

REVIEW OF AN **EXCLUSION DECISION**

Guidance for Parents

**Policy Planning and
Corporate Services
Department**

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1. Introduction

When a pupil is permanently excluded from a school by the Head Teacher, the parent (or pupil if over 18) has the right to make representations to the School's Discipline Committee. Where a Discipline Committee does not direct the Head Teacher to reinstate a pupil then the parent is given notice of the decision and informed of their rights to apply for a review of that decision.

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

Under the review process, an Independent Review Panel reviews the governing body's / proprietor's decision not to reinstate a permanently excluded pupil.

2. Should I apply for a review?

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

- You may have the decision reviewed by an Independent Review Panel even if you do not want your son/daughter to return to the school.
- You can apply for a review even if you did not make a case to, or attend, the meeting at which the Governors/Proprietor considered your child's permanent exclusion.
- An Independent Review Panel who have no connections with the school/Academy/ Pupil Referral Unit will hear your review.
- The Independent Review Panel carefully considers your case and that of the school/Academy/Pupil Referral Unit.
- If you think that your child's special educational needs have not properly been taken into account or the Governors'/Proprietors' meeting was unfair in any way you should consider applying for a review.

3. Important steps to follow

Make sure that you send your application for review as soon as possible after you receive the letter from the Governors/Proprietor telling you that your son or daughter has not been reinstated.

You must fill in the form “Application for a Review – Exclusion Decision” which you should have received with these guidance notes or write a letter. In either case you must set out your reasons for applying for a review.

If relevant, state how you consider your child’s Special Educational Needs (SEN) are relevant to the exclusion. Whether or not your child has recognised SEN, you have a right to require that the Local Authority/Academy appoint a SEN expert to attend the review. If you would like an SEN expert to attend the review hearing **you must request** this at the time you apply for a review of the Governors/Proprietors’ decision.

Please complete the form carefully and return it to:-

Democratic Services
Policy, Planning and Corporate Services Department
Nottinghamshire County Council
County Hall
West Bridgford
Nottingham
NG2 7QP

You lose your right to a review hearing if your application is received after the 15th school day after the day on which you are informed, in writing, of the Governors/Proprietors’ decision not to reinstate your child.

4. Claims of Discrimination

In addition to the right to apply for an Independent Review Panel, if parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the Equality Act 2010 to the:-

- a) First – tier Tribunal (Special Educational Needs and Disability) in the case of disability discrimination, or
- b) County Court in the case of other forms of discrimination.

Contact the Equality and Human Rights Commission (EHRC) for further help and advice (see Section 11).

Claims of discrimination to the First – tier Tribunal or County Court can be made up to six months after the discrimination is alleged to have occurred.

5. Independent Review Panels

a) Constitution and Remit of Independent Review Panels

The local authority / Academy Trust must constitute the panel with either three or five members (as decided by the local authority / Academy Trust) with at least one member from each of the categories below:-

- A lay member, to chair the panel, who has not worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer.
- A school governor, who has served as a governor for at least 12 consecutive months in the last five years, provided they have not been teachers or head teachers during this time.
- A head teacher or individual who has been a head teacher within the last five years.

Any one who has, or has had, a connection with the school or with any of the parties involved on the case cannot sit on the Independent Review Panel.

The Independent Review Panel can decide to:-

- uphold the exclusion decision; i.e. refuse your appeal; or
- recommend that the governing body/proprietor reconsiders their decision, or
- quash the decision and direct that the governing body considers the exclusion again.

The Independent Review Panel may also:

- direct the governing body/proprietor to place a note on your child's educational record.

The role of the panel is to review the governing body's decision not to reinstate a permanently excluded pupil. In reviewing the decision the panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

The panel must apply the civil standard of proof, (i.e. 'on the balance of probabilities' it is more likely than not that a fact is true) rather than the criminal standard of 'beyond reasonable doubt'.

The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied decision the chair has the casting vote.

The Independent Review Panel's decision is binding on the:- pupil; parent(s); governing body; head teacher; local authority; and (in the case of an Academy) Academy Trust.

b) Who will be at the Review Hearing?

- You and/or your partner. You may also wish to bring a friend; representative or legal adviser.
- Your child – if you wish them to be present.
- The Independent Review Panel Members.
- The Clerk to the Review Panel.
- If attending, the legal or other representative of the Governors/Proprietor.
- The Head Teacher / Principal of your sons/daughter's school/ academy/Pupil Referral Unit.
- Any witnesses called by the school / academy / Pupil Referral Unit or by you.
- If school / Pupil Referral Unit is maintained by the Local Authority (LA), an LA representative may attend.
- If school / alternative provision has academy status, an LA representative may attend at your request but may only make representations with the consent of the Academy.
- An SEN expert - **but only when you have requested their attendance at the time that you lodged your application for review.**
- If attending, and where relevant, the alleged victim or his/her representative may be present for part of the review hearing.

The Clerk provides an independent source of advice on procedure for all parties. The Clerk will remain with the Panel when it retires to consider their decision, however the Clerk will take no part in the making of the decision.

An Administrative Officer may also be in attendance and make a detailed note of the proceedings. These notes do not constitute minutes of the Review hearing, but are taken solely to assist the Panel's decision making process. The Statutory

Code of Practice lays down that these notes remain the property of the Review Panel and are not available to any of the parties to the hearing.

Sometimes there is also an observer. This may be someone who is training to be a Panel member or Clerk to the Panel. You will be asked if you agree to an observer being present for any part of your review hearing.

c) Rights of Representation

The following are entitled to make written representations, appear and make oral representations and to be represented (including legally);

- (a) The parent(s), or pupil if aged 18 or over
- (b) the Head Teacher
- (c) the Governing Body
- (d) the Local Authority

Excluded pupils are encouraged to attend the hearing and to speak on their own behalf if they wish to do so and the parent agrees.

If a parent would like to bring more than one friend or representative to the review hearing, the parent will need to make this known prior to the hearing as the Clerk will need to seek the Panel's agreement in advance. However, both parents may attend if they wish to do so, and each can exercise this right.

The alleged victim, if they wish, are able to make oral or written representations either in person or through a representative or alternatively, by submitting a written statement.

Whether or not a school recognises that a pupil has special educational needs (SEN), all parents (or pupils if aged 18 or over) have the right to request the presence of a SEN expert at an Independent Review Panel. The local authority / Academy Trust must appoint an SEN expert to attend the panel and cover the associated costs of the appointment. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion; for example, whether the school acted reasonably in relation to its legal duties when excluding the pupil. The request for a SEN expert should be made to Democratic Services on the Application for a Review Panel Hearing.

6 Notice of Hearing

The Review Panel must meet within 15 school days of the date the parent applied for a review. Parents will be given written notice of the date of the Review Panel Hearing. Parents are encouraged to attend to present their case but if they do not wish to do so they are entitled to have the matter determined on the written representations.

If a parent wishes to attend but cannot for reasons beyond their control, the Panel may decide to adjourn consideration of the Review Panel but if that is not reasonably practicable or the parent elects not to attend, the matter will be decided on the representations and the information available to the Panel.

Wherever possible the Clerk to the Panel should make available all written evidence to the Panel Members, to the parents and other parties to the Review at least 5 school days in advance to the hearing. The pupil, if they and their parent(s) request, should be allowed to attend the review and speak on their own behalf unless there is good reason to refuse.

7 Conduct and Order of Hearing

The review will be conducted as informally as possible, in a neutral venue and will be heard in private. At the commencement of the hearing, the parties will be introduced to those present and the procedure will be explained by the Clerk. Although informal, the Panel will endeavour to keep a set order of hearing which they may vary after consulting those present.

In the majority of exclusion reviews, it is anticipated that the order of hearing will be as follows: -

- (i) the case for the school and Governing Body;
- (ii) questioning by the parent(s) or their representative;
- (iii) questioning by the Review Panel

- (iv) the case for the parent(s);
- (v) questioning by the school or Governing Body representative;
- (vi) questioning by the Review Panel

- (vii) representations by the SEN Expert
- (viii) questioning by the school and Governing Body representative
- (ix) questioning by the parent(s) or their representative (if necessary);
- (x) questioning by the Review Panel

- (xi) summing up by the school and Governing Body representative;
- (xii) summing up by parent(s);

Members of the Panel may ask questions at any time if they consider it necessary to obtain more information or to assist both parties.

In cases which are known to be complex or particularly contentious, and where witnesses as to fact are likely to be called, the arrangements for the hearing will normally be varied to allow for the questioning of the witnesses by all parties.

The Panel may adjourn the hearing at any time if it appears desirable, to avoid hardship to the parties or for any other good reason.

8 Evidence

If any party intends to raise matters or produce documents which are not covered by the statement of decision made by the governors or the application for review, these documents should be submitted to the Clerk to the Panel in good time before the hearing. This will enable documents to be circulated to all parties in advance of the Review hearing, failing which it may be necessary for an adjournment to allow the other parties to consider such evidence.

It may be necessary for witnesses to be called, and wherever possible, notice should be given in advance to the Clerk to the Panel of how many witnesses each party wishes to call so that the Clerk can make suitable arrangements and an estimate of how long the hearing is likely to last. The Review Panel cannot compel witnesses to attend and any witnesses must therefore appear before it voluntarily, and pupils under the age of 18 can only attend with the permission of their parents.

Where either party brings a number of witnesses to attend the review panel, the panel may direct that those witnesses may not attend throughout but may be asked to wait until they are called into the review to give evidence.

9 The Independent Review Panel's Decision

At the conclusion of the evidence and representations, the parties will be asked to withdraw and the Panel will consider its decision. When considering the governing body's decision in light of the principles applicable in an application for judicial review, the panel should apply the following tests:

- **Illegality** – did the head teacher and / or governing body / proprietor act outside the scope of their legal powers in taking the decision to exclude? i.e. if a pupil is excluded by someone other than a head teacher or acting head teacher.
- **Irrationality** – was the decision of the governing body / proprietor not to reinstate the pupil so unreasonable that it was not one a sensible person could have made? i.e. where more than one pupil is involved in the same

incident and treated differently.

- Procedural impropriety – was the process of exclusion and the governing body / proprietor's consideration so unfair or flawed that justice was clearly not done?

Procedural impropriety means not simply a breach of minor points of procedure but something more substantive that has a significant impact on the quality of the decision making process. This will be a judgement for the panel to make but the following are examples of the types of things that could give rise to procedural impropriety:-

- bias;
- failing to notify parents of their right to make representations;
- the governing body / proprietor making a decision without having given parents an opportunity to make representations;
- failing to give reasons for a decision; or being a judge in your own cause (for example, if the head teacher who took the decision to exclude were also to vote on whether to uphold the exclusion).

Where the criteria for quashing a decision have not been met, the panel should consider whether it would be appropriate to recommend that a governing body reconsiders their decision not to reinstate the pupil. This should not be the default option, but should be used where evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision but which the panel believe justify a reconsideration of the governing body's / proprietor's decision.

In all other cases the Panel should uphold the exclusion.

The Independent Review Panel can decide to:-

- uphold the exclusion decision; i.e. refuse your appeal; or
- recommend that the governing body/proprietor reconsiders their decision, or
- quash the decision and direct that the governing body / proprietor considers the exclusion again.

The Independent Review Panel may also:

- direct the governing body/proprietor to place a note on your child's educational record.

Normally a decision will be given on the day of the Review Hearing but in any event that decision and the grounds on which it is made will be communicated in writing to the parent (or pupil of aged 18 or over) and to the governing body. The decision of the Review Panel is binding on all parties at this stage.

10 **Further Courses of Action**

If you have completed the exclusion review process and are unhappy about the outcome, or in the way in which the process was handled, there are specific routes of complaint available to you. Whilst there is no further statutory right of appeal, any party who is dissatisfied with the decision may have recourse to one of the following courses of action if there are appropriate grounds.

Complaining about the maladministration of an independent review panel

If your child has been permanently excluded and you believe that the independent review panel process was handled unfairly you can make a complaint of maladministration.

Complaints of maladministration against review panels arranged by a local authority should be made to the **Local Government Ombudsman (LGO)**. Details of how to make a complaint can be found on their website.

- (1) Refer the matter to the Commissioner for Local Administration (Ombudsman). The Ombudsman has jurisdiction over the proceedings of the Review Panels, and may investigate allegations of maladministration leading to injustice. The Ombudsman has no statutory power to overturn the decision of a Review Panel, but can only draw to their attention a finding of maladministration.

The address for the Ombudsman is:-
Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH
Telephone: 0845 602 1983 or 024 7682 1960
Website: www.lgo.org.uk

Complaints of maladministration against review panels arranged by an Academy should be made to the **Education Funding Agency (EFA)**.

- (2) A complaint to the Education Funding Agency can be made using the online school complaints form or by writing to:

The Department for Education
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

When making a complaint of maladministration you should explain why you believe the review process was unfair and include relevant supporting

information, such as the review panel's letter notifying you of the reasons for their decision.

Complaints about the decision of an independent review panel

The Department for Education does not interfere in the decisions of independent review panels. If you do not believe that maladministration has occurred but want to challenge the decision of a review panel you will need to seek a **judicial review**. Applications for a judicial review should be made within three months of the panel's decision.

- (3) Seek to challenge the decision of the Review Panel by means of what is known as judicial review. This is legally very complex and unless legally aided, can be costly. In essence such an application to the Court would only succeed if it can be shown that the Review Panel had mis-directed itself in law, or had on the evidence made such an unreasonable decision that in the view of the Court no reasonable Review Panel, taking into account all the relevant factors and disregarding irrelevancies could have taken such a decision. Any dissatisfied party wishing to consider this course of action should take independent legal advice.

11 Useful Contact Details

(a) Advisory Centre for Education

The Advisory Centre for Education (ACE) provide information on the law and parent's rights and give practical advice on how a parent can make an appeal if they feel the exclusion is inappropriate or unfair.

020 7704-9822 (Exclusion information line; open 24 hours)
0808 8000 5793 (freephone) (Exclusion freephone advice line: open 2.00 pm - 5.00 pm weekdays)

ACE General Office Number 020 7704 3370
(Monday – Friday 9.30 am – 5.30 pm)
www.ace-ed.org.uk (web site)
ace-ed@easynet.co.uk (general e-mails)

(b) Democratic Services

If you would like any further information about the process please ring Democratic Services on 0115 977 3887 or 0115 977 3825 or write to:-

Democratic Services
Policy Planning and Corporate Services Department
Nottinghamshire County Council
County Hall
West Bridgford
NG2 7QP

(c) Equality and Human Rights Commission EHRC

EHRC
FREEPOST
RRLG-GHUX-CTR
Arndale House
Arndale Centre
Manchester
M4 3EQ

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Email: englandhelpline@equalityhumanrights.com

Website: www.equalityhumanrights.com

(d) Parent Partnership Service

Kimberly Martin (Advice and Information Officer)
Department: Children, Families and Cultural Services
Telephone: 0115 9482888 | 07827 354637
kimberly.martin@nottscc.gov.uk

(e) Department for Education

General enquiries: 0370 000 2288