



Exclusions, Off-rolling, Fair Access, EHE, Children Missing Education

Understanding Education – Briefings

What do I need to know?

Exclusions

Schools can either exclude a pupil for a fixed period of time (up to 45 days in one school year) or permanently exclude them.

- Only the Headteacher has the power to exclude
- All decisions to exclude should be lawful, rational, reasonable, fair and proportionate

All schools should have a behaviour policy in place and appropriate behaviour management strategies which underpin high quality teaching and learning. Disruptive behaviour can be an indication of unmet needs.

Exceptional circumstances where a Headteacher may permanently exclude for a one-off offence might include:

- Serious actual or threatened violence against another pupil or member of staff
- Sexual assault or abuse
- Supplying an illegal drug
- Use or threatened use of weapon

A school cannot send a pupil home for disciplinary reasons, even with the parents' or carers' consent, without formally excluding the pupil. This is an unofficial or illegal exclusion. Schools sometimes send pupils home for a 'cooling off' period but this must still be recorded as a formal exclusion.

Schools can consider exclusion for issues related to behaviour outside the school gates. This is a matter for the Headteacher and should be in accordance with the school's behaviour policy.

In making the decision to exclude, a Headteacher should apply the civil standard of proof, i.e. 'on the balance of probabilities.' It would be expected that Heads would be measured in their decisions and take time to consider all evidence, including witness statements.

- If the Head is considering that it might be appropriate to permanently exclude, local authorities often recommend that the Head initially excludes a pupil for 5 days to enable the Head to undertake a robust investigation and give careful consideration to the decision.
- Excluded pupils should be encouraged and enabled to participate in all stages of the exclusion process.

On making the decision, the Headteacher must immediately notify the parents of the decision. They must ensure that the parents/carers are notified in writing of:

- the reasons for the exclusion
- whether it is fixed term or permanent
- the period of a fixed term exclusion i.e. start/end dates and date of return to school
- parents' right to make representations about the exclusion to the governing body
- how the pupil may be involved in this
- how any representations should be made
- details of the reintegration meeting being mindful that a fixed period exclusion must not be extended if an interview cannot be arranged or parents/carers do not attend.

If the governors are required to consider the exclusion, parents have a right to attend the meeting, be represented at this meeting and may bring a friend/representative. The parents/carers must be also given information about free and impartial advice.

Schools must inform the governing body and the local authority of an exclusion within 1 day if:

- it is a permanent exclusion (including where a fixed period exclusion is made permanent)
- the pupil will have been excluded for more than five school days (or more than ten lunchtimes) in a term
- the exclusion could result in the pupil missing a public examination or national curriculum test

If the pupil lives in a different local authority, then the Headteacher must inform the home local authority.

Unless it is a permanent exclusion, schools should provide suitable work and arrange for it to be marked. For permanently excluded pupils, the Local Authority must arrange provision commencing on the 6th day of the permanent exclusion. When a pupil returns to school following an exclusion the school should arrange for a reintegration meeting.

If governors are required to consider an exclusion,

- there is a duty to consider parents' representations about an exclusion
- the governing body may delegate their functions to a sub-committee of at least 3 members
- the governing body must consider reinstatement within 15 school days of receiving the notice of the exclusion if:
 - the exclusion is permanent;
 - it is a fixed period exclusion which would bring the pupil's total number of school days of exclusion to more than 15 days in a term; or
 - it would result in a pupil missing a public examination or national curriculum test.

The governing body must consider the interests and circumstances of the excluded pupil and have regard to the interests of other pupils and people working at the school. The governing body must also consider any representations made by parents, the Headteacher and a representative of the LA (in the case of a maintained school or PRU). In the light of their considerations, the governing body can either:

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

Parents can request the exclusion is further considered by an Independent Review Panel. This application must be made within 15 school days of being given notice of the decision to uphold a permanent exclusion. If parents apply within the legal time frame, the LA or the Academy Trust must, at their own cost, arrange for an IRP to consider the decision of the governing body not to reinstate a pupil. Any application outside this timeframe must be rejected by the local authority or academy. Following a review, the IRP can decide to uphold the exclusion decision; recommend that the governing body reconsiders their decision, or quash the decision and direct that the governing body considers the exclusion again.

Off-rolling

Off rolling is the practice of removing a pupil from the school roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the school roll, when the removal is primarily in the interests of the school rather than in the best interests of the pupil. Off-rolling strategies include part-time timetabling, managed moves, encouragement to home school or other types of exclusion activity.

Off-rolling is an ongoing concern and has received a great deal of press attention. The Timpson Review of school exclusions published in May 2019, also prompted the government to set out its response and commitment to the recommendations. (Much of the work associated with this was programmed for Summer 2020 but inevitably this has been delayed because of the Covid situation).

The revised Ofsted Inspection Framework does include a focus on off-rolling and where there is evidence that schools may be doing this, they are likely to be judged inadequate for leadership and management in their subsequent Ofsted report.

Fair Access Protocols

Local authorities are required to have Fair Access Protocols in place. These protocols are intended to ensure that children without a place outside of the normal admissions round are quickly placed in suitable settings. All schools, including academies, must agree and participate in the Fair Access Protocol and are expected to admit above their published admission number (PAN) if the school is already full.

How the Protocol operates is a matter for local determination but all schools are expected to respond to requests by local authorities to admit a child under Fair Access Protocols within seven calendar days. The governing body of a maintained school can appeal by referring the case to the Schools Adjudicator within 15 calendar days. In the case of Voluntary Aided or Foundation schools, the local authority can issue a direction to admit a child if after consultation it remains of the view that this is the appropriate school. In the case of academies, the local authority will seek to work with the academy concerned to agree admission of the child within 15 calendar days but if this has not happened, the local authority can apply for a direction from the Secretary of State.

Elective Home Education

In law, the responsibility for a child's education lies with parents and most parents exercise this responsibility by sending their child to school. However, parents can take full responsibility for their child's education and choose to electively home educate (EHE).

The current legal framework is not a system for regulating home education or forcing parents to educate in a particular way, but is a way of identifying and dealing with children who are not receiving a suitable, efficient and full time education. Local authorities are therefore required to:

- provide support and information for parents where it is appropriate or requested
- ensure the LA is fulfilling its statutory responsibilities to identify children who may not be in receipt of a suitable education
- respond to concerns that a child is not receiving efficient, full time and suitable education for his/her age, ability and aptitude

Home education is undertaken as a positive choice by many parents who follow this route. However, home education may be attempted as a last resort. The local authority should maintain a register of all EHE children known to them, their previous settings (if appropriate) and the reasons parents have indicated for home educating. This also enables the local authority to get an understanding of possible shortcomings in local provision and Alternative Provision settings, or potential failures by schools to manage attendance and behaviour properly.

The officer responsible in the local authority for monitoring the quality of EHE should request a meeting with the family and child to discuss educational provision. Where parents decline the offer of a home visit, they can be offered alternative options such as a telephone conversation or the provision of a written report evidencing materials and resources used. If it appears from the evidence that a child is not receiving suitable provision, advice and support from the local authority can be offered

and further monitoring put in place. However, if it continues to be a matter of concern, the local authority can write formally to parents setting out their reasons for concern giving parents the opportunity to respond in 15 working days. Where that fails to secure a satisfactory response, the local authority can issue an Attendance Order requiring the child to attend school provision.

Unregistered settings

Children may be identified as home educated but in reality spend a large amount of time at a number of unregistered settings. These settings could be providing a significant proportion of the child's education and may be an unregistered school where the usual standards of safeguarding and quality of education may not be of the standard expected in registered settings. Ofsted estimated in 2019 that as many as 6,000 children were being educated in unregistered settings. Ofsted now has a dedicated team of inspectors to identify and investigate potential unregistered independent schools. If such a setting is identified, local authorities should work with Ofsted to establish whether it is an illegal school, and then take action.

A school must be registered with Ofsted if it offers full time education and:

- has five or more pupils of compulsory school age
- is independent
- has one or more pupils with an Education and Health Care Plan (EHCP)
- has one or more pupils who are looked after
- the provision is providing 18 hours or more a week of education

If a setting is operating as a school and is not registered as a school, it is illegal.

Some home educated children may attend settings on a part time basis such as sports or drama clubs and that would be considered as part of the child's overall education.

Children Missing Education

Children missing education are “children of compulsory school age who are not registered at a school and are not receiving suitable education otherwise than at school”. Local authorities have a duty to establish the identities of such children of compulsory school age and to have robust policies and procedures in place to enable them to meet their duty in relation to these children. This includes ensuring that there are effective tracking and enquiry systems in place and appointing a named person to whom schools and other agencies can make referrals about children who are missing education. Local authorities are also required to have in place arrangements for joint working and information sharing with other local authorities and agencies. The DfE guidance on ‘Children Missing Education’ sets out a range of actions local authorities can take to track and secure the attendance of children at school.

The main concern about “children missing education” is that it is very difficult to know if children and young people are receiving their entitlement to education by not being in a full time setting and hence they may also be exposed to other risks.

Where can I access further information:

GOV.UK

- Exclusions from maintained schools, academies and pupil referral units in England, 2017
- Changes to the school exclusion process during the coronavirus (COVID-19) outbreak 2020
- Exploring the issue of off-rolling
- Fair Access Protocols: Principles and Process November 2012
- Fair Access Case Studies November 2012
- Elective Home Education: guidance for local authorities April 2019
- Children Missing Education November 2013 (updated 2016)
- Unregistered independent schools and out of school settings March 2018 and
- Department Advice for Collaborative Working between DfE, Ofsted and Local Authorities (in relation to unregistered provision)
- Timpson Review of School Exclusion May 2019