

# Serving on an exclusion panel

## Guidance for governors and trustees

Updated August 2024

Governing boards have a statutory duty to consider certain instances of pupil suspension and exclusion. The mechanism for this is a meeting whereby a panel of governors/trustees determine whether the headteacher's decision to exclude was lawful, reasonable, and procedurally fair.

This guidance explains the role of exclusion panels and how to prepare if you're part of a panel. You may also wish to [refer to our procedural guide to exclusion and suspension](#).

## The purpose of the panel meeting

The panel's role is to establish the facts in relation to the suspension or exclusion. The meeting gives the panel an opportunity to hear from those in attendance and to consider this alongside evidence and information received in advance.

You should think about whether it is more likely than not that a fact is true (rather than trying to prove it beyond a reasonable doubt).

The governing board's clerk will make arrangements for the meeting, including inviting relevant parties such as the suspended/excluded pupil (where appropriate), their parents, the local authority and the headteacher. Other relevant parties may include the pupil's social worker or virtual school head (VSH), external special educational needs and disabilities (SEND) specialists and the local authority.

### Exclusions training for governing boards

NGA strongly recommends that governors and trustees receive training regarding school exclusion legislation and panel conduct. If you haven't received training, ask your chair or governance professional what support is available.

NGA provides [training sessions](#) for governors and trustees who are likely to be part of a panel and offers [e-learning](#) on the governing board's role in exclusions.

## Reviewing the evidence

The panel should receive written evidence and information in advance of the meeting that is relevant to the decision to suspend/exclude. This will vary depending on the circumstances, but examples include:

- a list of all those who will be present at the panel meeting
- a copy of the headteacher's decision letter sent to parents
- a statement from the headteacher (providing a summary of the case and the reasoning behind their decision)
- the school's behaviour policy and any other relevant policies (e.g. SEND policy)
- parents' written representations in support of their child
- witness statements (these can be from the headteacher, the pupil's teachers, the designated safeguarding lead, the pupil themselves, their parent(s) and, if applicable, the designated teacher for looked-after children, the pupil's social worker, and VSH)
- the pupil's behaviour record and other relevant information held by the school such as those relating to a pupil's SEN (if applicable)
- evidence of support and interventions attempted prior to exclusion (headteachers can use suspension and exclusion in response to serious incidents or in response to persistent poor behaviour which has not improved following in-school sanctions and interventions)
- photographs and videos such as CCTV recordings

## Questions to ask

The governing board should consider whether the decision to suspend or permanently exclude the pupil was lawful, reasonable, and procedurally fair. Refer to the following questions when you are reviewing written evidence and during the meeting. Questions that need to be asked during the meeting will vary depending on the circumstances; the panel should identify where it needs more information and from whom.

### Questions to ask – lawfulness.

- Who made the decision? Is it clear that the headteacher made the decision to suspend/exclude the pupil?
- Was this decision taken in respect of a behaviour(s)? In what way did the pupil seriously or persistently breach the school's behaviour policy?

### Questions to ask – reasonableness.

- What evidence is there of the school intervening and supporting the pupil to prevent serious and or persistent breaches of the school's behaviour policy? Has the school tried to use alternative strategies to manage behaviour and avoid a suspension/exclusion?
- Were all other avenues explored so that the suspension/exclusion was the last resort? Were the specific needs and circumstances of the pupil considered before the decision was made?
- Does the seriousness of the incident(s) match the sanction issued?

- If the pupil has special educational needs or is disabled, did the school make reasonable adjustments?
- What is the likely impact on the pupil of the decision to exclude them? This includes consideration of timing of key national examinations, safeguarding issues from being out of school, and the home environment.
- How would allowing the pupil to remain in school seriously harm the education and/or welfare of the pupil and/or others in the school?

### Questions to ask – procedural fairness.

- Has the pupil been heard and supported in the process? Were they able to make a statement and/or respond?
- Has there been a thorough investigation of the incident(s)? Is there sufficient evidence? (a cross section of witness statements, for example)
- Has the school's behaviour policy and the statutory exclusions guidance been followed throughout the process?

## Reaching a decision

At the end of the meeting, the panel will privately discuss the case and reach a decision to:

- uphold the headteacher's decision to suspend or exclude; or
- direct reinstatement of the pupil immediately or on a particular date

In relation to **permanent exclusions**, [statutory guidance](#) sets out the following two tests of the headteacher's decision to exclude:

- Was the decision to exclude in response to serious or persistent breaches of the behaviour policy?
- Would allowing the pupil to remain in school seriously harm the education or welfare of the pupil or others, such as staff or pupils, in the school?

### Both tests should be met.

The panel's decision does not have to be unanimous; it can be reached by a majority vote.

In some cases, a decision to reinstate will make no practical difference. For example, the pupil may already have returned to school following a suspension or the parents make clear they do not want their child reinstated. However, the panel should still consider whether or not it would have upheld the decision to suspend or exclude.

The panel's decision should be clear and transparent, identifying reasons for the outcome. Your clerk will help you to construct a decision letter on this basis (outlined [in our procedural guide](#)).

The clerk should be present during the panel's decision making in order to provide procedural advice and continue to take minutes.

## Key considerations

Considering the following factors will help the panel decide whether the headteacher's decision to suspend or exclude was lawful, reasonable and procedurally fair. Refer to the information and evidence provided to the panel as well as responses to questions asked by the panel.

Examine	Consider
<b>The exclusion incident</b>	<ul style="list-style-type: none"> <li>Establish the facts on the balance of probabilities (it is more likely than not that a fact is true).</li> <li>Whether the school applied the relevant policies fairly and proportionately.</li> </ul>
<b>Whether the behaviour policy has been breached</b> (in a serious or persistent manner)	<ul style="list-style-type: none"> <li>It should be clear which part of the policy has been breached.</li> <li><b>If there is not enough evidence</b> for the panel to be confident that behaviour policy was breached, then the panel should consider directing reinstatement of the pupil immediately or on a particular date.</li> <li>Refer to the school's behaviour policy.</li> </ul>
<b>Whether suspension/exclusion is appropriate</b> (as a last resort because there is no reasonable alternative)	<ul style="list-style-type: none"> <li>The severity of the incident and likelihood of repeat behaviour, accounting for apologies given, remorse shown and/or offers to make reparation.</li> <li>Any risk to the education or welfare of the excluded pupil or others in the school.</li> <li>Whether all alternatives to exclusion have been attempted.</li> </ul>
<b>If the pupil has a <u>protected characteristic</u></b> , whether due regard has been given to the Equality Act 2010 and the public sector equality duty	<ul style="list-style-type: none"> <li>The headteacher must show that the decision to exclude is not discriminating against, harassing or victimising the pupil on the grounds of their: sex; race; disability; religion or belief; sexual orientation; pregnancy/maternity; or gender reassignment.</li> <li>Refer to the behaviour policy as well as the equality strategy and objectives.</li> </ul>
<b>If the excluded pupil has SEND</b> , whether their specific needs or circumstances were considered before the decision was made to exclude them	<p>The headteacher must show that the school has:</p> <ul style="list-style-type: none"> <li>made the necessary reasonable adjustments to policies and practices</li> <li>intervened in and supported the needs of the excluded pupil, seeking professional advice and support as appropriate (from the SENDCO and/or third parties such as LA professionals and medical experts)</li> </ul> <p>Refer to the behaviour policy, SEND policy and accessibility plan.</p>

Examine	Consider
<p><b>If the excluded pupil has a protected characteristic or SEND</b>, whether they have been put at an unfair risk of exclusion because of the school's policies, practices and procedures</p>	<ul style="list-style-type: none"> <li>• The headteacher must show that the relevant policies were consistently applied, sufficiently explained and that the excluded pupil was supported to comply.</li> <li>• Refer to relevant policies as well as data reviewed by the governing board that shows consistency of application.</li> </ul>
<p><b>Whether there are any mitigating factors that may explain why a behaviour happened or a pupil took a particular action.</b></p>	<p>Although the existence of any mitigating factors does not mean that the decision to exclude is incorrect, the panel should be satisfied that they were appropriately considered by the headteacher when making the decision to suspend/exclude the pupil. Potential mitigating factors include:</p> <ul style="list-style-type: none"> <li>• An Education and Health Care Plan (EHC Plan)</li> <li>• Looked After Children (LAC)</li> <li>• Bullying</li> <li>• Mental health and trauma issues</li> <li>• Medical issues</li> <li>• Potential SEND</li> <li>• Social or family reasons</li> </ul>