

GUIDANCE FOR SCHOOLS AND
PUPIL REFERRAL UNITS
ON THE
EXCLUSION OF PUPILS

Pupil Access & Support Service

Norfolk County Council

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Policy Guidance and Procedures on Exclusion from Schools and Pupil Referral Units

Introduction

Norfolk head teachers, teachers in charge of a Pupil Referral Unit (PRU), governing bodies, LEAs and Independent Appeal Panels must by law have regard to the following guidance when making decisions on exclusions and administering the exclusion procedure. This means that, whilst the guidance does not have the force of statute, there is an expectation that it will be followed unless there is good reason to depart from it. The guidance is not exhaustive and judgments will need to take account of the circumstances of individual cases.

These procedures apply to all Norfolk maintained schools and Pupil Referral Units and all pupils in them, including any who are below or above compulsory school age. They have applied to maintained nursery schools since September 2003.

They do **not** apply to independent schools, city technology colleges, academies, or sixth form colleges, which have separate exclusion procedures. Academies, however, must have exclusion procedures which are consistent with those set out in this guidance.

The procedures represent the most recent legislation (2003). This guidance is based on the revised version of *Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units*, which was issued in October 2004 (Ref: DfES/0354/2004), and which replaced Chapter 6 and Annex D of Circular 10/99, issued in July 1999, and the letters subsequently amending it.

It takes account of recent changes in legislation and includes new material on preventing, and alternatives to, exclusion and reintegrating excluded pupils (replacing chapter 5 of Circular 11/99), which draw upon the good practice reported to the Department by schools and LEAs. It also includes sections on unofficial exclusions and the ways in which pupils can legally be removed from school premises. There is a final part on the arrangements for money to follow permanently excluded pupils; this replaces the supplement to Circular 11/99 issued in November 1999.

Definitions

In this guidance, 'parent' means anyone who has parental responsibility for, or care of, a child. In cases of exclusion where the pupil is 18 or over, 'pupil' should be read for 'parent'. Where a child is the subject of a care order, the local authority that has parental responsibility for the child is entitled to determine to what extent the parents exercise their parental responsibility. Throughout this guidance, references to a school should be read as referring

equally to a PRU; where guidance applies differently to PRUs then this will be indicated clearly.

Where the parents of an excluded pupil do not speak, or have a good understanding of, English, correspondence and documentation relating to the exclusion should be translated into their mother tongue. In such cases the school and/or the LEA should arrange for an interpreter to be present at any meetings with the parent about the exclusion.

1. Early Intervention to Promote Positive Behaviour

POLICIES AND STRATEGIES TO ADDRESS BAD BEHAVIOUR

Early identification and intervention are key factors in promoting positive behaviour and in the prevention of exclusion from school.

- 1.1 All Norfolk schools and Pupil Referral Units have in place a range of policies and strategies to address bad behaviour which may lead to a pupil being excluded. Head teachers and other key senior staff at each school need to be able to identify patterns of behaviour and pupil response which indicate that a pupil requires support of a varying nature and level.

SUPPORT AVAILABLE

Every effort needs to be made to avoid longer exclusions and head teachers need to be able to demonstrate that the school has taken all reasonable measures to meet the needs of a particular pupil.

- 1.2 There is a wide range of support available from within the education authority services including The Pupil Access and Support Service (Attendance and Behaviour Support, Educational Psychology and Specialist Support, Special Needs, Attendance Team, Pupil Referral Units, Sensory Support Service and Exclusion Advice), Traveller Support Service, School Admissions, Education Advisory Service, Governor Support Service, and others. These services work closely with schools to support teachers in providing the best education and support for staff and children.

ADDITIONAL MEASURES

Many schools find Pastoral Support Programmes (PSPs) useful to help pupils better manage their behaviour. It is appropriate in particular for those pupils whose behaviour is deteriorating rapidly.

- 1.3 For those at risk, additional measures could include:
- meeting with parents/carers
 - change of class or setting
 - curriculum alternative at key stage 4
 - advice and support from the Area Attendance and Behaviour Team/School Support Team
 - temporary support from the Pupil Referral Units
 - managed move to another school with the consent of all parties involved
 - assessment of SEN
 - allocation of key worker support such as

Connexions PA, mentor, education social worker, psychologists, etc

- Pastoral Support Programmes
- Involvement of Youth Justice Service, health, social services etc.

AVOIDING EXCLUSION

It is essential that head teachers who are considering the exclusion of a pupil can demonstrate that they have considered and attempted alternatives to try to avoid the exclusion. Whether or not there is a PSP in place for a pupil, LEAs should, where possible, provide active support for head teachers.

SECTION 17 of the Crime and Disorder Act (1998) makes reference to the proven link between young people who are permanently excluded from schools and serious crime and their likelihood of re-offending. The statutory obligation imposed on LEAs under this Act means that account needs to be taken of reducing crime and disorder in all its work. Therefore the co-operation of schools and head teachers is important in view of the likely impact that exclusions will have on local levels of crime and disorder.

1.4 Alternatives to exclusion

A number of different alternatives should be considered by Norfolk head teachers in response to a serious breach of a school's behaviour policy. Some of these could include:

- a) **internal seclusion**
- b) **mediation**
- c) **restorative justice**
- d) **managed move**

- 1.5 Internal seclusion** (also known as internal exclusion), which can be used to defuse situations that occur in school that require a pupil to be removed from class but may not require removal from the school premises. The seclusion could be to a designated area within the school, with appropriate support and supervision, or to another class on a temporary basis, and may continue during break periods. Internal seclusion should be for the shortest time possible and should be subject to review. Learning Support Units should not be used to provide internal seclusion.

1.6 **Mediation** through a third party, usually a trained mediator, is another approach that may lead to a satisfactory outcome, particularly where there has been conflict between two parties e.g. a pupil and teacher, or two pupils.

1.7 **Restorative justice**, which enables the offender to redress the harm that has been done to a 'victim', and enables all parties with a stake in the outcome to participate fully in the process. This has been used successfully to resolve situations that could otherwise have resulted in exclusion. All professionals involved in the process need to be thoroughly involved and this can only work with the consent of all parties.

A managed move is not an exclusion. In line with other strategies it is a positive attempt to avoid the need for exclusion. It actively supports the pupil into another school with the help and co-operation of all parties involved.

1.8 **Managed move** to another school to enable the pupil to have a fresh start in a new school. The head teacher may ask another head teacher to admit the pupil. This should only be done with the full knowledge and co-operation of all the parties involved, including the parents, governors and the LEA, and in circumstances where it is in the best interests of the pupil concerned. In order to fully address the pupil's difficulties the LEA and schools have a protocol* in place to assist the process to create a supportive package for the pupil. Parents should never be pressured into removing their child from the school under threat of a permanent exclusion, nor should pupils' names be deleted from the school roll on disciplinary grounds unless the formal permanent exclusion procedures set out in statute and in this guidance have been adhered to.

**The LEA's 'managed move' protocol is currently subject to review.*

2. The Use of Exclusion

TYPES OF EXCLUSION

Fixed term exclusions should be for the shortest time possible, bearing in mind that exclusions of more than a day or two make it more difficult for the pupil to reintegrate into school. The Exclusion Team at County Hall and Area Attendance and Behaviour Officers can advise head teachers on how other schools in the authority have dealt with similar exclusions.

A pupil cannot be excluded for an indefinite period and neither should parents be asked to keep their child at home "voluntarily" for any length of time.

2.1 There are three types of exclusion. These are:

- **Lunch time** exclusions which may not total more than 90 in any one academic year
- **Fixed period** exclusions which last for a specific number of days but are limited to a total of 45 days in any one academic year for an individual pupil, thus:
 - Fixed period exclusions of 5 days and under;
 - Fixed period exclusions of between 6 and 15 days;
 - Fixed period exclusions of 16 days and over.
- **Permanent** exclusion where the individual pupil will not be allowed to return to the school again, unless he/she is reinstated by a meeting of the Governing Body.

If the head teacher is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and the pupil is being removed from the school site for that reason, formal exclusion is the only legal method of removal. **Informal or unofficial exclusions are illegal** regardless of whether they are done with the agreement of parents or carers.

FIXED PERIOD EXCLUSIONS

Fixed term exclusions must be finite and the return date made clear in the letter of exclusion. Any reintegration package involving less than full time schooling must have parental approval.

2.2 In all fixed period exclusions, the pupil must return to school immediately after the period of exclusion has expired. Short, part-time or "package" arrangements can only be implemented with the full agreement of parents and must have clear plans for the length of time for which the arrangements will apply.

**SETTING OF WORK FOR
THE PUPIL**

- 2.3 Schools are responsible for the setting and marking of work during all fixed period exclusions. Failure to complete work, however, does not constitute a reason for refusing to allow the pupil to return to school.

**PERMANENT
EXCLUSIONS AND THE
SCHOOL ROLL**

- 2.4 In all permanent exclusions, the pupil's name must remain on the school roll until the **effective date** is reached. This can be:

a) the 17th school day after parents or carers are notified of the decision of the Governing Body to uphold the permanent exclusion. **This is the date of the meeting of the Governing Body plus 17 school days (to allow 2 days for postage)**

or

b) the date the LEA receives written notification that the parent does not wish to go to Independent Appeal

or

c) the date of receipt of a letter from an Independent Appeal Panel upholding the permanent exclusion. **This is the date of the Appeal plus 2 school days**

or

d) the date a pupil goes onto another school's roll if it is before a, b, or c above.

**REPORTING
EXCLUSIONS**

- 2.5 For the purposes of the DfES exclusion returns, schools should report exclusions as occurring in the academic year in which the exclusion was imposed by the head teacher, not the year when the meeting of the Governing Body was held.

**WHEN EXCLUSION
SHOULD NOT BE USED**

2.6 Exclusion should not be used for:

- a) minor incidents such as failure to do homework or to bring dinner money;
- b) poor academic performance;
- c) lateness or truancy;
- d) pregnancy;
- e) breaches of school uniform rules or rules on appearance (for example, relating to jewellery, body-piercing, hairstyles, etc), except where these are persistent and in open defiance of such rules;
- f) punishing pupils for the behaviour of their parents, for example where parents refuse, or are unable, to attend a meeting.
- g) to effect a change of placement especially for pupils with a statement of special educational needs. If the placement is considered not appropriate an early annual review should be convened.

**EXCEPTIONAL
CIRCUMSTANCES**

2.7 Removal of pupils from school in exceptional circumstances

Pupils' behaviour outside school on school business – for example, on school trips, away school sports fixtures, or work experience placements - is subject to the school's behaviour policy. Bad behaviour in such circumstances should be dealt with as if it had taken place in school. For behaviour outside school, but not on school business, a head teacher may exclude a pupil if there is a clear link between that behaviour and maintaining good behaviour and discipline among the pupil body as a whole. This will be a matter of judgment for the head teacher. Pupils' behaviour in the immediate vicinity of the school, or on a journey to or from school, can be grounds for exclusion.

There may be exceptional circumstances in which head teachers need to remove pupils from the school site when exclusion would be illegal. An example is where a pupil is accused of committing a serious criminal offence which took place outside the head teacher's jurisdiction (perhaps during a weekend or school holiday and off the site) and/or there is insufficient evidence to warrant exclusion. The note opposite makes it quite clear that a head teacher would be unable to exclude a pupil in this situation. However, there may be compelling reasons for removing that pupil from the school premises pending the outcome of a police investigation. (Head teachers may wish to discuss such cases with the Area

for exclusion.

School staff who intervene to control the behaviour of pupils on public transport or in public places should be mindful of the fact that they are not empowered to use measures beyond their normal common law powers as citizens.

Attendance and Behaviour Officers).

A head teacher can authorise leave of absence for a fixed period, with the parents' agreement, or, exercising powers delegated by the governing body under section 29(3) of the Education Act 2002, can arrange for the pupil to be educated elsewhere (without parental consent if deemed necessary, although the parents should be notified). However, such education elsewhere must be arranged for the purposes of receiving any instruction or training included in the secular curriculum of the school. Whether the pupil has been granted leave of absence or is being educated elsewhere, the school must ensure that the pupil's full-time education continues while off site. Any such arrangements do not amount to a formal exclusion from school and should be kept under periodic review.

HEALTH AND SAFETY

2.8 Removal of Pupils on Health and Safety Grounds

Advice should be sought from the nominated Health Adviser to the school when these circumstances arise.

If difficulties persist, the head teacher should seek advice from relevant professionals, carry out a risk assessment and, if appropriate, request a review of the pupil's statement.

Headteachers may send a pupil home, after consultation with the parents, on health and safety grounds in circumstances where he or she poses an immediate and serious risk to the health or safety of other pupils or staff. **This may only be done for medical reasons**, perhaps due to a diagnosed illness or a diagnosed mental health condition leading to disruptive behaviour. It would equally be appropriate where a pupil is known to be suffering from a notifiable disease which others might catch. This is not an exclusion and should be for the shortest possible time.

3. The Role of the Head Teacher

WHO CAN EXCLUDE

- 3.1 Only the head teacher, or teacher in charge of a PRU, (or, in the absence of the head teacher or teacher in charge, the acting head teacher or teacher in charge) can exclude a pupil.

WHY EXCLUDE?

Head teachers contemplating permanent exclusion should be satisfied that the offence is of sufficient seriousness to merit the ultimate sanction. The Exclusion Team at County Hall and Area Attendance and Behaviour Officers are willing to advise headteachers how other schools in the authority have dealt with similar incidents.

Where permanent exclusion is not for a one off serious offence, a range of strategies including a Pastoral Support Plan should have been tried and seen to fail.

- 3.2 Head teachers are reminded that a decision to exclude a pupil should be taken only:

- a) in response to serious breaches of the school's behaviour policy;
- b) if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school;
- c) in most cases of permanent exclusion (see 3.3 below for exceptions) once a range of alternative strategies (a Pastoral Support Plan involving outside agencies) have been tried and failed.

Where exclusion is permanent it is an acknowledgement by the school that it has exhausted all available strategies and should normally be used as a last resort.

EXCLUSION FOR FIRST OR 'ONE OFF' OFFENCE

Head teachers should consider whether or not to inform the police where such a criminal offence has taken place. They should also consider whether or not to inform other agencies, e.g. Youth Offending Teams, social workers, etc.

- 3.3 There will, however, be exceptional circumstances where, in the head teacher's judgement, it is appropriate to permanently exclude a child for a first or 'one off' offence.

These might include:

- a) serious actual or threatened violence against another pupil or a member of staff;
- b) sexual abuse or assault;
- c) supplying an illegal drug;
- d) carrying an offensive weapon.

Where a pupil has been excluded for any of the above offences or persistent and defiant misbehaviour, including bullying (which

includes racism or homophobic bullying) or repeated possession and/or use of an illegal drug on school premises, the Secretary of State would not normally expect the Governing Body to reinstate the pupil.

Governing Bodies must have regard to the guidance. Any departure from the guidance must be recorded. The reasons for the decision to be taken to disregard the guidance must also be recorded.

(The word 'normally' is important. The Secretary of State's guidance is only guidance, and while Governing Bodies may view this guidance as a starting point, they must not be fettered in their discretion in individual cases, and should carefully consider the particular details and/or mitigating circumstances in all cases before reaching a decision.)

CONSIDERATION TO IMPOSE AN EXCLUSION

Exclusion should not be imposed in the heat of the moment, unless there is an immediate threat to the safety of others in the school or the pupil concerned.

Witness statements can form an essential element in a school's case. The Governing Body can agree to the removal of students' names to preserve anonymity.

It is essential that pupils facing exclusion know the details of the case against them and have the chance to vindicate themselves. For this reason the head teacher should whenever possible interview the student before exclusion is imposed in order to gain his/her version of events.

Head teachers must be careful not to discuss an exclusion with members of the Governing Body who will attend the meeting at any time prior to the meeting.

BALANCE OF PROBABILITIES

3.4 Before deciding whether to exclude a pupil, either permanently or for a fixed period, the head teacher should:

- ensure that a thorough investigation has been carried out and take, or have taken, all relevant witness statements, duly signed and dated;
- consider all the relevant facts and firm evidence available to support the allegations, taking account of the school's behaviour and equal opportunities policies. If there is doubt whether the pupil actually did what is alleged, the headteacher should not exclude the pupil;
- allow the pupil to give his or her version of events;
- check whether the incident may have been provoked, for example by bullying, including homophobic bullying, or by racial or sexual harassment; and
- if necessary, consult others, but not anyone who may later have a role in reviewing the head teacher's decision, for example a member of the governing body.

The standard of proof to be applied is the balance of probabilities, i.e. if it is more probable than not that the pupil did what he or

she is alleged to have done, the head teacher may exclude the pupil. However, the more serious the allegation, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard to be applied, but it does mean that when investigating more serious allegations head teachers will need to gather and take account of a wider range of evidence (extending in some instances to evidence of the pupil's past behaviour) in determining whether it is more probable than not that the pupil has committed the offence.

Exclusion should not be used if alternative solutions are available.

A school's written behaviour policy should always be consulted, as it is only for serious breaches of school discipline that a pupil can be excluded. Head teachers should bear in mind one of the factors which Appeal Panels must consider is whether a school has adhered to its published policy. Appeal Panels must also consider 'the broader interests of other pupils and staff in the school as well as the excluded pupil'; and 'where other pupils were involved in the same incident and were also disciplined, the fairness of the permanent exclusion in relation to sanctions imposed on the other pupils involved'.

POLICE AND EXCLUSION

(See APPENDIX 5)

3.5 Parallel police proceedings:

Where a school related incident is also the subject of a police investigation, guidance makes clear that headteachers should not delay the decision whether or not to permanently exclude. In these circumstances the judgement should be made on the basis of the evidence available.

In these circumstances, the Governing Body has no power to postpone its meeting beyond prescribed time limits.

EDUCATIONAL PROVISION FOR LONG FIXED TERM EXCLUSIONS (OVER 15 DAYS)

Head Teachers should discuss/seek advice from the Area Attendance and

3.6 Head teachers considering a pupil for a single block of more than 15 school days must plan:

- to enable the pupil to continue their education;
- what educational arrangements will best

Area Attendance and Behaviour Officer regarding pupils excluded for more than 15 school days.

help the pupil reintegrate into the school at the end of the exclusion.

CONTACT AND NOTIFICATION OF EXCLUSIONS

As detailed information may take time to collate and to avoid delayed notification of the exclusion, it could, if necessary, be provided in a prompt follow-up letter.

3.7 In all cases of exclusion, the headteacher must:

- try to contact parents by telephone without delay to inform them of the exclusion;
- send a letter to the parents, copy to the LEA's Exclusion Team (**See APPENDIX 2** for information that should be contained in the letter)
- Within one school day inform the Governing Body through the agreed channels within the school of:
 - a) All permanent exclusions;
 - b) All fixed term exclusions for more than 5 school days (or more than 10 lunchtimes) in any one term;
 - c) exclusions which would result in the pupil missing a public examination.
- Send copies of **all** exclusion notification forms and exclusion letters to the LEA Exclusion Team **and** the Area Attendance and Behaviour Officer **as soon as possible**. It is important that all details on the form are completed as this information is required to inform the DfES.

EXTENDING OR CONVERTING EXCLUSIONS

Headteachers can convert a fixed term exclusion only as a result of an investigation that reveals a wider and more serious pattern of offending than seemed the case when a fixed term was imposed. Fixed term exclusions should not be imposed simply to allow the school more time to reach a decision on the basis of

3.8 Extending a fixed term exclusion or converting a fixed term to a permanent exclusion.

Exceptionally, a headteacher, following further discussions and consideration of more extensive information and within a short timescale of no more than 6 days, may decide to extend a fixed term exclusion or convert a fixed term to a permanent exclusion. In these circumstances the headteacher should notify the parent immediately in writing explaining

evidence available at the point of exclusion.

The head teacher may withdraw an exclusion that has not yet been reviewed by the governing body.

the parent immediately, in writing, explaining the reasons for the decision. Once again, copies of the letter of exclusion and exclusion form should be sent to the Exclusion Team and Area Attendance and Behaviour Officer.

A permanent exclusion in this case would take effect from the date of the letter to parents informing them of the decision.

LENGTH OF EXCLUSION

OFSTED inspection evidence suggests that 1-3 days is often long enough to secure the benefits of exclusion without adverse educational consequences.

3.9 Length of fixed period exclusions

The regulations allow head teachers to exclude a pupil for one or more fixed periods not exceeding 45 school days in any one school year. The limit of 45 school days applies to the pupil and not to the institution. Therefore, any days of fixed period exclusion served by the pupil in any school or PRU in the same school year will count towards the total. It is important, therefore that, when a pupil transfers to a new school during the academic year, records of the fixed period exclusions a pupil has received so far during the current academic year are also transferred promptly to the new school. However, individual fixed period exclusions should be for the shortest time necessary, bearing in mind that exclusions of more than a day or two make it more difficult for the pupil to reintegrate into the school.

Exclusions may not be given for an unspecified period, for example until a meeting can be arranged. Such a practice amounts to an indefinite exclusion for which no legal arrangements exist.

EXCLUSIONS FROM PUPIL REFERRAL UNITS

Exclusions from PRUs now run on exactly the same lines as exclusions from mainstream schools, with the exception that permanent exclusions go straight to an Independent Appeal Panel.

3.10 Pupil Referral Unit Exclusions. The LEA must review fixed period exclusions from PRUs and consider any representations made by parents. In the case of one or more fixed period exclusions (including lunchtime exclusions) totalling more than 15 school days in any one term, where reinstatement is a practical option, the LEA must consider whether to reinstate the pupil. In the case of such exclusions the LEA must allow oral representations to be made by the parent and

teacher in charge and the representations must be heard within the same time-limits as apply to governing bodies, set out in paragraph 4.4.

EXCLUSION AT LUNCHTIME

The Secretary of State does not expect lunchtime exclusion to be used for a prolonged period. In the long run another strategy for dealing with the problem should be worked out.

- 3.11 **Lunchtime exclusion.** Pupils whose behaviour at lunchtime is disruptive may be excluded from the school premises for the duration of the lunchtime period. A lunchtime exclusion is a fixed period exclusion (deemed to be equivalent to one half of a school day) and should be treated as such, and parents have the same right to be given information and to make representations. A lunchtime exclusion for an indefinite period, like any other indefinite exclusion, would not be lawful. Arrangements should be made for pupils who are entitled to free school meals to receive their entitlement which may mean, for example, providing a packed lunch.

Where a parent/carer cannot or will not pick up a child for the lunchtime exclusion, headteachers should have due regard for the pupil's safety in deciding which action to take.

WHEN EXCLUSIONS START

- 3.12 In most cases an exclusion starts on the following school day. However, where a student is sent home **before the lunchbreak** to return the next day, schools should report a one day exclusion to the LEA. Where a student is sent home **after the lunchbreak** to return the next day, schools should report a half day exclusion.

A child should only be sent home with the knowledge and consent of the parents. This applies to all exclusions, the only exception being when a student is out of control and represents a danger to the safety of himself or others.

REINTEGRATION FOLLOWING EXCLUSION

An exclusion must not be extended if parents do not attend, or postpone attending a reintegration meeting.

- 3.13 **Reintegration meetings.** A reintegration meeting with parents at the end of a fixed period exclusion is clearly good practice. But the exclusion should not be extended if the parents do not attend.

SEN AND EXCLUSION
(PUPIL WITH
STATEMENT)

When a pupil with a statement is in danger of permanent exclusion the school should urgently convene an interim Annual Review of the Statement.

School governing bodies have a statutory duty to do their best to ensure that the necessary provision is made for any pupil who has SEN. Early identification and intervention, accurate assessment and the arrangement of appropriate provision to meet pupils' SEN usually leads to better outcomes.

- 3.14 **Pupils with a Statement of Special Educational Need.** Guidance stresses that 'only in the most exceptional circumstances' should schools exclude pupils with a Statement of SEN. All practicable means should be tried to maintain the pupil in school and where a pupil is still in danger of permanent exclusion, **the school should liaise with the LEA about initiating an interim annual review of the statement.**

Where a pupil with SEN is permanently excluded, the headteacher should use the time between the date of the exclusion and the meeting of the Discipline Committee to work with the LEA to see whether more help can be made available, or in cases of statemented pupils, whether the statement can be changed to name a new school. **Where either of these options is possible, the headteacher should normally withdraw the exclusion.**

SEN AND EXCLUSION
(SCHOOL ACTION
PLUS)

- 3.15 **Pupils on School Action Plus and those who are being assessed for a statement.** Schools are advised to try every practicable means to maintain the pupils in school, seeking LEA and other professional advice for pupils on School Action or School Action Plus or, where appropriate, asking the LEA to consider carrying out a statutory assessment.

SEN AND EXCLUSION
(PUPILS WITH
DISABILITIES)

The Disability Discrimination Act gives disabled pupils (including ADHD and ODD) added protection from exclusion.

- 3.16 **Disabled pupils.** Schools have a legal duty under the Disability Discrimination Act 1995, as amended, not to discriminate against disabled pupils by excluding them from school because of behaviour caused by their disability. This applies to both permanent and fixed period exclusions. The definition of disability under the Act covers pupils with physical, sensory, intellectual or mental impairments. Discrimination means treating disabled pupils less favourably than other pupils without justification. It also means failing to take reasonable steps to ensure that disabled pupils are not placed at a substantial disadvantage compared to their non-disabled peers. What constitutes a reasonable step will depend on the circumstances of each case. The Disability Rights Commission (DRC) has published a

Code of Practice which explains and illustrates schools' duties to disabled pupils, including in relation to exclusions. Schools, and those involved in exclusion decisions or appeals, are strongly recommended to read the Code of Practice for Schools available from the DRC or on their website (www.drc-gb.org).

Appeals against permanent exclusion, where discrimination is alleged to have taken place, or the disabled pupil has been placed at a substantial disadvantage by the exclusion procedures, will be heard by the Independent Appeal Panel. Claims alleging discrimination in respect of fixed period exclusions will be heard by the SEN and Disability Tribunal (SENDIST). Schools will be required, in disability discrimination claims, to demonstrate that their actions are justified and that there are no reasonable adjustments to their policies and practice they might have made to prevent the incident which led to the exclusion. Since many disabled pupils will also have special educational needs, schools will need may wish to consider the action they have taken to address those needs in this context.

EXCLUSION AND ETHNIC MINORITIES

Schools must ensure that pupils are not discriminated against on racial grounds. Exclusions should be monitored by ethnicity.

3.17 Students from ethnic minorities. Legislation requires that steps are taken by schools to ensure they will not discriminate against pupils on racial grounds in making a decision to exclude. Schools are advised to monitor exclusion by ethnicity, to ensure some groups are not treated more harshly than others. Schools are also required to assess whether policies that lead to sanctions including exclusion have a disproportionately adverse impact on pupils from certain racial groups. If such an impact is identified and cannot be justified, the policy should be revised.

The Commission for Racial Equality has prepared a *Code of Practice on the Duty to Promote Race Equality* and a non-statutory guide *The Duty to Promote Race Equality: A Guide for Schools*. It is strongly recommended that schools and all those involved in exclusion decisions or appeals read the Code of Practice or non-statutory guide. These can be obtained

from the Stationery Office. See the CRE's website for further information: www.cre.gov.uk .

**EXCLUSIONS AND
CHILDREN LOOKED
AFTER IN PUBLIC CARE**

Schools are urged to be especially sensitive to exclusion issues where children in public care are involved. Schools should try every practicable means to maintain the pupil in school, involving social care staff and multi-professional teams at the earliest opportunity in working with school to avoid exclusion.

Even where Norfolk County Council does not have parental responsibility, the child's social worker should be informed about any exclusion. The designated teacher for looked after children will be able to advise on the legal status of pupils in public care in the school.

3.18 Children in Public Care. Children in public care are especially at risk of low attainment in school and exclusion. Schools need to be especially sensitive to exclusion issues where children in public care are concerned. Schools should try every practicable means to maintain the child in school and should seek LEA and other professional advice as appropriate. The Area Education Co-ordinator for Children Looked After may be best placed to do this. Social Services should in all cases be involved at the earliest opportunity in working with the school to avoid the need to exclude the pupil.

In cases where a child in public care is excluded, anyone who is legally defined as a parent will have the right to make representations and to appeal. The definition of a parent for the purposes of the Education Acts is broadly drawn and includes any person who has parental responsibility (which includes the Local Authority where they have a care order in respect of the child) and any person (for example, a foster parent) with whom the child lives. These are in addition to the child's birth parent(s). This means that there could be a number of people whom the school has to notify about exclusions and who will have the right to make representations and appeal.

4. The Role of the Governing Body and Clerk to the Governing Body

SETTING UP A GOVERNORS MEETING

- 4.1 The responsibility of the Governing Body to set up a meeting is clearly set out in *Improving Behaviour and Attendance: Guidance on Exclusion from School and Pupil Referral Units* (revised October 2004) – DfES/0354/2004.

MEMBERSHIP AT THE MEETING

Governors may not attend a meeting if they have been in any way involved with the incident leading to exclusion. This, however, is rare and there is no reason why a governor who has served at a meeting reviewing a previous fixed term exclusion may not then serve on the Governor's meeting reviewing permanent exclusion.

- 4.2 The Governors at the meeting should comprise of three to five members (not including the head teacher). In setting up the meeting the governing body should aim to include a range of different types of governor. They should also take account of the need for members to meet quickly. Where a governor has a connection with the pupil or the incident might reasonably raise doubts about their ability to act impartially in relation to the pupil, they should not serve at that particular hearing.

PUBLIC EXAMINATIONS

- 4.3 If an exclusion would result in a pupil missing a public examination and the chair of the Governor's meeting does not think it practical for a full meeting to take place before the exam, he or she may alone consider the exclusion. The parent has the normal rights to make representations to the governors and, if possible, the chair should have the advice of the clerk and an LEA officer.

WHEN TO MEET

For exclusions of 5 days or under, the Governing Body does not need to meet but must consider any written representations from parents when next it meets.

For fixed term exclusions of between 6 and 15 days the Governing Body does not need to meet unless such a meeting is requested by the parent. A similar request can be made by a parent when the exclusion will result in the pupil missing a public examination.

For permanent exclusions and fixed term exclusions of 16 days or more the Governing Body must meet within 6 and 15 school days to review the exclusion.

- 4.4 On receiving notice of an exclusion from the head teacher, the governing body:
- a) must, in the case of a fixed period exclusion of more than 5, but not more than 15 school days in one term (which does not bring the pupil's total number of days of exclusion to more than 15 in one term), convene a meeting between the 6th and the 50th school day after receiving notice of the exclusion, to consider the exclusion, but only if the parent requests such a meeting.
 - b) must, in the case of a permanent exclusion, or a fixed period exclusion of more than 15 school days in one term, (or which brings the pupil's total number

of days of exclusion to more than 15 in one term) convene a meeting between the 6th and the 15th school day after the date of receipt of notice to consider the exclusion (model letters 3 & 4). If a pupil's total number of days of fixed period exclusion exceeds 15 school days in one term, any subsequent fixed period exclusion(s) of the pupil in the same term would again trigger the governing body's duty to consider the circumstances of the exclusion;

WHO TO INVITE

- c) must invite the parent, head teacher and an LEA officer to the meeting at a time and place convenient to all parties (but in compliance with the relevant statutory time-limits);
- d) should ask for any written statements (including witness statements) in advance of the meeting;
- e) should circulate in advance any written statements (including witness statements) and a list of those who will be present at the meeting to all parties.

Note: the legislation deems a lunchtime exclusion to be a fixed period exclusion equivalent to half a school day. This should be taken into account for the purposes of a) and b) above. For example, if a pupil were to be excluded at lunchtime for 15 school days in the same term, a) above would apply.

CLERK TO THE GOVERNORS (Appointment)

- 4.5 The Governing Body should appoint a clerk for the meeting to provide advice on the exclusions process and administration. The clerk should not be a member of the Governing Body. The clerk should be encouraged to seek guidance from the Governor Support Unit and/or the Exclusions Team at County Hall as necessary.

CLERK TO THE GOVERNORS (Role and Responsibilities)

- 4.6 **The role of the clerk is to**
 - arrange all governors' hearings at a date, time and place convenient to all parties: inform parents/carers, governors,

All paperwork must be available to all parties at least 5 school days before the meeting.

Information is confidential and is not circulated for discussion prior to the meeting but to allow familiarisation of the case to better inform the meeting.

headteacher and, in the case of an exclusion of 16 days plus or permanent, the LEA;

- ensure that all paperwork is received, collated and distributed to **all parties**, including the LEA, at least 5 school days before the meeting;
- advise the chair of the committee on procedures and the agenda;
- take accurate notes (verbatim minutes are not required) at the meeting which will need to be typed up for the pupil's file and in case of an independent appeal;
- write to the parents within one school day of the meeting outlining the committee's decision and the reasons for it;
- copy the letter at the same time to the headteacher (to be placed on the pupil's file with the exclusion letter) and to the Exclusions Team.

ARRANGING THE MEETING

Parents must be consulted as to availability and wherever possible their wishes be accommodated. Parents may be represented by a friend and/or legal representative if they so wish.

The pupil should be allowed to attend the meeting unless the Chair believes there are strong reasons for this not to happen.

4.7 **Before the meeting.** The Governors' meetings should be called at a time and place convenient to all parties (governors, parents/carers and LEA) within the allotted time limits. Every effort should be made to accommodate parents' requests (for example, should they be unable to attend on a particular day and they particularly want to attend the meeting). Parents may be accompanied by a friend and/or a legal representative and attendance by the excluded pupil is encouraged if parents consider this to be appropriate.

CIRCULATING INFORMATION

4.8 The clerk should request any written statements in advance of the meeting and circulate to all invitees. All papers should be circulated to all parties at least 5 days before the meeting. Where papers are presented late, whether by the parents or the school, it is at the discretion of the chair whether to allow them to be admitted. At Independent Appeal Panels all such papers are normally admitted

as long as they are deemed relevant, and a short break taken for all parties to read them through.

CONDUCTING THE MEETING

The meeting should be conducted along the lines of the principles laid out in paragraphs 20 and 21 in APPENDIX 4.

It should be noted that the governing body's role is to review exclusions imposed by the head teacher, who alone has the power to exclude. It follows that the governing body cannot increase the severity of an exclusion, for example by extending the period of a fixed period exclusion or by imposing a permanent exclusion in substitution for a fixed period exclusion.

- 4.9 **The meeting.** The Governing Body should decide who should act as the chair prior to the meeting. The Governors should uphold a rigorous impartiality in their approach to all parties, and never display bias in either its questioning of general comments. **It is not the role of the committee to reprimand the pupil.**

Where an allegation of misconduct against the pupil is in dispute the governing body should apply the balance of probabilities standard of proof, i.e. whether it is more probable than not that the pupil did what he is accused of (See paragraph 3.4). However, the more serious the allegation, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard to be applied but it does mean that when investigating more serious allegations, head teachers will need to gather and take account of a wider range of evidence (extending in some instances to evidence of the pupil's past behaviour), in determining whether it is more probable than not that the pupil has committed the offence. The governing body should normally allow the excluded pupil to attend the meeting and speak, if the parent requests this. They should allow the parent to be accompanied by a friend or legal representative at their request. A pupil aged 18 or over has the right to attend and to make representations in their own right.

HEARING ALL VIEWS

It is important that the meeting is held in an informal atmosphere and that the parent(s) leave the meeting feeling that they have had a fair hearing.

- 4.10 The Governors should listen to all views, according to the agreed agenda, including the pupil's view if appropriate.

LEA PERSPECTIVE

The LEA's role at the governing body meeting is not to give their view on the merits of the particular exclusion. But they can make a statement to the governing body in general terms, for example about how other schools in the area (and the LEA itself, if applicable) have dealt with similar incidents, and they can advise on alternative arrangements for the pupil to continue his or her education if the exclusion is upheld. The LEA representative can also draw the attention of governors to issues where there is a lack of clarity or where more information may be needed or where guidance appears to have been ignored. The head teacher should attend the meeting to clarify points and answer any questions relating to the incident or events leading to the exclusion. However, no party to the review should be alone with the governors at any point before, during or after the meeting.

4.11 The governing body may ask the LEA officer for advice. However, they should make their decision alone, asking the other parties, including the LEA officer, to withdraw. The clerk may stay with the governing body to help them by reference to the notes and with the wording of their decision letter.

GOVERNOR'S DECISION

4.12 At the end of the meeting, when all parties except the clerk have left, the Governors will need to decide:

- whether the pupil was responsible for the behaviour described;
- if so, whether the headteacher has adhered to the guidance on exclusions and, in particular, the criteria when using the sanction of exclusion;
- whether the extent of the sanction was justified and appropriate i.e. permanent or the number of days of a fixed term exclusion for behaviour.

GOVERNOR'S VERDICT

4.13 The Governors have the power to:

- uphold the exclusion; OR
- reinstate the pupil (whether the exclusion was fixed term or permanent), either

immediately or by a particular date.

GOVERNORS CANNOT

4.14 The Governors do not have the power to:

- convert a fixed term exclusion into permanent;
- increase the tariff of a fixed term exclusion,
- send a pupil to another school,
- change a permanent exclusion into a managed move.

PUPIL REINSTATEMENT

4.15 Where reinstatement is practical – in cases of permanent exclusion, or fixed term exclusions where the full term has not been served – the Governors should decide whether to direct reinstatement.

PUPIL REINSTATEMENT

Governors now have a third option: to decide that an exclusion was not justified but that reinstatement is not practical. The governor's finding is added to the pupil's record.

Rules on pupils who have been permanently excluded from two schools are covered in 'Admissions Code of Practice (2003)'.

NOTIFYING THE PARENTS

It is good practice to plan for a successful reintegration from a fixed term exclusion, or when a permanent exclusion is overturned at either Governors' meeting or Appeal Panel stage. However, governors and headteachers should note that no conditions may be attached to a student's return from an exclusion.

4.16 Where reinstatement is not practical – in permanent exclusions, when the parent does not wish the child to return to school, or fixed term exclusions when the exclusion has already been considered – the Governors should still consider the merits of the exclusion based on the evidence. The outcome of their review should be added to the pupil's record for future reference

4.17 The Governing Body must record its reasons for its decision in a letter to the parent that the clerk will send to the parent **within one school day. A copy of this letter must also be sent to the LEA.**

The governing body may not attach conditions to any direction they may give to the head teacher to reinstate the pupil; however, this does not prevent a school from following good practice in reintegrating the pupil.

CONFIRMATION OF THE DECISION

A model letter (APPENDIX 2 - Model Letter 5) for notifying parents of a decision to uphold a permanent exclusion is provided.

4.18 Where the governing body decide to uphold a permanent exclusion, their letter to the parent (or pupil if aged 18 or over) should also include the following information:

- The reason for the decision.

- Their right to appeal to an Independent Appeal Panel, together with the address of Democratic Services at County Hall to whom any notice of appeal should be sent.
- The date by which any notice of appeal should be lodged (15 school days after the day on which notice in writing was given of the governing body's decision. Where the notice is sent by first class post it is treated as having been given on the second working day after it was posted).
- That any notice of appeal must set out the grounds on which the appeal is made.
- That any claim on grounds of disability discrimination can also be set out in the notice of appeal.

5 The Role of the Local Education Authority

LEA ROLE AND RESPONSIBILITIES (EXCLUSION)

The governing body may ask the LEA officer for advice. However, they should make their decision alone, asking the other parties, including the LEA officer, to withdraw.

The LEA should send a representative to all permanent exclusion meetings and to longer fixed period exclusion meetings, if possible.

The LEA's role at the governing body meeting is not to give their view on the appropriateness of the particular exclusion.

5.1 The LEA's role is to support and inform the exclusion process, ensuring fairness and balance for all parties. The LEA fulfils its role by:

- advising all head teachers, governors, parents and pupils on procedures relating to all exclusions and ensuring that these have been carried out effectively;
- making a statement to the governing body in general terms about how other schools in the authority have dealt with similar incidents;
- drawing the attention of governors to issues where there is a lack of clarity or where more information may be needed or where guidance appears to have been ignored;
- ensuring that SEN School Action/School Action Plus funding has been used to support a pupil prior to exclusion and on reintegration;
- advising on alternative arrangements for the pupil to continue his or her education if the exclusion is upheld.

LEA ROLE AND RESPONSIBILITIES (PROVISION)

5.2 Additionally the LEA has responsibility for:

- supporting schools in planning provision for pupils excluded for more than 15 days (this provision must be full time from September 2002);
- working with schools in ensuring that suitable provision is in place for pupils who are permanently excluded from the 16th day of exclusion and to support reintegration to a new school (this provision must be full time from September 2002);
- assisting with the reintegration of excluded pupils to school without unreasonable

delay;

- collecting, collating, monitoring and communicating appropriate qualitative and quantitative information on all exclusions to inform county and national policy.

APPENDIX 1

<u>STRICTLY</u>			PUPIL SUBJECT TO EXCLUSION										Ref. No. /		
<u>CONFIDENTIAL</u>													For Office Use		
Personal details -															
School									Dfes Code				Year Group		
Pupil name									DoB				Gender		
Special Needs		N A P Q S		Ethnicity		1 2 3 4 5 6 7 8 9 10				Unique pupil number					
Home address of pupil															
Home telephone number								Looked after status		Yes/No					
Parents/Guardians Names															
Parents address if different to home address															
Exclusion type and period -															
Permanent				from:											
Fixed				from:				to:				days:			
Lunch				from:				to:				days:			
Reason for exclusion -															
Code	PP	PA	VP	VA	BU	RA	SM	DA	DM	TH	DB	OT			
Brief details:															
Have parents/carers been informed of the exclusion by telephone and letter. Yes/No															
Have the parent(s) been informed of their right to submit representations to the Governors. Yes/No															

Please attach a copy of the letter of exclusion to the parents/carers to this form.													
Signed								Date					
Headteacher													
When completed please send one copy to:													
Exclusions Team, Pupil Access Support Service, Education Department Carrow House, 301 King Street, Norwich NR1 2TN Tel: 01603-224011/223610 Fax: 01603-224008 eMail: sally.moy@norfolk.gov.uk/dave.pearce@norfolk.uk													
Please ensure a copy is sent to Area Attendance and Behaviour Officer													
Notes to help completion of the Pupil Subject to Exclusion form													
1	Please tick the Code of Practice level the pupil is currently on by using one of the following codes:												
		N	No special provision										
		A	School Action										
		P	School Action Plus										
		Q	School Action Plus and Assessment										
		S	Statemented										
2	Select one ethnic description from the list below and tick the number in the relevant box.												
		1	White										
		2	Black - African										
		3	Black - Caribbean										
		4	Black - Other (specify)										
		5	Indian										
		6	Pakistani										
		7	Bangladeshi										
		8	Chinese										
		9	Any other ethnic group (specify)										
		10	Unclassified										

3	Enter the unique pupil number in the box on the form.												
4	Please indicate whether looked after or not												
5	For a permanent exclusion tick the box and enter the date of the first day the pupil is not in school												
6	For a fixed term exclusion tick the box enter the date of the first and the last day the pupil is not in school and the total number of school days of the exclusion.												
7	For a lunch-time exclusion tick the box , enter the date of the first and the last day the pupil is not in school at lunch-time and the number of school days of the exclusion.												
8	Please tick the code from the list below which best describes the most important reason for the exclusion into box.												
		PP	Physical assault against a pupil										
		PA	Physical assault against an adult										
		VP	Verbal abuse/threatening behaviour against a pupil										
		VA	Verbal abuse/threatening behaviour against an adult										
		BU	Bullying										
		RA	Racist abuse										
		SM	Sexual misconduct										
		DA	Drug and alcohol related										
		DM	Damage										
		TH	Theft										
		DB	Persistent disruptive behaviour										
		OT	Other										

APPENDIX 2

Model letter 1 (Schools)

From head teacher notifying parent of a fixed period exclusion of 5 school days or fewer in one term, and where a public examination is not missed

Dear **[Parent's Name]**

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

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

You have the right to make representations to the governing body. If you wish to make representations please contact **[Name of Contact]** on/at **[Contact Details — Address, Phone Number, email]**, as soon as possible.

You should also be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal, and/or make a claim, to the SEN and Disability Tribunal (SENDIST). The address to which appeals should be sent is SENDIST, Procession House, 55 Ludgate Hill, London EC4M 7JW.

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

The school will set work for **[Name of Child]** during the period of his/her exclusion **[detail the arrangements for this]**. Please ensure that work set by the school is completed and returned to us promptly for marking.

You may wish to contact the Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE) — an independent national advice centre for parents of children in state schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/> .

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in school on **[Date]** at **[Time]**. I am sure it would be helpful
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for us to meet to discuss **[Name of Child]**'s return to school before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]

Head Teacher

APPENDIX 2

Model letter 2 (Schools)

From head teacher notifying parent of a fixed period exclusion of more than 5 and up to and including 15 school days in total in one term, or where a public examination would be missed

Dear **[Parent's Name]**

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

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

You have the right to request a meeting of the governing body at which you may make representations and the decision to exclude can be reviewed. As the length of the exclusion is more than 5 school days in one term the governing body must meet if you request it to do so. The latest date by which the governing body can meet is **[insert Date — no later than 50 school days from the date the governing body is notified]**. If you wish to make representations to the governing body and wish to be accompanied by a friend or representative please contact **[Name of Contact]** on/at **[Contact Details — Address, Phone Number, email]**, as soon as possible. Please advise if you have a disability or special needs which would affect your ability to attend a meeting at the school. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

You should also be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal, and/or make a claim, to the SEN and Disability Tribunal (SENDIST). The address to which appeals should be sent is SENDIST, Procession House, 55 Ludgate Hill, London EC4M 7JW.

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

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The school will set work for **[Name of Child]** during the period of his/her exclusion **[Insert the arrangements for this]**. Please ensure that work set by the school is completed and returned to us promptly for marking.

You may wish to contact Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011], who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE) — an independent national advice centre for parents of children in state schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/> .

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in school on **[Date]** at **[Time]**. I am sure it would be helpful for us to meet to discuss **[Name of Child]**'s return to school before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]

Head teacher

APPENDIX 2

Model Letter 3 (Schools)

From head teacher notifying parent of a fixed period exclusion of more than 15 school days in total in one term

Dear **[Parent's Name]**

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

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

As the length of the exclusion is more than 15 school days in total in one term the governing body must meet to consider the exclusion. At the review meeting you may make representations to the governing body if you wish. The latest date on which the governing body can meet is **[Date Here — no later than 15 school days from the date the governing body is notified]**. If you wish to make representations to the governing body and wish to be accompanied by a friend or representative please contact **[Name of Contact] on/at [Contact Details — Address, Phone Number, email]**, as soon as possible. You will, whether you choose to make representations or not, be notified by the Clerk to the governing body of the time, date and location of the meeting. Please advise if you have a disability or special needs which would affect your ability to attend a meeting at the school. Also, please inform **[contact]** If it would be helpful for you to have an interpreter present at the meeting.

You should also be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal to the SEN and Disability Tribunal (SENDIST). The address to which appeals should be sent is SENDIST, Procession House, 55 Ludgate Hill, London EC4M 7JW.

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

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The school will continue to set work for **[Name of Child]** during the period of **his/her** exclusion **[Please insert what arrangements are in place for this]**. Please ensure that any work set by the school is completed and returned to us for marking.

You may want to contact Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE), which is an independent national advice centre for parents of children in state maintained schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/>.

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in school on **[Date]** at **[Time]**. I am sure it would be helpful for us to meet to discuss **[Name of Child]**'s return to school before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]

Head teacher

APPENDIX 2

Model Letter 4 (Schools)

From head teacher notifying parent of a permanent exclusion

Dear **[Parent's Name]**

I regret to inform you of my decision to exclude **[Child's Name]** permanently from **[Date]**. This means that **[Child's Name]** will not be allowed back to this **[school /PRU] [for school pending a meeting of the Governing body]**. Alternative arrangements for **[Child's Name]**'s education will need to be made. In the first instance we will set work for **[Child's Name]** and would ask you to ensure this work is completed and returned promptly to school for marking.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded permanently because **[Reason for Exclusion — also include any other relevant previous history here]**.

As this is a permanent exclusion the governing body will meet to consider it. At the review meeting you may make representations to the governing body if you wish. The latest date on which the governing body can meet is **[Date — no later than 15 school days from the date the governing body is notified]**. If you wish to make representations to the governing body and wish to be accompanied by a friend or representative please contact **[Name of Contact]** on/at **[Contact Details — Address, Phone Number, email]**, as soon as possible. You will, whether you choose to make representations or not, be notified by the Clerk to the governing body of the time, date and location of the meeting. Please advise if you have a disability or special needs which would affect your ability to attend the meeting. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

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

Alternative education other than setting work will be provided for **[Name of Child]** if the exclusion continues beyond 15 school days. A Norfolk LEA representative will contact you to discuss this.

You may also wish to contact Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011, who can provide advice on what options are available to you. Additionally, you may find it useful to contact the Advisory Centre for Education (ACE) — an

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independent national advice centre for parents of children in state schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/> .

Yours sincerely

[Name]

Head teacher

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Model Letter 5 (Schools)

From the clerk to the governing body to the parent of a permanently excluded pupil upholding a permanent exclusion

Dear **[Parent's name]**

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

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

You have the right to appeal against this decision. If you wish to appeal, please notify **[name of the clerk to the appeal panel]** of your wish to appeal. You must set out the reasons for your appeal in writing, and may also include reference to any disability discrimination claim you may wish to make, and send this notice of appeal to Democratic Services, County Hall, Martineau Lane, Norwich, NR1 2DH by no later than **[specify the latest date — the 15th school day after receipt of this letter]**. If you have not lodged an appeal by **[repeat latest date]**, your right to appeal will lapse. Please advise if you have a disability or special needs which would affect your ability to attend the hearing. Also, please inform **[name of the clerk to the appeal panel]** if it would be helpful for you to have an interpreter present at the hearing.

Your appeal would be heard by an Independent Appeal Panel, which is empowered also to hear disability discrimination claims. A three member panel will comprise one serving, or recently retired (within the last 5 years), head teacher, one serving, or recently serving, experienced governor and one lay member who will be the Chairman.**[Use the following if there is a possibility that a five member panel may sit:** A five member panel will comprise two serving, or recently retired (within the last 5 years), head teachers, two serving, or recently serving, experienced governors and one lay member who will be the Chairman.] The appeal panel will rehear all the facts of the case — if you have fresh evidence to present to the panel you may do so. The panel must meet no later than the 15th school day after the date on

which your appeal is lodged. In exceptional circumstances panels may adjourn a hearing until a later date.

In determining your appeal the panel can make one of three decisions: they may uphold your child's exclusion; they may direct your child's reinstatement in school, either immediately or by a particular date; or they may decide that

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the exclusion should not have taken place, but that reinstatement in the school is not in the best interests of all concerned.

I would advise you of the following sources of advice : Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011. You may also find it useful to contact the Advisory Centre for Education (ACE), which is an independent national advice centre for parents of children in state maintained schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/>.

The arrangements currently being made for **[pupil's name]**'s education will continue for the time being. However, new arrangements to provide full-time education for **[pupil's name]** are being made and **[name of LEA officer]** will liaise with you shortly about these new arrangements. If you have any questions about this please contact **[name]**.

Yours sincerely

[name]

Clerk to the Governing body

APPENDIX 2

Model letter 6 (Schools)

From the clerk to the independent appeal panel notifying the parent (or the pupil if aged 18 or over) of the outcome of his or her appeal

Dear **[parent's name]**

Following the hearing of your appeal by the Independent Appeal Panel constituted by **[name]** Authority on **[date]** at **[location]** against the decision of **[the governing body of [name] School]** not to reinstate **[child's name]**, I am writing to advise you of the panel's decision.

After careful consideration of your representations both oral and written and those of the **[School]** and **[name]** LEA **[and of others if applicable, for example any victim]** and in the light of the available evidence, the panel has decided:

Either

(i) To uphold the exclusion

or

(ii) To direct **[pupil's name]**'s reinstatement in **[name of school]** with effect from **[date and time]**. **[Pupil's name]** should report to **[name of school staff member]** at that time.

or

(iii) That it is not practical to direct **[pupil's name]**'s reinstatement **[here give reasons, for example because this is an exceptional case where reinstatement would not be in the pupil's best interests or those of the whole school community]** although otherwise reinstatement would have been appropriate. Your child's school record will show that the permanent exclusion was overturned on appeal even though reinstatement was not directed.

[Give reasons in as much detail as possible for the panel's decision: the decision may be challenged by judicial review; or be the subject of a complaint of maladministration to the Local Government Ombudsman]

The panel's decision is binding on you, the **[governing body of [name] School]** and Norfolk Local Education Authority.

For decisions (i) and (iii) above: The alternative arrangements put in place for **[pupil's name]**'s full-time education will continue for the time being; but **[LEA officer's name]** will be in touch with you to discuss future provision.

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

Yours sincerely

[name] Clerk to the Independent Appeal Panel

APPENDIX 3

Model letter 1 (PRU)

From head teacher/teacher-in-charge of a PRU notifying parent of a fixed period exclusion of 5 school days or fewer in one term, and where a public examination is not missed.

Dear **[Parent's Name]**

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

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

You have the right to make representations to Norfolk LEA. These representations will be considered by a panel of three members of the PRU Management Committee. If you wish to make representations please contact **[Name of contact to be determined]** on/at **[Contact Details-Address, Phone Number, email]** as soon as possible.

You should also be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal, and/or make a claim, to the SEN and Disability Tribunal (SENDIST). The address to which appeals should be sent is SENDIST, Procession House, 55 Ludgate Hill, London EC4M 7JW.

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

The PRU will set work for **[Name of Child]** during the period of his/her exclusion **[detail the arrangements for this]**. Please ensure that work set by the PRU is completed and returned to us promptly for marking.

You may wish to contact Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011, who can provide advice. You may also find it useful to contact the Advisory Centre for

Education (ACE) — an independent national advice centre for parents of children in state schools. They offer information and support on state

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education in England and Wales, including on exclusion from a PRU. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/> .

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in the PRU on **[Date]** at **[Time]**. I am sure it would be helpful for us to meet to discuss **[Name of Child]**'s return to the PRU before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]

Head Teacher/Teacher In Charge of **[Name of PRU]**

APPENDIX 3

Model Letter 2 (PRU)

From head teacher/teacher in charge of a PRU notifying parent of a fixed period exclusion of more than 5 and up to and including 15 school days in total in one term, or where a public examination would be missed

Dear **[Parent's Name]**

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

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

You have the right to make representations to Norfolk LEA. These representations will be considered by a panel of three members of the PRU Management Committee. If you wish to make representations please contact **[Name of contact to be determined]** on/at **[Contact Details-Address, Phone Number, email]** as soon as possible. **[Note -this wording is not suitable where the child would lose the opportunity to take a public examination]**

You should also be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal, and/or make a claim, to the SEN and Disability Tribunal (SENDIST). The address to which appeals should be sent is SENDIST, Procession House, 55 Ludgate Hill, London EC4M 7JW.

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

The PRU will set work for **[Name of Child]** during the period of his/her exclusion **[Insert the arrangements for this]**. Please ensure that work set by the PRU is completed and returned to us promptly for marking.

You may wish to contact Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011, who can

provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE) — an independent national advice centre for parents of children in state schools. They offer information and support on state

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education in England and Wales, including on exclusion from the PRU. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/> .

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in the PRU on **[Date]** at **[Time]**. I am sure it would be helpful for us to meet to discuss **[Name of Child]**'s return to the PRU before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]

Head Teacher/Teacher In Charge of **[Name of PRU]**

APPENDIX 3

Model Letter 3 (PRU)

From head teacher/teacher in charge of a PRU notifying parent of a fixed period exclusion of more than 15 school days in total in one term

Dear **[Parent's Name]**

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

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

As the length of the exclusion is more than 15 days Norfolk LEA must consider the exclusion. It will be considered by a panel of three members of the PRU Management Committee. A review meeting will be held and at the review meeting you may make representations if you wish. The latest date for a review meeting is **[Date here-no later than 15 school days from the date LEA is notified]**. If you wish to make representations and wish to be accompanied by a representative please contact **[Name of contact to be determined]** on/at **[contact Details-Address, Phone Number, email]**, . Please advise if you have a disability or special needs which would affect your ability to attend a meeting at the PRU. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the meeting.

You should also be aware that if you think the exclusion relates to a disability your child has, and you think disability discrimination has occurred, you have the right to appeal to the SEN and Disability Tribunal (SENDIST). The address to which appeals should be sent is SENDIST, Procession House, 55 Ludgate Hill, London EC4M 7JW.

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

The PRU will continue to set work for **[Name of Child]** during the period of his/her exclusion **[Please insert what arrangements are in place for this]**.

Please ensure that any work set by the PRU is completed and returned to us for marking.

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You may want to contact the Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE), which is an independent national advice centre for parents of children in state maintained schools. They offer information and support on state education in England and Wales, including on exclusion from PRU. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/>. **[Insert reference to source of local independent advice if known]**

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in the PRU on **[Date]** at **[Time]**. I am sure it would be helpful for us to meet to discuss **[Name of Child]**'s return to the PRU before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]

Head teacher/Teacher In Charge of **[Name of PRU]**

APPENDIX 3

Model Letter 4 (PRU)

From head teacher/teacher in charge of a PRU notifying parent of a permanent exclusion

Dear **[Parent's Name]**

I regret to inform you of my decision to exclude **[Child's Name]** permanently from **[Date]**. This means that **[Child's Name]** will not be allowed back to this PRU pending a meeting of an Independent Appeal Panel. Alternative arrangements for **[Child's Name]**'s education will need to be made. In the first instance we will set work for **[Child's Name]** and would ask you to ensure this work is completed and returned promptly to the PRU for marking.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded permanently because **[Reason for Exclusion — also include any other relevant previous history here]**.

The Independent Appeal Panel will consider the decision that has been taken, and your right to appeal against this decision, if you so wish, will be heard at the meeting. Please notify **[name of the clerk to the appeal panel]** of your wish to appeal. You must set out the reasons for your appeal in writing, and may also include reference to any disability discrimination claim you may wish to make, and send this notice of appeal to Democratic Services, County Hall, Martineau Lane, Norwich, NR1 2DH by no later than **[specify the latest date — the 15th school day after receipt of this letter]**. Please advise if you have a disability or special needs which would affect your ability to attend the hearing. Also, please inform **[contact]** if it would be helpful for you to have an interpreter present at the hearing.

A three member panel will comprise one serving, or recently retired (within the last 5 years), head teacher, one serving, or recently serving, experienced governor and one lay member who will be the Chairman.**[Use the following if there is a possibility that a five member panel may sit:** A five member panel will comprise two serving, or recently retired (within the last 5 years), head teachers, two serving, or recently serving, experienced governors and one lay member who will be the Chairman.] The appeal panel will hear all the facts of the case.

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

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Alternative education other than setting work will be provided for **[Name of Child]** if the exclusion continues beyond 15 school days. A Norfolk LEA representative will contact you to discuss this.

You may also wish to contact the Exclusion Team for Norfolk LEA at Carrow House, 301 King Street, Norwich, NR1 2TN on 01603 223610/224011, who can provide advice on what options are available to you. Additionally, you may find it useful to contact the Advisory Centre for Education (ACE) — an independent national advice centre for parents of children in state schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at <http://www.ace-ed.org.uk/>.

Yours sincerely

[Name]

Head teacher

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Model Letter 5 (PRU)

From the clerk to the independent appeal panel notifying the parent (or the pupil if aged 18 or over) of the outcome of the hearing

Dear **[parent's name]**

Following the hearing of the Independent Appeal Panel constituted by **[name]** Authority on **[date]** at **[location]** to consider the decision of **[the teacher in charge [name] for [name] Pupil Referral Unit]** not to reinstate **[child's name]**, I am writing to advise you of the panel's decision.

After careful consideration of your representations both oral and written and those of the **[PRU]** and Norfolk LEA **[and of others if applicable, for example any victim]** and in the light of the available evidence, the panel has decided:

Either

(i) To uphold the exclusion

or

(ii) To direct **[pupil's name]**'s reinstatement in **[name of PRU]** with effect from **[date and time]**. **[Pupil's name]** should report to **[name of school staff member]** at that time.

or

(iii) That it is not practical to direct **[pupil's name]**'s reinstatement **[here give reasons, for example because this is an exceptional case where reinstatement would not be in the pupil's best interests or those of the whole PRU community]** although otherwise reinstatement would have been appropriate. Your child's PRU record will show that the permanent exclusion was overturned on appeal even though reinstatement was not directed.

[Give reasons in as much detail as possible for the panel's decision: the decision may be challenged by judicial review; or be the subject of a complaint of maladministration to the Local Government Ombudsman]

The panel's decision is binding on you, the **[governing body of [name] PRU]** and Norfolk Local Education Authority.

For decisions (i) and (iii) above: The alternative arrangements put in place for **[pupil's name]**'s full-time education will continue for the time being; but **[LEA officer's name]** will be in touch with you to discuss future provision.

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

Yours sincerely

[Name]

Clerk to the Independent Appeal Panel

APPENDIX 4

INDEPENDENT APPEAL PANELS

Notifying parents

1. When a permanent exclusion is upheld by the governing body, their decision letter ([model letter 5](#)) to the parent (or the pupil, if aged 18 or over) must state the reasons for the decision, give the last day for lodging an appeal and explain that the grounds for the appeal should be set out in writing. In the case of a permanent exclusion from a PRU the letter from the teacher in charge should give this information. The LEA should also write to the parent (or pupil) within 3 working days of the governors' meeting indicating the latest date by which an appeal may be lodged, the name and contact details for the clerk to the appeal panel, and explain that the notice of appeal must be in writing setting out the grounds on which it is made. LEAs may wish to have a leaflet available on the appeal process, which they can send to parents. Parents have a right to an independent appeal panel hearing even if they did not make a case to, or attend, the governors' meeting.

2. Any appeal made after the latest date for lodging an appeal will be out of time and must be rejected by the LEA. Generally, it is the local authority itself, rather than the education department, which administers the parent's appeal. It is important, therefore, that information relating to the progress of the appeal be given to the LEA, particularly where the parent lodges an appeal, but then withdraws it or fails to turn up at the appeal hearing without explanation. In the case of a pupil who lives outside the authority area, if the parent withdraws or abandons their appeal, the clerk to the appeal panel should notify the 'home' LEA.

The timing of the hearing

3. An appeal panel must meet to consider an appeal no later than the 15th school day after the day on which the appeal was lodged. However, if necessary, the panel may decide to adjourn the hearing if, having regard to the particular circumstances of the case, they consider that it would not be appropriate for them to proceed to determine the appeal. This might include circumstances where more information is awaited. If the parent requests a hearing date later than the 15th school day, the clerk may consult the panel members by telephone or email about the request and, if the members agree, a later hearing date may be set and the panel will be deemed to have

adjourned the hearing. The panel may adjourn on more than one occasion if necessary.

Combined appeals

4. If the issues raised by two or more appeals are the same or connected, the panel may decide to combine the hearings. In such cases the panel

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should check that no-one objects to this approach, and be aware of possible conflicts between the parties involved.

Composition of appeal panels

5. The LEA must constitute the appeal panel and appoint a clerk. The panel must have three or five members (as decided by the LEA) made up of three categories:

The chair must be a lay member, defined as someone who has not worked in a school in any paid capacity, although they may be (or have been) a school governor or work (or have worked) in a school as a volunteer. The chair could be someone with a legal qualification.

One (or, on a five member panel, two) must be, or have been, a governor of a maintained school, provided they have served in this capacity for a least 12 consecutive months in the last 6 years (but they must not be, or have been in the last five years, a teacher or head teacher).

One (or, on a five member panel, two) must be, or have been within the last 5 years, a head teacher of a maintained school. If the exclusion is from a PRU then this representative can be either a head teacher of a maintained school, or a teacher in charge of a PRU.

6. Where possible governor and head teacher panel members considering a primary school exclusion should have experience of that phase of education, those considering a secondary school exclusion should have experience of secondary education, and those considering an exclusion from a special school should have experience of that area of education. The lay member should have the necessary skills and qualities to chair the panel effectively.

7. A person may not serve as a member of an appeal panel if they:

Are a member of the Local Education Authority or of the governing body of the excluding school

Are an employee of the Local Education Authority or of the governing body, unless they are employed as a head teacher in another school in the same

LEA or as a teacher in charge of a PRU in the same LEA where the exclusion is from a PRU

Have, or at any time have had, any connection with an interested party, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially

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Are the head teacher of the school or have been the head teacher of the school in the last five years.

8. Doubts about impartiality may arise from the panel member having worked closely with the head teacher or governing body of the excluding school, or from being the head teacher or governor of a school to which the pupil might be admitted if the exclusion is confirmed. Small LEAs may have difficulty finding serving head teachers and governors who feel they are able to act impartially and may need to recruit panel members from a neighbouring LEA if they cannot find retired head teachers and governors to take on the role.

9. It is very important that LEAs ensure that all panel members and clerks receive suitable training and that the chair is trained in the specific chairing skills the panel requires. The DfES has issued a training pack for exclusion appeal panel members (for details of how to obtain a copy see the related documents section at the end of [Part 7](#)). LEAs will need to identify and train sufficient chairs, members and clerks to ensure they can arrange hearings within the necessary timescale. Further training materials for chairs and clerks are expected to be made available online from June 2004. The Council on Tribunals has emphasised the importance of training for all those involved in the exclusion process.

Role of the clerk

10. The clerk provides an independent source of advice on procedure for all parties. Further information on the role of the clerk can be found in [Checklist 9](#) of the ISCG training pack. The clerk should not have served as clerk to the governing body hearing.

11. Clerks should receive training, and will need to keep up to date with developments in case law and changes in legislation and guidance. Over time clerks are likely to develop experience in the conduct of both exclusion and admission appeals. If, exceptionally, the clerk has not received training and no member of the panel is legally qualified, the authority should consider whether the panel should have an independent source of legal advice, for example a solicitor from the authority's legal services department. In any event this is desirable where the appellant (the parent) is legally represented.

In advance of the hearing

12. The LEA must take reasonable steps to find out when the parent and others entitled to attend the hearing would be available in order to ensure that all parties are able to attend. They must also arrange a suitable venue for hearing the appeal in private. It should be neutral, accessible, and have good access for people with disabilities. Appeal hearings should never be held at the excluding school.

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13. The following are entitled to attend a hearing, submit written representations and address the panel:

- a) The parent (or, if aged over 18, the pupil), who may be represented or accompanied by a legal or other representative
- b) The head teacher
- c) An officer or other representative of the LEA
- d) A governor, who may be represented by a legal or other representative
- e) A member of the Council on Tribunals is entitled to attend as an observer. The Council would be grateful if LEAs would notify them of forthcoming appeals (their address is: 81 Chancery Lane, London, WC2A 1BQ).

An excluded pupil under the age of 18 should normally be allowed to attend the hearing and to speak on his or her own behalf, if he or she wishes to do so and the parent agrees. The panel cannot compel witnesses to attend the hearing.

14. The clerk should advise the parent of his or her right to be accompanied by a friend or representative, including a legal representative or advocate. If the parent wishes to bring more than one friend or representative, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the hearing.

15. The clerk should also ascertain whether an alleged victim wishes to be given a voice at the hearing either in person, through a representative or by submitting a written statement.

16. When the position is clear, the clerk must give all parties details of those attending and their role and notify them of the order of hearing.

17. The clerk should circulate all written evidence to all parties five working days before the hearing. This must include the statement of decision by the governing body and the notice of appeal from the parent which gives the

grounds for the appeal. The head teacher, governing body and LEA may also make written representations. If any of the parties intend to raise matters or produce documents at the hearing that are not covered by the statement of decision or the notice of appeal, they should be asked to submit these to the clerk in good time before the hearing.

Conduct of the appeal hearing

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18. It is for the appeal panel to decide how to conduct the proceedings which should be reasonably informal so that all parties can present their case effectively. Tape-recording of the hearing should be avoided unless there is good reason and all parties agree.

19. In opening the appeal hearing the chair should outline the procedure to be followed and explain to all parties that the panel is independent from both the school and the LEA. The chair should explain that the panel needs to have regard to legislation and DfES guidance in its conduct and in reaching its decision.

20. Following introductions, the clerk should explain the order in which the parties entitled to be heard will state their case (as previously notified to them) and that there will be an opportunity for questioning by the other parties after each presentation. The chair should then lead the panel in establishing the relevant facts. Panel members may wish to ask questions to clarify an issue or to elicit more information. Questions from the panel should generally be taken at the end of each party's statement and following questioning by the other parties.

21. Sufficient time must be allowed for each party to put their case. The panel should ensure that the parent (or, if aged over 18, the pupil) is given the opportunity to comment on relevant information obtained from the LEA or governing body. Care must be taken to ensure that no party attending the hearing is present alone with the appeal panel in the absence of any other party.

22. An appeal cannot continue if the number of panel members drops below three at any stage. In this event, the panel may need to adjourn until its quorum is restored. Once an appeal has begun, no panel member may be substituted by a new member for any reason. Accordingly, where a member cannot continue as a result of illness or death a new panel will have to be constituted. In the case of a five member panel, however, the panel may continue in the event of the death or illness of one (or even two) of its members, provided all three categories of member are still represented. In the case of a panel being reduced to four members and them being deadlocked, the chair has the casting vote.

Evidence and witnesses

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

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24. All parties may put forward new evidence about the event that led to the exclusion, including evidence that that was not available to the head teacher or the governing body. All parties should be given the opportunity to respond to any such new evidence which has been put forward. However, the school may not introduce new reasons for the exclusion.

25. To reach a decision, the panel will generally need to hear from those directly or indirectly involved. The governing body may wish to call witnesses who saw the incident that gave rise to the exclusion. These may include any alleged victim or any teacher other than the head teacher who investigated the incident and interviewed pupils. A teacher may be accompanied by a friend or representative.

26. In the case of witnesses who are pupils of the school, it will normally be more appropriate for the panel to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and with their parent's consent. Panels should be sensitive to the needs of child witnesses to ensure that the child's view is properly heard.

27. All written witness statements must be attributed and signed and dated, unless the school has good reason to wish to protect the anonymity of pupils, in which case they should at least be dated. The general principle remains that an accused person is entitled to know the substance and the source of the accusation. The panel must consider what weight to attach to written statements, whether made by adults or pupils, as against oral evidence. They should bear in mind that a written statement may not encompass all the relevant issues, nor can the author be interrogated.

28. The calling of character witnesses is at the discretion of the panel, but should be allowed unless there is good reason to refuse.

29. It is for the panel to decide whether any witnesses should stay for the rest of the hearing.

Reaching a decision

30. In considering an appeal, the panel should decide, on the balance of probabilities, whether the pupil did what he or she is alleged to have done. However, the more serious the allegation, the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring the criminal standard to be applied but it does mean that when investigating more serious allegations, head teachers will need to gather and take account of a wider range of evidence (extending in some instances to evidence of the pupil's past behaviour), in determining whether it is more probable than not that the pupil has committed the offence. If more than one incident of misconduct is alleged, the panel should decide in relation to each one.

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31. The panel should consider the basis of the head teacher's decision and the procedures followed having regard to the following:

a) Whether the head teacher and governing body complied with the law and had regard to the Secretary of State's guidance on exclusion in deciding, respectively, to exclude the pupil and not to direct that he or she should be reinstated. While the law states that the panel must not decide to reinstate a pupil solely on the basis of technical defects in procedure prior to the appeal, procedural issues would be relevant if there were evidence that the process was so flawed that important factors were not considered or justice was clearly not done.

b) The school's published behaviour policy, equal opportunities policy and, if appropriate, anti-bullying policy, Special Educational Needs policy, and race equality policy.

c) The fairness of the exclusion in relation to the treatment of any other pupils involved in the same incident.

32. Having satisfied themselves as to these issues, the panel should consider whether in their opinion permanent exclusion was the right response. If they conclude it was not, they should then go on to consider whether this is an exceptional case where reinstatement is not a practical way forward (see section 39).

33. In deciding on whether or not to direct reinstatement, the panel must balance the interests of the excluded pupil against the interests of all the other members of the school community.

34. Where a parent appeals against permanent exclusion and makes a claim alleging racial discrimination, the appeal panel must consider whether there has been discrimination in relation to the *Race Relations Act 1976* (as amended).

35. Where a parent appeals against permanent exclusion and makes a claim alleging disability discrimination, the appeal panel must consider whether the

pupil is disabled and whether there has been discrimination within the meaning of the *Disability Discrimination Act 1995* (as amended). Appeal panels must consider the Disability Rights Commission's Schools Code of Practice which provides guidance on the *Disability Discrimination Act*.

The decision

36. An appeal panel may uphold the decision to exclude; direct immediate reinstatement or reinstatement at some future date; or they may decide that because of exceptional circumstances or other reasons it is not practical to

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give a direction requiring reinstatement, but that it would otherwise have been appropriate to give such a direction.

37. If the panel direct reinstatement the date specified must be reasonable in the circumstances. The panel may not attach conditions to the reinstatement of a pupil.

38. In some cases it will not be practical for the panel to direct reinstatement because the parent has made clear he or she does not want it, or because the child has become too old to return to the school.

39. There may also be exceptional cases where the panel consider that the permanent exclusion should not have taken place, but that reinstatement in the excluding school is not a practical way forward in the best interests of all concerned. This could include situations where there has been an irretrievable breakdown in relations between pupil and teachers; or between the pupil and other pupils involved in the exclusion or appeal process. Before deciding that there are exceptional circumstances the panel should try to establish what efforts have been made to address a possible breakdown in relations. Balancing the interests of the pupil and the whole school community may suggest that reinstatement would not be the most sensible outcome in such cases. In considering whether such exceptional circumstances exist the panel should consider representations from the governors, the head teacher and from the parent (or pupil if 18 or over).

40. In any case where the panel decide that reinstatement would have been justified but is not practical, they should indicate this in their decision letter and give details of the circumstances that made them decide not to direct reinstatement. Such a letter should be added to the pupil's school record for future reference.

Record of the proceedings of an appeal panel

41. The clerk to an appeal panel should take minutes of the proceedings, the attendance, the voting and the decision in a format approved by the LEA. The minutes are not public documents but should be retained by the LEA for a

period of at least five years, as they may need to be seen by a court or by the Local Government Ombudsman.

After the hearing

42. The panel is independent. Its decision is binding on the parent, the governing body, the head teacher and the LEA. The panel cannot revisit its decision once made.

43. The panel must let all parties know its decision by the end of the second working day after the hearing. [Model letter 6](#) is for notifying the parent of the

APPENDIX 4

decision of the panel. The decision letter should give the panel's reasons for its decision in as much detail as possible for the parties to understand why the decision was made.

44. If the appeal panel upholds the permanent exclusion, the clerk should immediately report this to the LEA. If the pupil is of compulsory school age, it is for the LEA in whose area the pupil lives to make arrangements as quickly as possible for the pupil to continue in suitable full-time education. If the pupil lives outside the area of the LEA arranging the appeal, the clerk should make sure that the home LEA is also informed immediately of the position.

45. Where the exclusion is upheld the clerk should also advise the parent to contact the appropriate person at the home LEA about arrangements for their child's continuing education. The head teacher should remove the pupil's name from the school roll the day after the conclusion of the appeal.

46. Where the panel direct reinstatement they should immediately inform the head teacher of their decision and specify the date on which the pupil must be readmitted.

47. Details of an exclusion may not be deleted from the pupil's record, even where reinstatement is directed. The governing body must, however, comply with any parental request to append their appeal statement to the pupil's record. It will be for the governing body to decide what details of the exclusion are included in the pupil's school record: copies of the principal correspondence might be included and possibly the minutes of the governing body and appeal panel hearings, if the governing body and appeal panel respectively agree to this.

Remedies after the appeal hearing

Complaint to the Commissioner for Local Administration (the Local Government Ombudsman)

48. A parent can complain to the Local Government Ombudsman about maladministration by the appeal panel. The Ombudsman can make

recommendations if he or she finds that there has been maladministration. He or she might recommend a fresh hearing, if this were practical, and the LEA would normally be expected to comply.

Judicial review

49. If either the parent or the governing body consider that the panel's decision is perverse, they may apply to the High Court for a judicial review. This must be done promptly and no later than three months from the date of the decision. If a judicial review were granted, the court would consider the lawfulness of the panel's decision. If it found the panel's decision to be

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unlawful or unreasonable (in the narrow legal sense of 'unreasonable', i.e. irrational or perverse), it could quash the decision and direct the LEA to hold a fresh appeal hearing before a newly constituted panel.

APPENDIX 5

POLICE INVOLVEMENT AND PARALLEL CRIMINAL PROCEEDINGS

Introduction

A school-related incident may sometimes also be the subject of a police investigation which may subsequently result in criminal proceedings. This can mean that the evidence available to head teachers, governing bodies and Independent Appeal Panels is very limited. They may not, for example, be able to hear relevant witnesses or to consider relevant material; it may not be known whether a criminal charge is to be brought; if a charge has been brought, the eventual outcome of any court proceedings may be uncertain. It should be remembered that the police and the courts will be applying the criminal standard of proof – beyond reasonable doubt – whereas the head teacher, governing body and Independent Appeal Panel must apply the civil standard of proof (the balance of probabilities).

Head teacher's decision to exclude and consideration of the circumstances by the governing body

A head teacher need not postpone his or her decision to exclude a pupil simply because of the possibility that criminal proceedings might be brought in respect of the same incident, but the critical factor in any such case will be the evidence that is available to the head teacher. In such circumstances, a judgment must be made on the basis of the evidence available. Relevant considerations include the fact that:

- a) a serious allegation has been made against the pupil by another pupil or member of staff at the school which is the subject of a police investigation which may result in criminal proceedings being brought;
- b) pending the conclusion of any such criminal proceedings, the pupil's continued presence in the school may have an adverse effect on the complainant and other potential witnesses, and on the promotion of good order and discipline at the school generally.

Where a head teacher excludes a pupil in circumstances such as those outlined in the preceding paragraph, the school's governing body has no power to postpone their meeting to consider the pupil's exclusion beyond the statutory time-limit. In deciding whether to direct the head teacher to reinstate the pupil, therefore, they too may be subject to the same constraints as regards the availability of witnesses and other relevant information and will have to consider the case on the same basis.

APPENDIX 5

Arrangements for appeal hearings in parallel criminal proceedings cases

Where the governing body decide not to direct the head teacher to reinstate a permanently excluded pupil in the circumstances described in the preceding paragraph, the parent (or, if aged over 18, the pupil) should be notified of their decision and of their right to appeal in accordance with Part 5 of this guidance. Any appeal must be lodged no later than 15 school days after the day on which notification of the governing body's decision was received and the appeal panel must meet to consider the appeal no later than 15 school days after the day on which the appeal was lodged.

Upon first meeting, the appeal panel must consider, taking into consideration any representations made by the parties and on the advice of their clerk, whether they can proceed to determine the appeal or whether instead to adjourn the hearing pending the outcome of any police investigation and/or any criminal proceedings that may be brought. The mere fact that parallel criminal proceedings are in progress will not of itself determine whether the hearing should be adjourned. Relevant factors for the panel to consider will include:

- a) whether any charge has been brought against the pupil and, if so, what the charge is;
- b) whether relevant witnesses and documents are available;
- c) the likelihood of delay if the hearing were adjourned and the effect it may have on any complainant, the excluded pupil or the school itself;
- d) whether an adjournment or, as the case may be, declining to adjourn, might result in injustice.

If the panel do decide to adjourn, the LEA should take steps to ensure the pupil's continuing education pending the hearing. The clerk will be responsible for monitoring the progress of any police investigation and/or criminal proceedings and for re-convening the panel at the earliest opportunity when the hearing can proceed to final determination.

If necessary the panel may adjourn more than once. The same panel members should re-convene on each occasion (subject to the considerations referred to in paragraph 112). Where the panel reconvene following the disposal of any criminal proceedings they should have regard to any information about them relevant to the issues they have to determine.

APPENDIX 6

ARRANGEMENTS FOR MONEY TO FOLLOW PUPILS WHO HAVE BEEN PERMANENTLY EXCLUDED FROM SCHOOL

Introduction

This guidance explains the revised legal and administrative arrangements to ensure that funding promptly follows a permanently excluded pupil from the excluding school to the new school. These arrangements apply on or after 22 March 2004. This guidance also applies to pupils who have been permanently excluded and where the independent appeal panel has decided that because of exceptional circumstances or other reasons it is not practical to give a direction requiring reinstatement, but that it would otherwise have been appropriate to give such a direction. They do not apply in cases of exclusions for a fixed period. We have changed the 'relevant date' to provide schools with continuing funding so that they can arrange education for permanently excluded pupils until the conclusion of the exclusion process.

Types of school covered by this part of the guidance

'Schools' referred to in this guidance include LEA maintained Community, Foundation, Voluntary, Community Special and Foundation Special schools. Academies and City Technology Colleges are not covered by this guidance. In all cases, the amount is transferred via the LEA.

For an exclusion from a Special School, the amount should be the same as that for a pupil of the same age and characteristics as an excluded pupil in a mainstream secondary or primary school.

Mechanism for deducting and allocating money

The LEA should ensure that the correct funding moves with the pupil. There are different processes depending on whether the pupil attends school in the LEA where they live or attend school in another LEA. These processes are:

- a) Determination and redetermination of schools' budget share:

The LEA is responsible for reducing the budget share of any excluding school it maintains. The amount to be reduced is the

appropriate proportion of the school's funding for that pupil. The new school will receive the amount deducted from the excluding school or a proportion of that amount if the LEA makes educational provision out of school;

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b) Inter-LEA recoupment:

For transfers between LEAs, where a pupil lives in one area but attends a school maintained by another LEA, the funding formula of the LEA where the excluding school is situated determines the amount. Where this is subsequently passed to a different LEA and on to a school in that or a third LEA's area, neither of these LEAs' funding schemes impact on the calculation.

Amount of funding attributed to the pupil (see Annex)

The amount is determined by the funding formula used by the LEA for maintained primary or secondary (not special) schools for the financial year in which the relevant date falls, taking account of the pupil's age and characteristics. 'Characteristics' is a catch-all term for any pupil-specific factor used in the LEA funding formula, such as free school meal entitlement. This allows the LEA, if they wish, to deduct more than just the age weighted pupil unit (AWPU). The LEA may decide that to recalculate the budget share on this basis is inefficient and opt to deduct just the AWPU.

Date from which excluding school loses money

The excluding school loses funding from the 'relevant date' of exclusion. The allocation to the new school is made from the date of entry to the new school. The LEA keeps the difference between these two amounts to contribute towards any time the pupil is educated out of school. If no school place is found, the home LEA keeps the entire amount deducted for education out of school.

When a permanently excluded pupil starts a new school before the relevant date (e.g. the parent does not appeal but immediately arranges entry to a new school) funding cannot be transferred until the day after the relevant date.

The relevant date

From 22 March 2004, the relevant date is the day that an independent appeal panel decides not to direct reinstatement, or, if there is no appeal, on the day

after the last date on which an appeal may be made or on the day (if earlier) that the relevant person notifies the LEA that they do not intend to appeal. Prior to 22 March 2004 the 'relevant date' was the day on which the school's governing body decided that the pupil should not be reinstated. We have changed the relevant date to provide schools with continuing funding so that they can arrange education for permanently excluded pupils while they remain on roll.

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For transfers between LEAs, the relevant date for allocating funds to the intermediate or new LEA is the date on which the new LEA provides education for that pupil. The relevant date is the same whether this is provided at a school maintained by that LEA or out of school.

The need for prompt payments

Transfers between LEAs must be completed within three months of the relevant date.

Complete weeks (see Annex)

The formulae use complete weeks as the basis of the calculation. This represents the proportion of the whole financial year the pupil spent in the school. The number of complete calendar weeks is calculated out of 52, i.e. including school holidays, banks holidays and weekends. Complete weeks are counted from the relevant date to the last day of the financial year, i.e. to 31 March.

Exception

If the excluded pupil is in a transfer year and the relevant date falls between 1 April and the beginning of the new school year, then funding is removed until the end of the school year rather than the end of the financial year:

- a transfer year is the school year before a pupil starts at secondary or middle school, generally Year 6. The last year of compulsory schooling (i.e. Year 11) does not count as a transfer year. This means that if a child is excluded in their last term of school, money for the entire financial year is removed from the school's budget;
- the end of the school year is the last calendar day before the first term after July, so for example if the new school year begins on 1 September, the end of the school year will be 31 August.

Pupil numbers for the next year's funding

The LEA may adjust actual pupil numbers to reflect exclusions taking place

after a pupil count date that determines funding. This includes numbers due to permanent exclusions or increasing numbers due to the admission of a pupil permanently excluded from another school. This is most likely to arise if a pupil is excluded between the schools' census date in January and 31 March. LEAs may adjust actual and estimated pupil numbers when determining schools' initial budget shares for the following financial year, as well as an in-year redeterminations of budget shares.

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Related documents

The Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004

The Education (Amount To Follow The Permanently Excluded Pupil) Regulations 1999

The Financing of Maintained Schools Regulations 2003 [regulations made annually]

Sections 494 and 569(4) of the Education Act 1996

ANNEX

How to work out how much money should follow the pupil

- **LEA redetermining the budget share of one of its own maintained schools**

Deduction from the excluding school

Calculation 1

$$A \times (B / 52)$$

A is the amount attributable for the full financial year to a registered pupil of the same age and characteristics as the pupil in question

B is the number of complete weeks remaining in the financial year calculated from the relevant date (EXCEPT that where the permanent exclusion takes effect on or after 1 April in a school year at the end of which pupils of the same age or age group as the pupil in question normally leave that school prior to being admitted to another school with a different pupil age range, B is the number of complete weeks remaining in that school year calculated from the relevant date)

Allocation to the admitting school

Calculation 2

$$D \times (E / F)$$

D is the amount by which the LEA reduces the budget share of the school from which the pupil was permanently excluded or would have been reduced had that school been maintained by the LEA

E is the number of complete weeks remaining in the financial year during which the pupil is a registered pupil at the admitting school

F is the number of complete weeks remaining in the financial year calculated from the relevant date

Inter-LEA transfers – maximum 3 LEAs

Deduction and allocation

Calculation 3

$$G + H \times J / 52$$

G is the amount

H is the amount from the excluding LEA's local schools budget attributable to that pupil but not delegated to the individual school (the amount held by the LEA)

J is the number of complete weeks remaining in the financial year calculated from the relevant date

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RELATED DOCUMENTS

Education Act 2002 section 52

The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 (S.I. 2002/3178) as amended by The Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004 (SI 2004/....)

The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 (S.I. 2002/3179) as amended by The Education (Pupil Exclusions) (Miscellaneous Amendments) (England) Regulations 2004 (SI 2004/....)

Exclusion Appeal Panels Training Pack — Getting it Right - available from ISCG tel: 020 7229 0200 email: iscg@governors.fsnet.co.uk

Legal Toolkit for Schools — available from DfES Publications tel: 0845 602 2260

Disability Discrimination Act 1995 as amended by The Special Educational Needs and Disability Act 2001

Race Relations Act 1976 as amended by The Race Relations (Amendment) Act 2000

The Race Relations (Statutory Duties) Order 2001 (S.I. 2001/3458)

The Education (Pupil Registration) Regulations 1995 (S.I. 1995/2089) as amended

Guidance on the Education-related provisions of the Anti-social Behaviour Act - available from Prolog tel: 0845 602 2260 or at www.dfes.gov.uk/behaviourandattendance/

The Education (Parenting Orders) (England) Regulations 2004 (SI 2004/182)

Guidance on Drugs in Schools is available at www.teachernet.gov.uk/wholeschool/behaviour/drugs/

The education of children and young people in public care
<http://www.dfes.gov.uk/incare/>

Department for Education and Skills, Circular 7/90 'Management of the School Day'.

National Curriculum Handbooks (References: QCA/99/457, QCA/99/458)

Admissions Code of Practice (Reference: DfES/0031/2003)

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Special Educational Needs Code of Practice (Reference: DfES/581/2001)

Admission Appeals Code of Practice

