

Toolkit and guidance for Governors/Trustees serving on Pupil Suspensions and Permanent Exclusion Panels

Content		Page no.
The Law	Key points	3 - 4
	Headteacher/Principal's duty to inform parties	4 - 6
	Governance Board and Local Authority's duties to arrange education for suspended or permanently excluded pupils	7
Duty to consider a Suspension or Permanent Exclusion	Timescales	8
	Remit of the Board	9
	The Panel/Committee	10
The Panel/Committee Meeting	Who should attend	11
	Setting the date and the time	12
	Sending out evidence	12
	Procedure during the meeting	13
	Notifying parties about a decision	13
	Decision letter	14
	Independent Review Panels (IRPs)	15
Appendix A	Summary of the boards duties to review the headteacher's suspension or permanent exclusion decision	16
Appendix B	Flow-chart - Procedure for a panel/ committee meeting	17
Appendix C	Crib sheet/check list for consideration of an exclusion	18 - 24
Appendix D	Frequently Asked Questions	25

Update Log	
July 2017	Original Publication following updated DfE Guidance
January 2018	Updated Appendix C
December 2020	Refer to DfE Guidance for changes to Exclusions Process due to the Covid-19 outbreak
September 2021	Additional information on IRPs and addition of FAQs Page
April 2022	Removal of temporary arrangements regarding the use of remote technology for exclusion panels during the Covid-19 outbreak
June 2022	Updated Appendix C – further information on check list for consideration of an exclusion.
July 2022	Updated document throughout to reflect changes to DfE Guidance for September 2022 onwards. The term 'fixed-term exclusion' has been replaced by the term 'suspension'.
January 2023	Removal of term 'Discipline Committee', now referred to as Panel or Committee
September 2023	Updated to included amended regulations on Headteacher's right to cancel a suspension or permanent exclusion and that Governance Board reinstatement and IRP meetings can now be held by remote access if requested by parents and certain conditions are met.

This guidance document is produced to help boards to understand the law and different party's duties around suspension and permanent exclusion. It is not produced to replace the statutory guidance provided by the DfE (Department for Education) [click here](#) which provides greater detail but to give context and best practice when considering exclusions.

The Law - Key points

- The principal legislation that applies to exclusions is "The school Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.
- All maintained schools and academies **must** have regard to the DfE (Department for Education) statutory guidance – "Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement" (September 2023). It is this document that fully explains the law in regard to the Headteacher/Principal's powers and decision to exclude and the board of governors/trustees' legal duties to consider exclusion and replaces the 2017 guidance.
- Only a Headteacher/Principal of a school or an academy can suspend or permanently exclude a pupil (or the person acting as Headteacher/Principal) and this must be on disciplinary grounds. The decision to suspend or permanently exclude a pupil must be within the law and must be reasonable and fair. There is a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race and it is expected that schools/academies will consider carefully the fair treatment of pupils from groups who are vulnerable to suspension or permanent exclusion such as those on Pupil Premium, who are Children Looked After or who are noted as having SEND (Special Educational Need and Disability).
- All children have a legal right to full time education and disruptive behaviour is often an indication of unmet needs. Where a school/academy has concerns about a pupil's behaviour it should intervene early in order to reduce the need for suspension or permanent exclusion. It is illegal to suspend or permanently exclude a pupil simply because the school/academy is not able to meet his/her needs and suspending or permanently excluding a pupil for behaviour that is due to any SEND may constitute discrimination.
- A pupil may be suspended for one or more fixed periods up to a maximum of 45 school days in a single academic year, or permanently excluded. Suspensions may not necessarily be for a continuous period and could be for parts of the school day e.g. if during a lunchtime break a pupil's behaviour is disruptive they could be suspended from the school premises for the duration of the lunchtime break, in this example the lunchtime exclusion is counted as a ½ day for statistical purposes and in order to determine whether or not a board consideration meeting is required.
- A suspension cannot be 'extended' or 'converted' to a permanent exclusion; however, a further suspension can be issued if further evidence comes to light that might warrant a longer period and this further term would begin immediately after the

original suspension. If further information comes to light that would warrant a permanent exclusion, then the permanent exclusion would begin immediately after the suspension.

- Behaviour outside of the school could be considered grounds for a suspension or permanent exclusion.
- An informal suspension such as sending a pupil home or to time-out to 'cool off' is unlawful.
- The pupil's views should be taken into account, considering these in light of their age and understanding, before deciding to suspend or permanently exclude, unless it would not be appropriate to do so. The pupil should be informed about how their views have been factored into any decision made.
- For any suspension of more than 5 days the board **must** arrange suitable alternative full-time education which will begin no later than the 6th day. (For pupils suspended from a PRU, it will be the Local Authority). For a permanent exclusion it is for the pupil's home local authority to provide alternative education. The board must therefore ensure that the school/academy arranges alternative provision.
- The board of governors/trustees are legally required to consider parents' representations and, in some cases, must also consider whether a suspended or permanently excluded pupil should be reinstated.
- Parents have the right to request that any decision not to reinstate their permanently excluded child can be reviewed by an Independent Review Panel.
- At any time, a Headteacher or Principal can cancel or withdraw a suspension or a permanent exclusion that has not yet been considered by the board's committee/panel. If this occurs, parents, the governing board and the local authority should be notified, without delay and if relevant, the social worker and Virtual School Head. Parents should be offered the opportunity to meet with the headteacher to discuss the circumstances that led to the suspension or permanent exclusion being cancelled.
- When removing a pupil from the school roll, the governance board must ensure this is done under the circumstances prescribed by the Education (Pupil Registration) (England) Regulations 2006, as amended.

Headteacher/Principal's duty to inform parties

Whenever a pupil is suspended or permanently excluded the Headteacher/Principal must without delay inform the parents of the suspension or permanent exclusion, the reason for it and the length if a suspension. Initial notification by the Headteacher/Principal should be via telephone in the first instance. The following information must also be provided in writing by either delivering to the parents, leaving it at their usual or last known home

address or posting it to that address (note written notification can only be sent electronically if the parents have given written consent for the notice to be sent that way):

- Reason(s) for suspension or permanent exclusion.
- Period for suspension or when it is permanent the fact that it is permanent.
- The rights of the parents to make representations to the governance board and how the pupil may be involved and how any representations should be made.
- Parents' (or an excluded pupil if they are 18 years or older) right to make a request to hold the meeting via the use of remote access and how and to whom to make this request.
- Where there is a legal requirement for the board to consider the suspension or permanent exclusion that the parents or the pupil (if they are 18 years old or over) have a right to attend, to be represented at that meeting (at their own expense) and to bring a friend.
- Where a suspended or permanently excluded pupil is of compulsory school age the headteacher must also notify the pupil's parents of the days on which they must ensure that the pupil is not present in a public place at any time during school hours. These are the first five days of a suspension or permanent exclusion, (or until the start date of any full-time alternative provision or the end of the suspension where this is earlier), and that failure to make sure this happens is an offence and parents could be given a fixed penalty notice or be prosecuted. It should be made clear exactly which days their duty applies.
- When notifying parents about a suspension or permanent exclusion, the headteacher should draw attention to relevant sources of free and impartial information. This information should include:
 - The Department's Guidance for parents and carers on behaviour, suspension and permanent exclusion, which can be found here <https://www.gov.uk/government/publications/school-exclusions-guide-for-parents>.
 - Coram's Child Law Advice service can be accessed through their website <https://childlawadvice.org.uk/information-pages/school-exclusion/> or contacted on 0300 330 5485 from Monday to Friday, 8am – 6pm.
 - ACE education run a limited service and can be reached on 0300 0115 142 on Monday to Wednesday from 10am to 1pm during term time. Information can be found on the website: <http://www.ace-ed.org.uk/>.
 - Independent Provider of Special Education Advice (known as IPSEA – www.ipsea.org.uk) is a registered charity. It offers free and independent information, advice and support to help get the right education for children and young people with all kinds of special educational needs (SEN) and disabilities.
 - Local SEND Information Advice & Support Services Network (SENDIAS).

When notifying parents about a suspension or permanent exclusion, the Headteacher/Principal should also provide information about the arrangements that have been made to enable the pupil to continue their education prior to the start of any

alternative provision or the pupil's return to school, in line with legal requirements and guidance in part six of the DfE guidance.

The local authority of the school must be informed without delay of all school suspensions and permanent exclusions regardless of the length. If applicable, the local authority of the pupil's home address must be notified of permanent exclusions.

The Headteacher/Principal must without delay notify the governance board and the local authority of:

- Any permanent exclusion (including where a suspension is followed by a decision to permanently exclude);
- Any suspension or permanent exclusion that results in the pupil being suspended or permanently excluded for a total of more than 5 school days (or more than 10 lunchtimes) in a term;
- Any suspension or permanent exclusion that results in a pupil missing a public examination or national curriculum test; and
- The governance board must also be informed once per term of any other suspensions or permanent exclusions that they have not already been notified of.

Informing Social Workers and Virtual School Heads about a Suspension or Permanent Exclusion:

- The headteacher must also without delay inform the social worker where a child has one and the Virtual School Head if the child is a looked after child (LAC).

Headteacher's right to cancel a Suspension or Permanent Exclusion:

The headteacher can cancel any suspension or permanent exclusion that has already begun (or one that has not yet begun), as long as the governing board has not yet met to consider whether the pupil should be reinstated.

Where a suspension or permanent exclusion is cancelled:

- The headteacher must notify the parents, the governing board, the LA and the pupil's social worker and VSH as applicable, without delay. The notification must also provide the reason for the cancellation.
- The governing board's duty to consider reinstatement ceases, and there is no requirement to hold a meeting to consider reinstatement.
- Parents (or the suspended or permanently excluded pupil if they are 18 years or older) should be offered the opportunity to meet the headteacher to discuss the circumstances that led to the suspension or permanent exclusion being cancelled which should be arranged without delay.
- The pupil must be allowed back into the school from which they were suspended or permanently excluded without delay.

A permanent exclusion cannot be cancelled if the pupil has already been excluded for more than 45 school days in a school year or if they will have been so by the time the cancellation takes effect.

Governance Board and Local Authority's duties to arrange education for suspended or permanently excluded pupils

When a pupil has been suspended for more than 5 school days (10 sessions) it is the duty of the governance board (or the LA when the pupil is suspended from a pupil referral unit) to arrange suitable full-time education for any pupil of compulsory school age. This provision **must** begin no later than the 6th day. In reality it will be the school that will arrange this provision, but the board must receive assurances that this has happened or is happening.

It is for the LA (the pupil's home local authority) to arrange for suitable full-time education for any pupil permanently excluded that will begin no later than the 6th day.

Where a pupil has an EHCP, the local authority may need to review the plan or reassess the child's needs, in consultation with parents, with a view to identifying a new placement.

Where a looked-after child is suspended or permanently excluded, the school should document the provision of immediate suitable education in the child's PEP.

Where alternative provision is being arranged then this information should also be confirmed to the parents in writing, at least 48 hours prior, giving full details of where the provision will take place, any start and finish times and if appropriate any information that the pupil will need to identify the person they are reporting to on the first day. The board must keep the placement under review.

For pupils in the final year of compulsory education who do not have any further public examinations to sit, provision does not have to be arranged.

The DfE guidance sets out in paragraph 94 that "the chair of the governing board should ensure that there are clear processes in place to comply with its legal duty to arrange suitable full-time educational provision for pupils of compulsory school age from the sixth consecutive school day of a suspension. This includes:

- Checking that there is a process in place for the governing board to assure itself that the education provided is suitable and full-time
- Quality assuring provision and ensuring that any previous placements have been evaluated, including support for any SEND the pupil may have
- Checking whether there is a process in place to monitor the pupil's attendance and behaviour at the provision
- Checking whether the correct attendance code is being used
- Checking whether the pupil's child protection file and any other information relevant to the pupil's safeguarding and welfare has been securely transferred to their new setting as early as possible, in line with [Keeping children safe in education 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/92121/Keeping_children_safe_in_education_2021.pdf)"

Duty of the board to consider a suspension or permanent exclusion

The law is clear that the board has a duty to consider reinstatement of suspended or permanently excluded pupils, but the requirements to do so are dependent upon a number of factors as illustrated in Appendix A (A flow chart produced by the DfE illustrating when a board must consider the exclusion page 38 of DfE guidance).

The board must consider, within 15 school days of receipt of notification, the Headteacher/Principal's decision to exclude in the case of:

- All permanent exclusions
- All suspensions of pupils who have been suspended for more than 15 school days in the term
- A suspension or permanent exclusion that would result in a pupil missing a public examination or National Curriculum test. Note there is a further requirement for the board in this particular instance in that although they should meet within 15 days they should meet where reasonably practical to do so before the date of the examination or test. If it isn't practical to do so the Chair of Governors, for maintained schools, may consider the exclusion alone and decide whether or not to reinstate the pupil; for academies then the exclusion can be considered by a smaller committee if the trust's articles of association allow them to do so.

The board has 50 days following notification to consider the following:

- All suspensions where a pupil would be suspended for more than 5 school days in a term, but less than 16 days and their parents have made representations. If the parent doesn't make representations, then the board is not required to meet and cannot direct the reinstatement of the pupil.

There is no given timescale for the following, but expectation would be that the board considers the exclusion as soon as possible and no later than 50 days:

- Suspensions that do not bring a pupil's total number of days to more than 5 in a term the board must consider any representations made by parents. There is no given timescales for this but the expectation that the meetings is arranged in a reasonable amount of time. The board does not have the power to decide to reinstate the pupil and is not required to meet with the parents.

Right of Parents or Suspended or Permanently Excluded Pupil if Over 18 to Request a Remote Access Governing Board Reinstatement Meeting.

Parents (if the pupil is under 18) or excluded pupils (if they are aged 18 years or older) can request a meeting to be held via the use of remote access, however this should not be a default option. Holding meetings via remote access must only be done if governing boards are satisfied that the meeting is capable of being held fairly and transparently.

Where a parent does not request a remote meeting or does not state a wish either way, governing boards must hold the meeting in person unless it is not reasonably practicable to do so in person for a reason related to extraordinary events or unforeseen circumstances such as an unforeseen school closure due to floods, fire or outbreak of infectious illness/disease.

If there are technological or internet network issues, during a meeting held via the use of remote access which compromises the ability for participants to be seen or heard or prevents the meeting from being held fairly and transparently a face to face meeting must be arranged by the governing board despite the parent's request. This should be done without delay.

Should Social Workers or VSHs be joining a meeting that, as a whole, is taking place in person, they must be allowed to join via the use of remote access should they wish to do so.

Remit of the board

The board should be regularly provided with information and data on suspensions and permanent exclusions, those taken off roll and those on roll but attending education off-site on a termly basis. The board should challenge and evaluate what the data is telling them and take into consideration cost implications of directing children to be educated off-site in Alternative Provision. The board should also check for patterns in the data such as high numbers of children with SEND being suspended or permanently excluded, this may indicate the SEND support within the school needs reviewing for example.

When considering a reinstatement of a suspension or permanent exclusion the civil standard of proof must be applied when establishing the facts and circumstances around the suspension or permanent exclusion i.e. that on the 'balance of probabilities' it is more than likely that a fact is true rather than the criminal standard of 'beyond reasonable doubt'.

The board has a key role in all of the suspension and permanent exclusion processes, and it can bring potential friction between the board and the Headteacher/Principal as it is the duty of the board to test the decision with a great degree of rigour. The board's consideration meeting (normally delegated to a panel of 3 governors/trustees, discussed further in this guidance document) must consider the interests and circumstances of the suspended or permanently excluded pupil, including the circumstances of the suspension or permanent exclusion whilst at the same time have regard to the interests of the rest of the school/academy community (staff and pupils). It is for the panel to test whether the decision was lawful, reasonable, and procedurally fair taking into account the Headteacher/Principal's legal duties. Panel members should ensure that they are satisfied that the

Headteacher/Principal has taken all possible steps to establish the true facts of the incident that prompted the suspension or permanent exclusion.

The circumstances will need to be assessed with a greater degree of scrutiny by asking certain questions when considering the written and oral evidence.

Following their consideration, the board can either:

- Decline to reinstate the pupil; or
- Direct reinstatement of the pupil immediately or on a particular date.

The board should note the outcome of its consideration on the pupil's educational record, and copies of relevant papers should be kept with the educational record.

It should be noted that where reinstatement is not practical either because the parents don't want their child to return to the school/academy or it is after the suspension period and the pupil has already returned; the board **must** still consider the decision made by the Headteacher/Principal and whether it was justified based on the evidence and within the law.

When the suspension does not take the pupil's total number of suspended days above 5 for that term then the board does not have the power to overturn the decision made by the Headteacher/Principal. However, if the board following consideration finds that the exclusion was unfair and should not have been issued, they can direct that a note is placed on the pupil's record to say this.

The Panel/Committee

The board may delegate its suspension or permanent exclusion functions to a committee of at least 3 governors/trustees, this could also be referenced as the suspension and permanent exclusion hearing or suspension and permanent exclusion panel. Membership of the committee can comprise:

- Maintained schools:
 - 3 governors eligible to serve on the committee i.e. no previous knowledge of the situation, no member of staff and anyone associated with the excluded pupil or the pupil's family.
 - Joint committee – 2 or more maintained schools can form a joint committee to consider suspensions or permanent exclusions. This can be done under the School Governance (Collaboration) (England) Regulations 2003 which legally allows boards to delegate consideration of an suspension or permanent exclusion to a committee comprising governors from other schools. The terms of reference for the committee need to be agreed by all boards of all schools involved.
- Single Academy Trust – a committee or panel is arranged under the articles of association and membership is determined by the trustees. Membership can include people who are not trustees as long as the majority of the membership of the committee is trustees and no vote is taken unless the majority of members are trustees.

- Multi-academy trusts – Trustees of the MAT (multi-academy trust) are the body responsible for considering exclusions and so membership of the committee should comprise 3 trustees but can include local governors from any of the academies within the trust. In order for local governors to be used the trustees of the MAT must:
 - Delegate responsibility formally to the local governing body for suspension or permanent exclusion functions via the local board terms of reference and/or the scheme of delegation for the MAT
 - Agree procedures that will allow a local governing body to use local governors from elsewhere in the trust.

Panel/Committee Meeting

Where the committee is legally required to consider the suspension or permanent exclusion, they should:

- Not discuss the suspension or permanent exclusion with any party outside of the meeting
- Ask for written evidence in advance of the meeting to include:
 - Witness statements
 - CCTV footage if applicable
 - Copies of any relevant policies such as behaviour, suspension and permanent exclusion etc.
 - Any other relevant information held by the school such as but not exhaustively the pupil's:
 - Attendance record
 - Behaviour record
 - Personal education plans (PEPs) if applicable
 - Information relating to their SEN
 - Progress and attainment information
- Allow parents and pupils to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness the committee should first seek parental consent and invite the pupil's parents to attend the meeting).
- 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.

Who should attend?

The following people **must** be invited to a meeting of the board and allowed to make representations:

- Parents
- The Pupil if they are 18 years or over
- The Headteacher
- The pupil's social worker, if they have one, and if the pupil is a Looked-After Child the Virtual School Head
- A representative of the LA (local authority) for maintained schools or pupil referral units. Academies are not required to invite a representative of the LA, but the parent

could invite them as an observer. In Academies the LA representative may only make representations with the boards consent.

In addition to those required by statute the following will also attend:

- The panel of 3 governors/trustees – one of whom will act as chair for the meeting
- A governance professional (clerk) to take notes and advise on procedure
- The pupil, unless s/he is very young and/or there are strong reasons against his/her attendance
- Witnesses, although these do not normally remain for the full meeting

Where the parent is to bring a friend or representative, they are there to act as an advocate and to accompany and support the parent. They can make statements or ask questions on the parent's behalf but any questions the friend asks should be from the parent's perspective and as long as this happens the committee should allow them to make statements and ask questions.

Pupils' attending the meeting – the statutory guidance stipulates that the board should "identify the steps they will take to enable and encourage the suspended or permanently excluded pupil to attend the meeting and speak on their behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding; or how the suspended or permanently excluded pupil may feed in their views by other means if attending the meeting is not possible."

Reasonable adjustments should be made 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 with mobility or communication that has an impact upon their ability to attend the meeting or to make representations)

Setting the date and time

All "reasonable endeavours" must be made to arrange the panel/committee meeting at a date and time that is convenient to all parties and that complies with the statutory time limits. If, however the parent has a valid reason for requesting the adjournment, the board should issue a new date and time for the meeting as soon as possible but still within the statutory time limit for the board to consider the exclusion.

Sending out evidence

Written evidence should be provided in advance of the meeting and where possible circulated to all parties at least 5 school days prior to the meeting. Information to be circulated should include:

- A list of all persons who will be present at the meeting
- Witness statements
- Other relevant information.

If the meeting is to work well it is critical to send out information in advance and the clerk should be clear about how the meeting should proceed.

Witness statements can be gathered from the headteacher, the pupil's teachers, the designated safeguarding lead, the pupil themselves, the pupil's parent(s) and if applicable, the designated teacher for looked-after children. Where possible, written statements should also be gathered from the pupil's social worker, and for looked-after children the area's VSH.

Procedure during the meeting

All parties – Headteacher/Principal, Parents, Pupil and where applicable the LA (local authority) representative, Pupil's social worker and Virtual Head would attend the meeting together.

At the agreed time the governance professional (clerk) will bring the parties, who should be kept separate up until the time of the meeting, into the room where the meeting will be held. It is important to remember that no-one is entitled to remain alone with the panel expect for the governance professional (clerk).

Clear minutes/notes need to be taken as a record of evidence and these minutes/notes should be made available to all parties on request.

The Chair of the committee – the three panel members will agree as to who will chair – will welcome all to the meeting, introduce the panel to the parties in attendance and explain the format of the meeting, as shown in the flow chart given in Appendix B.

The governance professional would stay to help the board reference to their notes of the meeting and with the wording of the decision letter.

A crib sheet and guidance are given in Appendix C as to the questions that need to be asked and for panel members to use during the meeting.

Notifying parties about a decision

When the decision has been made the panel must without delay:

- If they have decided the pupil should be reinstated:
 - Direct the Headteacher/Principal accordingly and the date the pupil is to be reinstated; and
 - Where legally required to consider reinstating a suspended or permanently excluded pupil, the board must notify parents or the pupil if they are 18 years or over, the headteacher, and where relevant, the pupil's social worker and/or the VSH of its decision, and the reasons for it, in writing and without delay. Where the pupil resides in a different local authority area from the one in which the school is located, the governing board must also inform the pupil's 'home authority'.
- If they have decided not to reinstate the pupil:
 - Where legally required to consider reinstating a suspended or permanently excluded pupil, the governing board must notify parents or

the pupil if they are 18 years or over, the headteacher, and where relevant, the pupil's social worker and/or the VSH of its decision, and the reasons for it, in writing and without delay. Where the pupil resides in a different local authority area from the one in which the school is located, the governing board must also inform the pupil's 'home authority'.

- In the case of a permanently excluded pupil give the parent written notice stating that the exclusion is permanent, that the parent can apply for the panel decision to be reviewed by an Independent Review Panel, where to apply for the review and the date that the application for review must be made.

Where the pupil resides in a different LA from the one that the school/academy they attended then the 'home authority' must also be notified.

Decision Letter

It is recommended that the decision will be made in the form of a letter and should be sent out without delay. Notice is deemed to have been given on the same day if it is delivered or on the second working day after posting if it is sent by first class mail. It must set out:

- The decision
- Reasons for the decision
- Factors taken into consideration in reaching the decision

The decision must be added to the pupil's record and the letter must be clear as to why the decision was made.

Where the decision is to uphold a permanent exclusion, the letter must also set out:

- The fact that it is permanent.
- The deadlines and procedures for appeals to the Independent Review Panel –
 - The date by which the application for a review must be made (15 school days from the date on which notice in writing of the panel's decision was given to parents)
 - The name and address to whom an application for a review should be submitted.
 - That a request to hold the meeting via the use of remote access can be made.
 - 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 SEN are considered to be relevant to the permanent exclusion.
- Regardless of whether the pupil has recognised SEN, parents have a right to require the local authority/academy trust to appoint a SEN expert to advise the review panel.
- The availability of a SEN expert, their role and that this will be at no cost to the parent.
- The option of making a separate disability discrimination claim or claim of other discrimination to the County Court

- That a claim of discrimination under the Equality Act 2010 made under these routes should be lodged 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 permanently excluded).
- That parents may, at their own expense, appoint someone to make a written and/or oral representation to the panel and that parents may also bring a friend to the review.

Independent Review Panels (IRP)

A parent can only request an IRP for permanent exclusions they cannot request an independent review of suspensions. In maintained schools the responsibility for arranging an IRP hearing rests with the LA. In academies the academy trust is responsible for arranging the IRP, as per the statutory guidance (Part 9) the trust will need to make sure that panel members for the IRP have undertaken relevant training along with the clerk to the panel, there are also specifics in regard to who can and can't serve on a panel. Most academies would purchase the IRP service from the LA who have already undertaken the statutory duties in regard to panel membership and training.

Following its review, the IRP can decide to:

- uphold the governing board's decision;
- recommend that the governing board reconsiders reinstatement; or
- quash the decision and direct that the governing board reconsiders reinstatement.

The IRP's decision is binding on the pupil, parents, governing board, headteacher and local authority.

Where the IRP directs or recommends that the governing board reconsider whether a pupil should be reinstated, the governing board must reconvene to do so within ten school days of being given notice of the IRP's decision. If the board do not do so an adjustment will be made to the school's budget in the sum of £4,000 if the panel has ordered this.

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

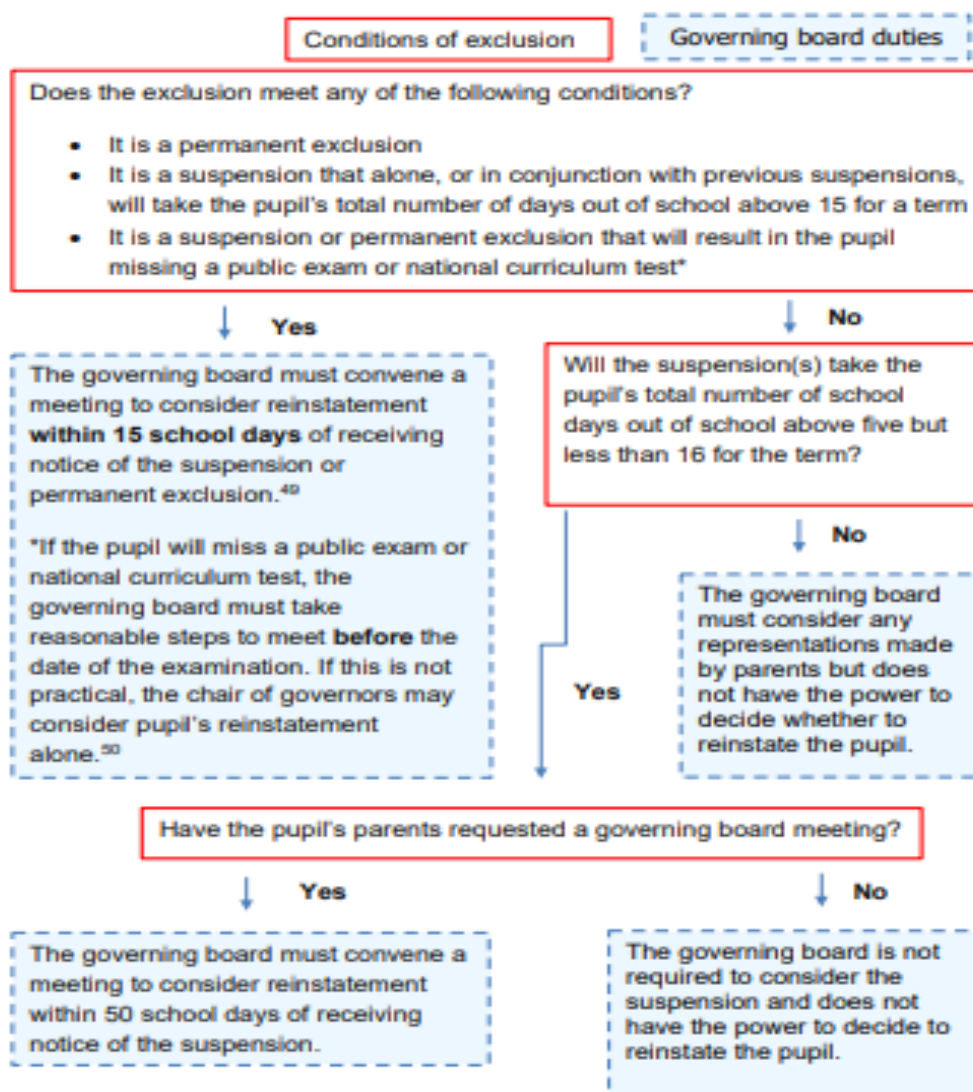
- the parents;
- the headteacher;
- the local authority; and, where relevant, the 'home authority'.

The reconsideration provides an opportunity for the governing board to look afresh at the question of reinstating the pupil, in light of the findings of the IRP. There is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting.

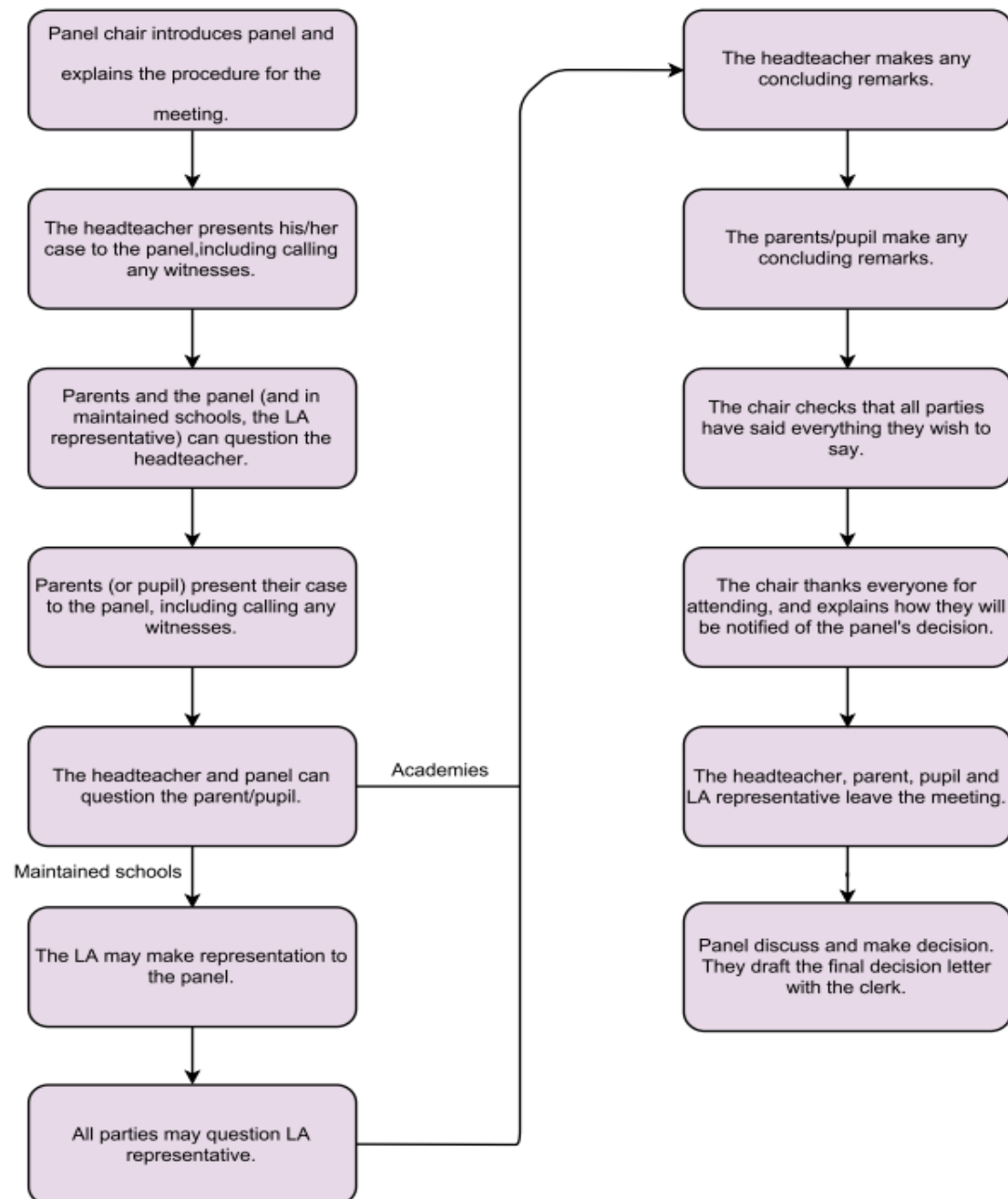
A clerk should take minutes of the meeting and all parties except the clerk must leave the room whilst the decision is taken.

The board's decision should demonstrate how they have addressed the concerns raised by the IRP.

A summary of the governing board's duties to review the headteacher's exclusion decision



Appendix B – Procedure for a panel/committee meeting



Appendix C - Crib sheet/check list for consideration of a suspension or permanent exclusion

The following has been produced to help the panel members before the meeting, during and after the meeting and designed as a check list to make sure procedure has been followed, information to consider and to assist in the types of questions that might need to be asked. This guidance is produced to help understand the suspension and permanent exclusions process, questions included are not exhaustive, it will depend on individual circumstances.

Checklist for school paperwork required in preparation for the consideration meeting: -

1. A detailed overview statement from the Headteacher explaining why it is felt that a suspension or permanent exclusion is appropriate in this situation. It should include details of all the strategies used by the school to support the pupil, including dates the strategies were put in place, and the outcome.
2. A clear account of the incident which led to the decision to suspend or permanently exclude, including any events which led up to the incident. Any written accounts made by staff and pupils who were involved in, or who witnessed the incident should be included in the pack. The suspended/excluded pupil should be given the chance to provide a written account, either written themselves or scribed by a member of staff. This should be written on the day of the incident, if possible. If that is not possible, the pupil should be asked to provide their account as soon as possible after the incident.

Paragraph 179-180 of 'Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement, September 2023' states that: "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 permanently excluded pupils are entitled to know the substance behind the reason for their permanent exclusion and the school should communicate this effectively with the pupil. Whilst carrying this out it is important to ensure that any reasonable adjustments are made and recognise that the pupil may have additional needs (e.g., speech, language and communication needs, cognition difficulties or EAL).

Where written accounts of the incident are available and will be provided as part of the school's evidence pack, the school must consider the data subject rights of all concerned. Where a statement is written by a pupil, the school will need to consider their data protection obligations to that pupil and whether redaction of pupils' names (and identifying details) is necessary in any witness statements which are being released to third parties.

If redaction does occur, it is necessary for the documents involved to be labelled, for example, Pupil A, B, C or 1, 2, 3. **Importantly**, the same consistent labelling needs to be used throughout so that, for instance, Pupil A can be identified in accounts by staff or other pupils which refer to Pupil A. This will enable all parties at the consideration meeting to follow the sequence of events more easily and avoid confusion.

3. A synopsis of events over time which led to the suspension or permanent exclusion, e.g.: dated behaviour logs which clearly shows incidents, outcomes, and interventions.
4. Dated documents reflecting how the pupil's needs have been addressed and whether targets have been met, for example, Individual Behaviour Management Plans (IBMP), Personal Support Plans (PSP), Individual Education Plans (IEP). This should include all the strategies and interventions employed by the school to address a pupil's needs.
5. SEN perspective – Educational Psychology/Teacher Advisor reports, and details of how any recommendations have been implemented, and any supporting SEN papers, e.g.: copy of Educational Health Care Plan (EHCP) and the last/latest annual review.
6. Vulnerable pupil information – if not already provided within aspects 4 and 5 above any further information regarding Children Looked After or previously looked after, such as Personal Education Plans or other information specific to that pupil.
7. Information regarding the involvement of other agencies, e.g.: CAMHS, Children's Service Department (Social Care), Early Help Hub referral, YOT etc.
8. Copies of the letters and notifications of any previous fixed-period suspension and a copy of the permanent exclusion letter and notification.
9. Details of relevant contact/involvement with parents/carers.
10. Attendance records over the last 12 months.
11. A summary of the pupil's strengths and abilities in relation to National Curriculum Key Stages. More detailed information can also be provided if relevant, e.g.: a copy of the recent academic reports, SATs results, CAT scores Fischer Family Trust data, Pupil Progress file for Year 10 and Year 11, if applicable.
12. A copy of relevant school policies, e.g.: Behaviour Policy, SEN Policy, Bullying Policy, Exclusion Policy, etc.

Note that any information provided to the governance board panel must be made available to all parties in attendance at the consideration meeting – school representatives, parent and pupil, LA representatives. This is why information identifying staff or other pupils, as stated above in item 3, must be anonymised or redacted without affecting the ability to follow the sequence of events.

The following information is provided as a check list to the panel members of the consideration meeting. This ensures that procedure has been followed, especially legal requirements regarding process and information provided. It will help the panel members understand their duties regarding the

consideration meeting and the decisions they might need to make if procedure/process has not been followed.

Guidance is given in red italics to provide context as to why the panel needs to ask the question or to see that relevant information has been given. Where information is not given but is highlighted by *, this is required because of a requirement in legislation that this legal information is needed to ensure compliance. If not seen, then questions will need to be asked about whether legal process was followed and the decision as a panel you will need to make.

Basic Information			
Name of Pupil	<i>To ensure that the information seen and that has been provided is relevant to the individual pupil being considered within the panel hearing.</i>		
Date of suspension/ permanent exclusion	*	Period of suspension	*
Date of hearing	*	Number of days between exclusion and hearing	*
Initial phone call & letter	Was this received by the parent and if appropriate the child's social worker, Virtual School Head for Looked After Children and was the Local Authority informed?		Yes/No *
	Did it have all the information required in Part Five of DfE guidance? (comment)	* if it did not you need to ask, was it provided in a different format e.g., verbally, or other written communication. Failure to comply with this legal requirement, especially regarding permanent exclusions, may mean that the panel will have to overturn the original decision to suspend or exclude because of a failure to comply with legal duty.	
Accessibility	Did the school consider how to communicate accessibly and clearly?		<i>Was consideration made of whether parents may have particular communication</i>

		<i>needs relating to a disability or having English as an additional language (EAL)?</i>
Support for parents	Did the letter include information about where parents can find free and impartial information?	<i>*Did the letter provide the information as set out in the DfE guidance on how to access sources of impartial information.</i>
Written Evidence	When was it sent?	<i>*</i>
	When was it received by the parent? (comment)	<i>*</i>
Does the pupil have protected characteristics? (race, gender or disability)	Yes/no	
	If yes what has been done to ensure fair treatment (comment)	<i>The panel must ensure that the pupil has been treated fairly, if not this will impact on the decision that needs to be made</i>
Is the pupil in a group vulnerable to exclusion? (such as SEN, Free school meals, Looked after children, ethnic minority)	Yes/no	
	If yes what has been done to ensure fair treatment (comment)	<i>As Above</i>

Breaches of Behaviour Policy (or any applicable policy)

It is for the Headteacher/Principal to decide where a pupil's behaviour warrants a permanent exclusion though this is a serious decision and should be reserved for a serious breach or persistent breaches of policy and where a pupil's behaviour means allowing the pupil to remain in school would be detrimental to the education or welfare of the pupil or others in the school.

Breaches in the school's behaviour policy to be identified -	During Headteacher representations in meeting when they make the case	<i>Findings – evidence Questions need to be asked to ensure that the suspension or permanent exclusion was a final option. It is good to record the evidence, in case it is required for an independent review panel or other tribunals should the case arise.</i>
	Written evidence	<i>Findings – explained above</i>

--	--	--

Questions		
During the meeting questions can be asked by anyone to anyone present i.e., parents/pupil to the Headteacher/Principal and vice-versa. The following are suggestions for the panel members and are not exhaustive as questions that need to be asked will be specific to each individual suspension/permanent exclusion situation.		
Key questions to the Headteacher/Principal	Have contributing factors such as bullying, bereavement or mental health issues? What evidence is there of this?	<i>It is good practice for questions asked to be recorded within the notes of the meeting along with the response</i>
	Has this type of incident occurred in the past and how was it dealt with?	
	Why would allowing the pupil to remain in school seriously harm the education and welfare of the pupil or others in the school?	
Key question to ask parents and pupil	Have you been given the opportunity to present your case?	Yes/No and evidence
	If not, why not? What further representations do you want to make?	
Following the meeting whilst considering and to inform decision		
Did the Headteacher/Principal act within their legal powers?	<i>Again, you need to ensure that legal process has been followed. If not, this will have to inform decisions made as to the fairness and validity of the original decision.</i>	
Was there sufficient factual basis for the exclusion decision?	<i>If there was not sufficient factual evidence, even considering civil rule of law (the balance of probabilities) can the decision be upheld? Or do you need further information to qualify such a decision? This will be important if the exclusion is permanent as your decisions may be overturned by an Independent Review Panel.</i>	
Was the decision to exclude a reasonable one? <i>(This is more about the decision not being irrational or perverse that no HT acting sensibly</i>	<i>Whilst this is a difficult consideration, if the majority of the panel feel that the decision was not reasonable in law or policy then you</i>	

<i>could have arrived at the decision made perhaps because of a lack of evidence or a failure to take account of evidence or excluding for a non-discipline related reason)</i>	<i>must overturn the decision by directing reinstatement and your reasons for that conclusion.</i>
<i>Was the exclusion procedurally fair? Has the statutory guidance been followed in relation to communication with parents, involving the pupil or liaising with other agencies? Where major errors have been made that potentially undermine the whole process the governors/trustees should consider a breach of fairness.</i>	<i>As above</i>
<i>Was anything said in the meeting that you (the panel member) felt was particularly persuasive or relevant?</i>	<i>In thinking about this, you are thinking about the information that will inform your decision which is the decision that will be challenged if the exclusion was permanent and is escalated to an independent review panel.</i>
<i>Are you more certain than not of the pupil's guilt? If so, what evidence did you consider? Was this from more than one source?</i>	<i>By looking at the evidence you have considered, this will also help to justify your rationale for your conclusions.</i>
<i>Are you satisfied that the Headteacher/Principal carried out a thorough investigation?</i>	<i>Without this how did they come to their conclusion?</i>

Decisions		
In reaching your decision on whether to reinstate, or put a note on the file, you need to consider whether the decision was lawful, reasonable, and procedurally fair, taking account of the Headteacher/Principal's legal duties and the evidence presented.		
Key questions to inform the decision	Did a breach of policy occur	<i>If so, be clear what was breached in your summary outcome. This will help the school in future decision making.</i>
	Was it a serious breach	<i>Be clear about the breach, if it was serious does it merit further actions such as disciplinary – staff or pupil</i>
	Was the pupil treated fairly and reasonably through the process	<i>If not, why not and what can be done to ensure unfairness does not happen again.</i>
	Would allowing the pupil to remain seriously harm the education and	<i>What questions have you asked regarding this to seek assurances this is not just being used to exclude a pupil that the school is</i>

	welfare of the pupil or others in the school	<i>not meeting the needs of as they should. If allowing the pupil to remain will bring serious harm to the education and welfare of the pupil or others in the school, record in what way as evidence to support your decision making.</i>
Options	Uphold the exclusion	<i>Why? Give your rationale for doing so considering legal requirements and school policy,</i>
	Direct reinstatement of the pupil immediately or on a particular date	<i>Why? Be clear as to the specific reasons as to why you are making this decision. The school will need that clarity.</i>
When decision made	Inform all parties as per statutory guidance and for those pupils who have been permanently excluded inform the parents of their right to apply to an Independent Review Panel (IRP) and who they should contact, the timescale and right to request a remote IRP meeting.	

Appendix D – Frequently Asked Questions

Q. Do Inset days count when calculating timescales for when Panels should meet?

A. The answer is **no**, school days are only counted as such when the pupils are in the school, therefore Inset days do not count when calculating timescales.

Q. Can a Panel change a permanent exclusion to a suspension?

A. The answer is **no**, the remit of the panel is to consider whether the decision of the HT to permanently exclude the pupil should be to decline to reinstate the pupil; or direct reinstatement of the pupil immediately or on a particular date.

Q. Can a Panel delay their decision on a suspension or permanent exclusion to gather more information?

A. The answer is **yes**, as long as it is made clear to all parties why the decision is being pushed beyond the deadline. If new information is presented to the panel, all parties will need to see the information, and this may mean convening a new meeting so that all parties can respond to the information.