

A PARENT'S GUIDE TO THE INDEPENDENT EXCLUSION REVIEW PROCESS



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INTRODUCTION

The Education Act 2002 (as amended by the Education Act 2011), requires all Local Authorities (LAs) and Academies to make arrangements for enabling parents to apply for a review of the decision of a Governing Body or Proprietor of an Academy not to reinstate a pupil who has been permanently excluded from a school maintained by an LA or Academy.

This guide will help you decide whether or not to apply for a review of the decision to permanently exclude your son/daughter.

This booklet is based on the current Exclusion Guidance published in August 2024. This replaced an edition published in September 2024.



WHAT IS AN INDEPENDENT REVIEW

Who has the right to apply for a review?

The relevant person:

- Where a pupil has reached the age of 18, it is the pupil him/herself; or
- Where a pupil is **under 18**, it is his/her parent.

Under the Education Act, the definition of “parent” is broad. In addition to a child’s birth parents, it includes any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person who the child lives with e.g. a foster carer.

Is there any point in applying for a review?

It is for you to decide but it is important you know:

- You may have the decision reviewed by an Independent Review Panel (IRP) even if you do not want your son/daughter to return the school.
- The role of the IRP is to review the Governing Body’s decision; it **CANNOT** directly reinstate a permanently excluded pupil. However, it can require the Governors to consider their decision again.
- The IRP cannot “wipe the excluded pupil’s slate clean”.
- You can apply for a review even if you did not make



a case to, or attend, the Governors' meeting which considered your child's permanent exclusion.

- The IRP who will hear your appeal consists of three people who have no connections with the Local Authority/school/academy/PRU.
- The IRP will carefully consider your case **and** that of the school/academy/PRU.

If you think that your child may have or has special educational needs (SEND) and you believe that these were not properly taken into account, or the Governors' meeting was unfair in any way you should consider applying for a review.

The panel does not have the power to review a decision because you do not agree with the decision.

Are there circumstances where I do not have a right to a review hearing?

Yes. There are three:

- You lose your right to a review hearing if your application is received after the 15th school day after the day on which you are informed, in writing, of the Governors' decision not to reinstate your child.
- If you withdraw your application for a review, you also lose your right to a hearing.
- The appeal form is invalid because you have not included your reasons for review as set out in the Exclusions Regulations.

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- It is important that you complete the online appeal form as soon as possible after you receive the letter from the Governors telling you your son/daughter has not been reinstated.
 - You should give the matter careful consideration before you withdraw your application.

My child is disabled (physically or otherwise), what should I do if I think that my son/daughter has been excluded for a reason related to their disability?

In addition to the right to apply for a review to be heard by an IRP, if you believe the exclusion has occurred for a reason related to your child's disability, under the Equality Act 2010, you can make a disability discrimination claim to the First-tier Tribunal (Special Educational Needs and Disability). You **MUST** lodge your claim within 6 months of the date your child was permanently excluded.

If your claim is successful, the First-tier Tribunal can direct the school/academy/PRU to reinstate your son/daughter.

Alternatively, you can choose to make this claim to the IRP. However, the IRP does not have the power to direct reinstatement.

If you make a claim to the IRP, you should put the reasons



for claiming disability discrimination in writing on the application form (or letter). You may also wish to contact the Equality & Human Rights Commission (EHRC) for further help and advice (see Appendix).

You can make a claim of discrimination to the First-tier Tribunal (& County Court) before deciding to apply for a review hearing. Where this is the case you **MUST** apply for a review hearing within 15 school days of the date the discrimination claim is finally determined.

Where you make such claims at the same time as applying for the IRP to review the decision to permanently exclude your child, the arrangements for the review hearing must not be delayed or postponed.

The same action applies if you believe your child was discriminated on racial grounds, except that you can only go to the County Court.

When will my review be heard?

The IRP must meet to consider your application for review no later than the 15th school day after the day on which your application was received. However, an IRP may adjourn the hearing if there is good reason. For example: SEN expert unavailable to attend, we could not secure a full panel in the time due to their other commitment, a panel member is unwell a day or so before the hearing, or there are parallel criminal proceedings.



Why is my appeal being combined with another appeal hearing?

This does not happen often as panel's have previously found this can lead to dissatisfaction at the hearing.

The guidance does allow for two or more reviews to be combined and dealt with in the same hearing. However, this only happens after consultation with all parties AND if the IRP considers that it would be fair and expedient to do so because the issues raised by the reviews are

- (a) the same or connected and
- (b) all parties agree.

Please note the final decision is for the IRP and not any other party or the clerk.

THE HEARING

How do I appeal

You need to complete an online form, there should be a link to the website on the letter from the GB. Please complete all sections including your reasons.

The link is: www.edap.link/myPEXappealform

You **must** set out your reasons for applying for a review (it says this clearly in the regulations under schedule 1) and, if relevant, state how you consider your child's SEN are relevant to the exclusion.



If you believe that your child's permanent exclusion was due to SEN issues you can request for a SEN expert to attend the hearing.

If you return your form stating that reasons will be given later, your form will be rejected by the panel and you may lose your chance to appeal.

The hearing

All hearings are held online allowing parents to join the hearing from their home. Or maybe a private room at work, so that you do not have to take another day off work. You need to be aware that we only send paperwork and an invitation to the primary appellant.

Who will be at the Review Hearing?

There could be around a dozen but please do not let that put you off appealing.

- You and your spouse/partner. You may also ask for a friend or legal adviser (at your cost) to attend too.
- Your son/daughter is actively encouraged to attend, after all this is about their future.
- The IRP (3 members).
- The Clerk to the IRP.

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- The panel usually has a legal advisor.
 - The HeadTeacher/Principal of your child's school/academy/PRU. Other senior leaders such as the SENCO may also be present. Occasionally, the school may have a legal representative.
 - A Governor of the school.
 - Any witnesses called by either the school/academy/PRU or by you may attend for part of the hearing.
 - If school/PRU is maintained by the LA, an LA representative may attend.
 - If school is an Academy, an LA representative may attend at your request but may only speak with the consent of the Academy Governors.
 - A SEN expert, but you must request this on the online appeal form. You should be aware that this person advises the panel on SEN issues, he/she does **NOT** act as an advocate for the family.
 - If attending, and where relevant, the alleged victim or his/her representative may be present for part of the review hearing.
 - Sometimes there is also an observer. This may be someone who is training to be an Independent Review Panel member or Clerk to Panel. You will be asked if you object to an observer being present for any part of your review hearing.

Who is the SEN expert?

The SEN expert will be someone with appropriate expertise and experience of special educational needs



(SEN). **HE/SHE DOES NOT ACT AS AN ADVOCATE FOR THE FAMILY.** You **MUST** request an SEN expert at the same time that you lodge your appeal.

Although the SEN expert may work for the LA, he/she will not have had any direct connection with your child or the incident leading to the exclusion. The SEN expert will not assess your child but will advise the panel on how SEN matters may have affected the decision to permanently exclude. He/she must act independently and not act in such a way that might raise doubts about his/her ability to act impartially.

I need an interpreter/signer

You must request this on the online Appeal form. However, many parents feel more comfortable if someone they know, such as a relative or friend, translates at the hearing. **The choice is yours.**

Should I attend the review?

Yes: if at all possible: You are best person to tell the IRP why you think the decision to permanently exclude your child was flawed.

Can I bring someone with me to help me?

Yes: You may bring a family member or friend, character witness or a representative with you. They can simply support you or speak on your behalf. Any legal representative is at your cost.



You will need to tell the Clerk in advance of the Review who you will be bringing and in what capacity.

Who are the IRP members?

The IRP will have three members:

- One member must be a lay person. This is someone who has never worked in a school in a paid capacity (disregarding any experience as a school governor or volunteer). This person will Chair of the panel.
- One member must be, or have been within the previous five years, a Head Teacher/Principal;
- One member must be, or have been a governor of a school provided they have served in that capacity for at least 12 consecutive months within the last 5 years, and they have not been a teacher or Head Teacher during the last 5 years;

Anyone who has, or has had, a connection with the school or with any of the parties involved in the case cannot sit on the IRP. All IRP members and the clerk must be trained and re-trained every two years.

What powers does the IRP have?

The IRP can decide to:

- uphold the exclusion i.e. refuse your application; or
- recommend that the governing body reconsiders their decision; or

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- quash the decision and direct that the governing body reconsiders their decision.

The IRP does not have any power to reinstate your child directly, but the governors at a subsequent meeting can. The panel had no powers to “wipe the excluded pupil’s slate clean”.

The panel will consider your review. The IRP may only quash the decision on the principles applicable to judicial review. Therefore, the IRP should apply the following tests:

- **Illegality** e.g. did the Headteacher/Principal act outside the scope of his/her legal powers in taking the decision to exclude?
- **Irrationality** e.g. was the decision of the Governors or the Headteacher so unreasonable that it was not one a sensible person could have made.
- **Procedural Impropriety** - was the process of exclusion and/or the Governors’ consideration so unfair or flawed that justice was clearly not done?

Procedural impropriety means not simply a breach of minor points of procedure but something that has a significant impact on the quality of the decision-making process. The Department for Education’s Guidance gives the following examples:

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- Bias;
 - Failing to notify parents of their right to make representations;
 - Governors/Academy Trust 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 e.g. if the Head Teacher who took the decision to exclude were also to vote on whether to uphold the exclusion.

The IRP may also.

- Direct the governing body to place a note on your child's educational record;
- In the case of a governing body's decision, the panel may order that a readjustment be made to the school's budget of £4000. (or in the case of an Academy, order that the Academy must make a £4000 payment directly to its local authority) if following a decision by the IRP to quash the original decision, the governing body academy trust:
 - a. reconsiders the exclusion and decides not to reinstate your child (where you want your child to be reinstated), or
 - b. fails to reconsider the exclusion within 10 school days after notification of the IRP's decision.



Should I bring my son/daughter to the review?

Yes: Your son/daughter should be encouraged to attend so their voice can be heard.

What happens if I do not attend the review?

Due to the statutory deadline in place i.e. the IRP must meet within 15 school days of your review request being received by the Clerk, the Panel will meet whether you attend or not.

If you have a genuine reason at least two days **BEFORE** the hearing for not being there, the IRP may consider adjourning the review. However, if you provide no genuine reason and offer no explanation for your absence, the IRP will carry on with the review in your absence.

What information will be available at the review?

The Clerk will circulate all the paperwork to all parties before the hearing. You and the school/academy will see the same paperwork as the panel.

This may include:

- your application for review;
- the Governing Body (GB) decision letter;
- the minutes of the GB meeting;
- the exclusion letter;
- the Headteacher's/Principal's report to the GB;

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- any policies or documents that the GB was required to consider when making their decision;
 - witness statements (these should be signed and dated, but can be anonymised if there is fear of retaliation)
 - physical evidence could also be made available if your child was caught with a weapon in their bag while in school.
 - any additional evidence you send to the Clerk at least 5 working days before the hearing.

If documents have been requested and not provided, the Panel will have to consider adjourning the hearing.

Is late paperwork allowed?

Submitting paperwork on the day of the review is unlikely to be accepted unless it is a short letter or report. Please let the Clerk have any additional paperwork at least 5 working days before the hearing.

Can new evidence be put forward?

Yes: Both sides can, but the school cannot introduce new reasons for permanently excluding your child. But do bear in mind deadlines.

Can IRP's be combined?

Yes: If your child and another pupil were permanently excluded for the same incident the two Reviews can be combined. This is a decision for the IRP.



How is the IRP conducted?

The key aim is to apply the rules of natural justice so all parties are able to put their case and the review is conducted in such a way that no outsider could consider there was any unfairness or bias.

You are reminded that the role of the panel is to review the decision of the Governors. It is **NOT** a rehearing.

Although hearings run to an agenda, the panel will be keen to make the hearing as informal as possible within the parameters of the guidance.

The structure of the review will be:

- a. Chair's Introduction.
- b. Case for the school/academy. This will be delivered by the Governors and the Headteacher/Principal.
- c. Questions to the school from the panel.
- d. Questions to the school from the appellant (you).
- e. Alleged victim's statement (if present).
- f. Parent's case including your child's view.
- g. Questions to parent's and pupil from the panel
- h. Questions to parent's and pupil from the school
- i. Local Authority view (for Academies with the agreement of the Academy Governors).
- j. The SEN Expert gives a view.

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- k. Questions to the SEN expert from the panel and parents.
 - l. Summing up the school
 - m. Summing up Parent's.
 - n. Closing questions
 - o. Close of meeting

What standard of proof do the IRP apply?

The IRP will apply the civil standard of proof i.e. on the balance of probabilities; it is more likely than not that a fact is true.

The IRP does not apply the criminal standard of proof of “beyond reasonable doubt”. The standard that the police use is very different.

While the IRP would take into account that the police had decided not to prosecute that would not necessarily nullify the Headteacher's or Principal's decision to permanently exclude.

Police Involvement and Parallel Criminal Proceedings

Just because the police are involved in the incident or parallel criminal proceedings are taking place does not mean that the IRP cannot progress the Review. The IRP would need to consider whether:

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- any charge has been brought against the pupil and, if so, what the charge is;
 - relevant witnesses' statements 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
 - an adjournment or declining to adjourn, might result in injustice.

WHAT HAPPENS AFTER THE HEARING

What happens next?

The three members of the panel will deliberate without the school being present. The Clerk remains to take notes and offer any legal or procedural advice.

The panel draft their final report which you will get posted to you between 5 and 10 working days after the hearing.

When will I hear the outcome of my review?

The Clerk will e-mail the result by the next working day. A full letter will usually follow with the IRP's reasons within a further 10 working days.

Is the IRP's decision binding on anybody?

Yes. The family, Governors, Head Teacher/Principal and the LA are bound by the IRP's decision.



I have heard from the Clerk that my review will go back to the governors.

Within 10 days of the longer letter, the governors will meet to review your case. The duty is on the Governing Body as to how this meeting is organised. The Guidance does not allow parents to attend this meeting unless they wish to invite you. This has been backed up by the courts. After the governors have deliberated, the governors will write to you within a few days.

COMPLAINTS

What can I do if I am unhappy about the review process?

For schools other than Academies you can ask the Local Government and Social Care Ombudsman (LGSO) to investigate. This is not a right of appeal as the LGSO can only investigate due written complaints about procedural flaws in how the Review was conducted. You have 6 months in which to approach the LGSO. The LGSO cannot overturn the panel's decision or re-instate your child back to school.

You can employ a solicitor to seek a Judicial Review in the High Court. This must be done within 3 months but please be aware that this could be costly. Once again, the Judge cannot re-instate your child back to school.



The Guidance does not offer academy appellants the right to complain to another body. However, the Government's website does offer a route to make a complaint about the whole process, but not the decision.

In addition as previously advised you can apply for a Judicial Review through a solicitor.

Both the LGSCO and DfE can be reached from this link:

<https://www.gov.uk/schools-admissions/complain-about-the-appeals-process>

Who can give me advice?

The Clerk can advise on procedural matters, but not about how to present your case.

CORAM, a children's charity also offers advice

www.coram.org.uk

Search for the School Exclusion Hub.

Further appeal?

There is no right of appeal against the IRP's decision.





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