



Haverling
L O N D O N B O R O U G H

London Borough of Haverling

Permanent Exclusion Policy

Admissions and Inclusions

September 2018

Index

Introduction	Page 3
Permanent Exclusion	Page 3
Understanding the Decision to Permanently Exclude	Page 3
Who can Permanent Exclude	Page 3
Reasons for a Permanent Exclusion	Page 3
Standard of Proof	Page 4
Child's Behaviour Outside School	Page 4
Child's Voice	Page 4
Unofficial Exclusions	Page 4
Children with SEN or Disabilities	Page 4
Factors to Consider Before Permanent Exclusion	Page 4
Alternatives to Exclusions and Early Intervention	Page 5
Extending a Fixed Term Exclusion into a Permanent Exclusion	Page 5
Vulnerable Groups	Page 5
Looked After Children	Page 5
What happens during the Permanent Exclusion	Page 6
Parents Keeping Child at Home	Page 6
Alternative Education	Page 6
Finding a New School	Page 6
Fair Access Protocol	Page 7
Parents Right to Apply for a School Place	Page 7
Children with Educational Health Care Plans (EHCP)	Page 7
Parents Wishing to Challenge the Permanent Exclusion	Page 7
The Governors Review of Permanent Exclusion	Page 7
Parents Preparing for Their Case	Page 8
Discrimination	Page 8
The Governor's Meeting in Advance of the Permanent Exclusion Hearing	Page 9
Permanent Exclusion Hearing	Page 9-11
Independent Review Panel (IRP)	Page 11
Discrimination and the Equality Act	Page 12
Disability Discrimination Claims	Page 12
Useful Documents	Page 13

Introduction

Throughout this policy 'schools' should be taken to include all Academies and Free and independent schools. The term 'child' or 'children' refers to all children who are legally required to receive an education.

The London Borough of Havering recognises the right of parents to have their children educated at school up to the end of compulsory school age. This right applies equally for the parents of children with special educational needs (SEN).

This document aims to set out the London Borough of Havering's current position for Permanent Exclusions and outlines its Policy. This Policy relate to children of compulsory school age.

Permanent Exclusion

A permanent exclusion is the most serious sanction a school can give if a child does something that is against the school's Behaviour Policy (the school rules). It means that the child is no longer allowed to attend the school and their name will be removed from the school roll. Permanent exclusion should only be used as a last resort.

Understanding the Decision to Permanently Exclude

This policy will assist schools and parents to make plans for what actions should be taken into account before excluding a child. This section will assist with the understanding a about permanent exclusion and the processes that should be followed.

Who Can Permanently Exclude

Only the Head Teacher has the power to exclude a child. Other members of staff such as heads of year cannot exclude, though they may provide information to support the head's decision.

Reasons for a Permanent Exclusion

All exclusions must be for disciplinary reasons only. All schools must have a Behavior Policy setting out what the school rules are and this must be published on the school website. Schools may vary in what they will permanently exclude for. However permanent exclusion should only happen:

- In response to a serious one-off breach or persistent breaches of the school's Behavior Policy
- Where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school

In practice this means that there are two likely scenarios for a Permanent Exclusion

- Child has had a history of persistent disruptive behaviour and the school feel they cannot do anymore
- Child has committed a single serious one-off offence, even if they have never been in trouble before. This may be something like assaulting a pupil or member of staff or bringing a knife or drugs into school. However it is up to each school to define what counts as a serious offence

Standard of Proof

The head's decision to exclude must be taken on the 'balance of probabilities'. This means that it is more likely than not that the child did what they are accused of. This is not the same as the 'beyond reasonable doubt' standard required in a criminal case.

Child's Behaviour Outside School

Children can be excluded for behaviour outside school; this may include behaviour on school trips, on the way to and from school and behaviour which may bring the school into disrepute. Cyber-bullying which takes place out of school may also lead to exclusion.

Child's Voice

Where practical, a Head Teacher should allow a pupil to present their case before deciding whether to exclude. If this hasn't happened, parents should seek to find out their child's version of what happened and send this into school.

The United Kingdom has ratified the United Nations Convention on the Rights of the Child (UNCRC). Article 12 of the UNCRC requires states to provide a right for children to express their views and for due weight to be given to those views, in accordance with the age and maturity of the child. This does not give children authority over parents.

Unofficial Exclusions

Sometimes schools may ask parents to keep their child at home without excluding them. This is often portrayed as doing the parent and child a favour by not making it official. This is not lawful, even if a parent agrees to it. If the Head Teacher does not want the child in school for disciplinary reasons they must go through the formal exclusions process.

Unofficial exclusions can easily lead to a child missing considerable amounts of education or even dropping out of the system altogether. It also means that parents may lose their rights to make representations to the Governors or to attend a meeting. Children should not be asked to stay at home because the school can't provide for their special educational needs or to get them out of the way during an inspection. If this happens, parents should remind the school that this amounts to an unlawful unofficial exclusion. Parents may also wish to inform the London Borough of Havering by emailing IYFAP@haverling.gov.uk.

Children with SEN or Disabilities

Sometimes children with special educational needs can show poor behaviour because they are feeling frustrated in their learning. They may also have emotional difficulties or a disability which affects the way they behave.

Before excluding a child with SEN, the school should look first at what additional support is needed or whether a different school would be more suitable.

If the child has an Education Health Care Plan (EHCP) then the school should consider bringing forward the annual review or holding an emergency interim review.

Head Teachers should, as far as possible, avoid permanently excluding children with an EHCP.

Factors to Consider Before Permanent Exclusion

Before deciding to exclude Head Teachers should take account of factors that may have affected the child's behaviour. These might be:

- bullying
- mental health

- bereavement
- unidentified SEN
- Was the child affected by anything going on at home or at school
This could be a family bereavement or divorce or bullying at school

Alternatives to Exclusion and Early Intervention

Where children are at risk of exclusion, schools should look at early intervention to address the underlying causes of the poor behaviour. If a child shows persistent disruptive behaviour, heads should consider a multi-agency assessment. This may pick up unidentified special educational needs but also wider family issues affecting the child. A multidisciplinary assessment may be carried out and in Havering this is called a Multi-Agency Referral Form (MARF) and these forms are available on the London borough of Havering web site at:

<https://my.havering.gov.uk/Pages/OnlineForms/Multi-Agency-Referral-form.aspx>

This provides an opportunity for different agencies and services involved with a child to share information, identify needs and agree any actions.

Extending a Fixed Term Exclusion into a Permanent Exclusion

It is unlawful to extend or lengthen fixed term exclusions. In exceptional circumstances usually where further evidence has come to light, a further fixed period exclusion may be issued to begin immediately after the first fixed term exclusion period ends or the school can choose to permanently exclude immediately after the end of the fixed period but must issue a separate letter to the parent.

Children should not be excluded for a non-disciplinary reason such as:

- If the child has special educational needs and the school advice it can't meet those needs, it should look at putting more or different support in place
- If the child is not doing well in school or is not as able as other children. A child cannot be excluded because they are not likely to get good exam results
- Because of something a parent has done. This might be something like making a complaint or not going to a meeting at school
- Not allowing a child back into school after a fixed period exclusion unless they meet particular conditions. Once the fixed term exclusion has ended the child must be allowed to go back to school. For example the Head Teacher can't extend the exclusion because the child won't admit they are guilty

Vulnerable Groups

Some groups are overrepresented in exclusion statistics. These include children with SEN, children eligible for free school meals, children from particular racial groups and looked after children. Head Teachers should look at providing extra support to these groups to try to reduce the risk of exclusion.

Looked After Children

Schools should work together with Foster Carer's, children's homes and the Local Authority that looks after the child to try to avoid exclusion. This might include putting in additional support. Head Teachers should, as far as possible, avoid permanently excluding looked after children. Schools should work closely with the Local Authorities Virtual Head Teacher to explore other options.

What Happens During the Permanent Exclusion?

This section explains what happens once a child is permanently excluded and what the options are for their future education.

If a child is permanently excluded, parents must be notified in writing without delay.

The letter must advise:

- the reason for the exclusion
- the fact that it is permanent
- the right for parent to put their views in writing to the Governing Body
- the right to go to a meeting of the Governing Body and put their views in person

If a child is of compulsory school age, parents must also be told about their responsibilities to keep them at home during the first five days of the exclusion.

If a parent has not received a letter by the end of the first day of exclusion, they should contact the school to check that their child has been formally excluded. Parents could remind the school that informal exclusions are not allowed and could have an opportunity to negotiate with the school, for an alternative such as a fixed period exclusion or a managed move to another school.

Parents Keeping Child at Home

The first five days

Even though a child is not allowed on the school site, they still should be receiving education. Schools should take reasonable steps to set and mark work for the first five days of any exclusion. If no work has been sent home, parents should contact the school and ask for some. Many schools have work available to pupils on the school website. Any work set should be accessible and achievable to pupils outside school.

During the first five days parents are responsible for their child's whereabouts. Parents must make sure they are not in a public place without reasonable justification during school hours. This duty is similar to that on school attendance and parents could be fined if they breach this. The fine is £60 and goes up to £120 pounds if not paid within 28 days. Failure to pay within 42 days could lead to prosecution.

Alternative Education

Day six and beyond

The Local Authority has a duty to provide suitable full-time alternative education from day 6. This is most likely to take place at a pupil referral unit or other alternative provision. If the child has an EHCP, the alternative provision must be able to meet the child's needs as set out in EHCP. The placement must be identified in consultation with parents. For looked after children it is recommended that alternative educational provision starts from the first day of an exclusion.

Local authorities do not have to provide alternative education for children who are below or above compulsory school age.

Finding a New School

Initially the child will probably be given a place in a pupil referral unit or other alternative provision. The child's case will be heard at the Local Authority's In Year Fair Access Panel (IYFAP) where a school will be named. The child's needs, will be assessed and the pupil referral unit will work alongside the new school to ensure a swift transition for the child.

Fair Access Protocol

The Fair Access Protocol (FAP) is a local agreement for placing children without a school place back into school as quickly as possible. The protocol allows provision for children who are new to the Local Authority where no school places is available. Permanently excluded children will be covered by this. Children can be placed under the FAP even if a school is full.

Parents Right to Apply for a School Place

Parents can also apply for a school place under the normal admissions system and have the right to appeal if the school is full. There are some cases when a school may refuse admission even if it has places available.

These are:

- Twice permanently excluded children within two years of the last exclusion
- Children with challenging behaviour making in-year admissions. Schools can refer this to the Local Authority to be dealt with under IYFAP.

Children with Education Health Care Plans

If a child has an EHCP, the LA will need to change the name of the school on the Plan after a permanent exclusion. This process is dealt with in collaboration with the SEND departments Assessment and Placement Team. Parents have a right of appeal if they disagree and want a different school.

Parents Wishing to Challenge the Permanent Exclusion

This section outlines how a parent can challenge the decision to permanently exclude their child.

1. If the exclusion is not officially permanent or parents think the head may be persuaded to withdraw it, they could negotiate for an alternative.
2. Ask for a meeting with the head to discuss. Before the meeting think carefully about what might be best for the child.

Parents could ask for:

- additional support for their child
- a managed move to another school
- a flexible curriculum or alternative provision

If it is a one off incident and the child has not otherwise been in trouble, then a letter from the child asking to be given another chance may help. However it's important to understand that the head does not have to change their decision even if the parent thinks it is wrong or unfair.

Parents should concentrate on making a good case to the Governing Body.

The Governors Review of Permanent Exclusion

What rights do parents have?

Responsibility for reviewing exclusions lies with the Governors of the school. This may be delegated to a subcommittee which may be called the discipline committee. The subcommittee must have at least 3 members.

The Governors must be informed of a permanent exclusion without delay. They must meet within 15 school days to consider the exclusion.

Parents must be invited to attend the meeting to put forward their views. Parents have a right to be represented and also to take a friend with them.

If the Governors decide not to reinstate the child back into school parents may ask for their decision to be reviewed by an Independent Review Panel (IRP). The IRP does not have the power to reinstate the child but may direct the Governors to look at their decision again. If parent is planning to challenge the exclusion, requests for these items need to be in writing from the school straight away.

Parents Preparing for their Case

This section will help parents put forward their views to the Governors. It is sensible to do this in writing even if parents will be meeting the Governing Body in person. Keep copies of all letters and emails.

It is fairly rare for Governors to overturn a Head Teacher's decision to permanently exclude a child. Parents would need to convince the Governors that the decision to exclude their child permanently was not lawful, reasonable or fair.

Procedures

Check that the school has followed the proper procedures in accordance with the DfE Permanent Exclusion Guidance at www.dfe.gov.uk.

Evidence

If parent thinks that the child did not do what they are accused of, or were not involved to the extent the school says, then parents will need to consider the evidence very carefully. Remember that the standard of proof for an exclusion is that it is more probable than not that the child did it. Parents should talk to their child about what happened. It is sensible to do this as soon as possible. Try to get them to focus on the facts of the incident. Parents may wish to ask some direct questions such as:

- Show me exactly where you were
- Who else was in the room
- Did any other staff see what happened
- Did anything lead up to it

Sometimes children with an otherwise good record do get caught up in misbehavior and do something silly. Teenagers in particular do not always think through the consequences of their actions.

Effect on others in the school

The second condition for permanent exclusion is that allowing the child to remain in school would be harmful to the education or welfare of others in the school:

- Are they seriously disrupting the class
- Are they a risk to other children and/or staff
- If it's a one off serious offence
- How likely is it that it will happen again

Discrimination

Was the exclusion affected by something like race, gender, disability, sexual orientation? If the child has a disability, was the behaviour they are being punished for a direct consequence of their disability?

Were there reasonable adjustments the school could have made to avoid the incident?
Give examples of what they could have done differently.

More information is published in the Technical Guidance for Schools at
www.equalityhumanrights.com

The Governors' Meeting in Advance of the Permanent Exclusion Hearing

This section explains how the Governors' meeting will be run.

1. Who will be there?
 - The panel of Governors. There must be at least three and none of them should have any involvement in the case that might lead them to favour one side above another. That could be for example if one of the panel members were related to the alleged victim.
 - A Clerk to take notes and advise on procedure. It is normal practice to have a clerk but is not a legal requirement.
2. The following people must be invited to the meeting:
 - Head Teacher - who will explain the school's case for excluding the child.
 - Parents - must be allowed to bring a friend or representative to support at the meeting if they wish.
 - A representative - of the Local Authority must be invited and may make representations.
 - If an Academy parents may ask for a Local Authority representative to be invited to the meeting. They will not be invited if the parent does not ask and Governors will need to agree if they can make representations or just observe the meeting.
3. Other people who may attend:
 - Witnesses - consider whether there are any witnesses who could help the case. Parents could ask for a character witness to be there to present their child in a positive light.
 - The child – should be encouraged and supported to attend if they wish.
(See further under a fair hearing below)
4. When the Governors send papers they should include:
 - A list of everyone who will be present at the meeting.
 - Time and date
 - The Governors must meet within 15 school days after they have been informed about the exclusion. They must try to arrange the meeting at a time that is convenient to everyone.
5. Papers in advance of meeting
 - The Governors should ask for written material to be sent in before the meeting. That would include witness statements and information from the school about a child's SEN. They should try to circulate the papers at least five days before the meeting so parents and Governors have a chance to read them.
 - If any new papers are brought up at the hearing, parents can ask for a short break in order to read them.

Permanent Exclusion Hearing

This section explains how the Governors' Hearing will be conducted.

1. Fair Hearing

- The Governors should not discuss the exclusion with any of the parties outside the meeting. That means that they shouldn't have a private meeting with the Head Teacher about it without the parent or child there.
- The principles relating to fair hearings for the Governing Body meeting also apply to the Independent Review Panel (IRP) hearings.
- Parents have a right to have their views properly heard and guidance also states that the review "should be conducted in an accessible, non-threatening and non-adversarial manner".
- The meeting is likely to follow a similar order to the Governing Body meeting. The chair should explain the procedure at the beginning of the hearing.

There is also a community organisation that can support parents if their child has SEND. Parents can contact the local Special Educational Needs and Disability Information Advice Support Service (SENDIASS) at: www.haverling.gov.uk/pips.

If parent has a disability, the Governors must take steps to make sure they are not put at a disadvantage because of this. Parents may want to ask for an accessible venue or materials in an alternative format. They may even require some extra time to present their case.

All parties should be supported to participate and have their views heard. Parents can ask for other support such as an interpreter.

The child's views are very important and they should be encouraged to go to the meeting if possible. The child could be supported by being allowed to bring a friend or give information in a way that they can understand.

What will happen at the hearing?

2. A typical order of proceedings might be:

- the chair introduces everyone and explains what will happen
- the head gives the school's case for excluding the child
- the parent puts their case
- opportunities for all parties to ask questions
- summing up by the head and the parents
- The parents and the head will then be asked to leave, as the Governors must make the decision on their own. A clerk may stay with them to help by referring to notes of the meeting.

3. The Governors' decision

- The Governors must decide whether to reinstate the child in school. When making their decision, they must:
 - consider the interests and circumstances of the excluded pupil
 - have regard to the interests of other pupils and people working at the school
 - They will look at the facts on balance of probabilities and consider whether the head's decision was lawful, reasonable and procedurally fair.
- Minutes should be taken of the meeting as a record of the evidence that was taken into account.
- The Governors have two options - they can either:
 - decide not to reinstate the child in school or
 - direct reinstatement of the child immediately or on a particular date

- If reinstatement is not practical because the parent does not want the child to go back to the school, the Governors must still consider whether the Head Teacher's decision was lawful, reasonable and procedurally fair.

4. After the Hearing

- The Governors should log the outcome on the child's school record along with copies of the relevant papers
- The Governors must let parent and the Local Authority know the outcome and the reasons for their decision in writing without delay. If they decide not to reinstate the child in school the letter must also advise:
 - the fact that it is a permanent exclusion
 - parents right to ask for the decision to be reviewed by an IRP
 - timescales for applying for an IRP
 - parents right to ask for an SEND expert at the IRP
 - parents right to be represented
 - If the child has a disability which affected the exclusion and parent feels that the Governors did not take this into account, they may make a disability discrimination claim to SEND. See ACE's Booklet on Disability Discrimination for more details at

www.ace-ed.org.uk/publications/download-advice-booklets/disability-discrimination

Independent Review Panel (IRP)

1. The letter parents receive from the Governors advises parents to put in writing the request for an independent review panel meeting.

Parents have 15 school days from the date of the letter to ask for a review. If they miss the deadline the application will be rejected.

At the same time parents can ask for:

- Attendance of an SEND expert if they think SEND is relevant to their child's exclusion
- Attendance of a Local Authority representative. If the child's school is an Academy, a representative of the LA will only be invited if requested to attend.
- The IRP meeting must take place within 15 school days of the application being received. The meeting may be adjourned if necessary.

2. Who will be at the IRP hearing

- Panel members - The panel will be made up of 3 or 5 members. There are strict rules about who can and can't be on a panel. The panel members must be independent and must not appear to be biased in any way.
- Clerk – It is good practice to have a clerk but this is not a legal requirement. The clerk should not be the same as the clerk to the Governing Body meeting
- Head Teacher
- A member of the Governing Body.
- A representative will be invited if the child is at a maintained school. For Academies parent needs to ask specifically and their role may be limited to observing.
- SEN expert if parents requested this.
- Excluded child – must be allowed to attend and encouraged to participate. If they don't attend, they can put their views forward in writing or through a representative.
- Witnesses – may be present but it is more usual to have written statements if the witnesses are pupils at the school.
- The alleged victim - has a right to be present or put in written views.

3. Representation at the IRP

- The head and the Governors have right to be represented. They may be represented by lawyers but this is not often the case. Parents also have a right to be represented, including by a lawyer. Parents would need to arrange these themselves.

4. Papers

- As with the Governors meeting, the clerk should make sure that the papers are sent to all parties 5 school days before the review.
- Parents should be made aware who will be at the meeting and what their role will be.

5. Evidence

- The panel will take into account all evidence that was before the Governing Body. They can look at new evidence but they may be limited in how they can use it.
- If completely new evidence comes to light since the Governors' meeting, the panel can look at this evidence when deciding whether to recommend reconsideration by the Governing Body, but not when deciding whether to quash the decision

6. The role of the IRP

- Is to review the decision of the Governing Body to check that it was properly made. The IRP cannot reinstate a child. It can only recommend or direct the Governing Body to reconsider the exclusion. The rules around IRPs are highly complex and this is just a summary. Full details are available on the DfE website at:

www.gov.uk/government/publications/irp-and-first-tier-tribunal-exclusion-appeals-systems

Discrimination and the Equality Act

The Equality Act 2010 covers discrimination based on a range of 'protected characteristics'. For pupils in school these are disability, race, sex, religion or belief, pregnancy or maternity, sexual orientation or gender reassignment.

Exclusion from school is specifically covered by the Act. This does not mean that a school cannot exclude a pupil with a protected characteristic, but they must not do it just because for instance the child has a disability or is from a particular racial group.

Schools must also make sure that their policies such as the behaviour policy or uniform policy do not unfairly disadvantage pupils with protected characteristics.

Disabled pupils must also not be discriminated against because of behaviour connected to their disability unless there is a very good reason for it. For example, a child with autism who is very literal in what she says should not be treated in the same way as another child who is deliberately rude to a teacher.

Schools must also make 'reasonable adjustments' to the way they do things in order to avoid disabled pupils being put at a disadvantage.

Disability Discrimination Claims

Children with special educational needs and disabilities are statistically more likely to be permanently excluded than the average. Parents whose child has a disability, whether formally diagnosed or not, which affected the exclusion can make a claim to the First-Tier Tribunal for Special Educational Needs and Disability (SEND) at:

- Parents can make a claim to SEND as well as or instead of going to the Independent Review Panel. SEND's powers are different from those of the IRP.
- SEND will look at the disability aspects of the exclusion afresh. This is not just a review of the Governing Body decision.
- SEND has the power to reinstate the child, even if their name has already been removed from the school roll.
- Parents must lodge any claims within 6 months of the exclusion.

Useful Documents

There are a number of documents that may be useful to parents if challenging their child's exclusion:

- Department for Education (DfE) - Statutory Guidance
- School behaviour policy
- School SEN policy (if the child has SEN which may be relevant to the exclusion)
- Child's school record – parents need request this in writing. The school may charge for making a copy.
- Incident report and witness statements – the school should have compiled a report of the incident and may have taken witness statements from the children involved

DRAFT