you to discuss future provision.

A copy of this letter will be added to **[pupil's name]**'s school record for future reference.

Yours sincerely

**[Name]**

Chair of the Independent Review Panel

Copies to;

Head teacher

AEO (SEN) Senior EP,

Pupil and Family Service school link team