

NOTES OF GUIDANCE ON INDEPENDENT EXCLUSION REVIEWS

These notes reflect the following legislation and guidance:-

- The Education Act 2002, as amended by the Education Act 2011;
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- The Education and Inspections Act 2006;
- The Education Act 1996; and
- The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, as amended by the Education (Provision of Full-Time Education for Excluded Pupils) (England) (Amendment) Regulations 2014
- Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement – Guidance for maintained schools, academies, and pupil referral units in England – September 2022 – Department for Education

1.0 PURPOSE OF EXCLUSION REVIEW PANEL

An Independent Exclusion Review Panel ('the Review Panel') is convened to consider an application by parents for a review of the decision of the governing board of the school concerned not to reinstate a pupil, following his or her permanent exclusion from the school by the headteacher.

2.0 DEFINITION OF 'PARENT'

The definition of a 'parent' for the purposes of the Education Act is broadly drawn. In addition to the child's birth parents, references to parents in these notes include any person who has parental responsibility (which includes the Local Authority where it has a Care Order in respect of the child) and any person (for example, a foster carer) with whom the child lives.

3.0 TIMETABLING OF REVIEW PANEL HEARING

A Review Panel must normally meet within 15 school days of notice being given to parents by the governing board of its decision not to reinstate a permanently excluded pupil. The Clerk to the Review Panel will take reasonable steps to arrange a time and date in order to ensure all parties are able to attend the hearing.

A suitable venue for the review hearing will be arranged locally, taking account of any access requirements.

4.0 MEMBERSHIP OF THE REVIEW PANEL

The Review Panel must have 3 or 5 members (North Yorkshire chooses to have 3 member Panels), including one member from each of the following three categories:

- A lay member to chair the Review Panel, who has not worked in any school in a paid capacity (disregarding any experience as a school governor or volunteer)
- Current or former school governors who have served as a governor for at least 12 consecutive months in the last five years, provided they have not been teachers or headteachers during this time
- Headteachers or individuals who have been a headteacher within the last five years

5.0 ROLE OF CLERK

An officer of Legal and Democratic Services will act as Clerk to the Review Panel. It is the Clerk's responsibility to provide an independent source of advice to the review on procedure, legislation and statutory guidance, for all parties. The Clerk remains with the Review Panel throughout the hearing (but does not take part in the decision making) to offer advice on procedure or law, makes reference to notes of evidence and records the decisions made and reasons for them.

Any queries about the review process generally can be addressed to the Principal Democratic Services Officer, Appeals Team, County Hall, Northallerton, North Yorkshire, DL7 8AD (Tel: 01609 533385 or email: appeals@northyorks.gov.uk).

6.0 RIGHTS OF REPRESENTATION

The following persons are entitled to make written representations to the Review Panel; attend the hearing and make oral representations to the Review Panel; and to be represented (including legally):-

- The parents or pupil if they are 18 years old;
- The headteacher;
- The governing board; and
- The Local Authority (in the case of a maintained school or pupil referral unit¹);

The excluded pupil may attend the hearing and speak on his or her own behalf, if he or she wishes to. If the pupil is not attending, they may feed in their views through a representative or by submitting a written statement.

Any alleged 'victim' should also be given a right to be heard in person, through a representative, or by submitting a written statement.

7.0 APPOINTING A SPECIAL EDUCATIONAL NEEDS (SEN) EXPERT

If requested by parents in their application for an independent review, the Local Authority/Academy Trust must appoint an SEN expert to attend the Review Panel and cover the associated costs of this appointment.

Parents have a right to request the attendance of an SEN expert at a review, regardless of whether the school recognises that their child has SEN.

The SEN expert's role is set out as follows:

- The SEN expert's role is similar to an expert witness, providing impartial specialist advice to the Review Panel on how special educational needs might be relevant to the permanent exclusion. The SEN expert should base their advice on the evidence provided to the Review Panel. The SEN expert's role does not include making an assessment of the pupil's special educational needs.
- The focus of the SEN expert's advice should be on whether the school's policies which relate to SEN, or the application of these policies in relation to the permanently excluded pupil, were lawful, reasonable and procedurally fair. If the SEN expert

¹ Parents may request that the local authority attend a meeting of an academy's governing board as an observer; that representative may only make representations with the governing board's consent. Where a local authority representative has attended a governing board meeting, they would normally also be invited to the Review Panel meeting.

believes that this was not the case, he/she should, where possible, advise the Review Panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

- Where the school does not recognise that a pupil has SEN, the SEN expert should advise the Review Panel on whether he/she believes the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any special educational needs that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's permanent exclusion.
- The SEN expert should not criticise a school's policies or actions simply because he/she believes a different approach should have been followed or because another school might have taken a different approach

Where an SEN expert has been requested by the parents, but is not present, the Review Panel should make parents aware of their right to request that the review is adjourned, until such time as an SEN expert can attend the hearing.

8.0 EVIDENCE AND WITNESSES

The Clerk will make reasonable efforts to circulate copies of relevant papers to all parties at least 5 school days before the review hearing. This will include as a minimum:

- The governing board's decision
- The parents' application for a review
- Any policies or documents that the governing board was required to have regard to in making its decision

Any written representations, or documents on which the parties intend to rely and which are not covered by the governing board's decision, or by the written application for a review by parents, should be forwarded to the Clerk to the Review Panel, as soon as possible, before the date of the review hearing.

The parents and the governing board are also entitled to call witnesses and, if so, the names of witnesses should also be conveyed to the Clerk to the Review Panel, again, as soon as possible before the date of the hearing.

In the case of witnesses who are pupils of the school, it will normally be more appropriate for the Review Panel to rely on written statements. Pupils, however, may appear as witnesses if they do so voluntarily and with the consent of their parents. In such cases, that pupil's parents should be invited to the hearing in support of their child.

The calling of character witnesses is at the discretion of the Review Panel, but will be allowed unless there is good reason to refuse.

It is for the Review Panel to decide whether any witnesses should stay for the rest of the hearing, once they have presented their evidence.

Where a Social Worker or Virtual School Head is present, the Review Panel must have regard to any representations made about how the child's background, experiences, needs, education, welfare and/or safeguarding risks were considered by the headteacher in the lead up to the permanent exclusion or may be relevant to the pupil's permanent exclusion.

9.0 PROCEDURE AT THE HEARING

The hearing will be reasonably informal so that all parties can present their case effectively and will be conducted in an accessible, non-threatening and non-adversarial manner.

The hearing will normally run in the following order:-

- (1) **Presentation of the Case by the Governing Board's representative**
- (2) **Representations by the Head Teacher**
- (3) Questioning of the Governing Board's representative by the Parents/Carers & Panel
- (4) Questioning of the Head Teacher by the Parents/Carers & Panel
- (5) **Representations by alleged 'victim' or his/her representative (if present)**
- (6) **Representations by the Local Authority representative**
- (7) Questioning by the Parents/Carers & Panel
- (8) Questioning by the Governing Board's representative.
- (9) **Questioning of the SEN Expert on how SEN may be relevant to the permanent exclusion. (if present)**
- (10) **Presentation of the Case by the Parents/Carers or their representative**
- (11) Questioning of the Parents/Carers Case by the Governing Board's representative & Panel
- (12) **Representations by the Social Worker (if present)**
- (13) Questioning by the Governing Board representative & Panel.
- (14) **Representations by the Virtual School Headteacher (if present)**
- (15) Questioning by the Governing Board representative & Panel.
- (16) **Representations by the Excluded pupil (if present)**
- (17) Questioning by Governing Board's representative & Panel
- (18) **Summary by the Governing Board's representative**
- (19) **Summary by the Parents/Carers or their representative**

} **The
School's
Case**

At the conclusion of the Review Hearing all parties will leave the room together.

10.0 MATTERS TO BE TAKEN INTO ACCOUNT BY THE REVIEW PANEL IN REACHING A DECISION

The role of the Review Panel is to review the governing board's decision not to reinstate a permanently excluded pupil. In reviewing the decision, the Review 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 Review Panel must apply the civil standard of proof; i.e. 'on the balance of probabilities' which means that it is more likely than not that a fact is true, rather than the criminal standard of proof, which is of 'beyond reasonable doubt'.

Following its review, the Review Panel can decide to:

- **uphold the governing board’s decision not to reinstate;**
- **recommend that the governing board reconsiders reinstatement; or**
- **quash the governing board’s decision and direct that the governing board reconsiders reinstatement.**

The Review 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 of the Review Panel has the casting vote.

The independent Review Panel’s decision is binding on the pupil; parents; governing board; headteacher; Local Authority; and (in the case of an Academy) Academy Trust.

The Review Panel may only quash the governing board’s decision where it considers that it was flawed when considered in the light of the principles applicable on an application for Judicial Review.

New evidence may be presented to the Review Panel, though the school may not introduce new reasons for the permanent exclusion or the decision not to reinstate the pupil and the Review Panel must disregard any new reasons that are introduced.

In deciding whether the governing board’s decision was flawed, and therefore, whether to quash the decision not to reinstate, the Review Panel must only take account of the evidence that was available to the governing board at the time of making its decision. This includes any evidence which the Review Panel considers would, or should, have been available to the governing board if it had been acting reasonably.

If evidence is presented that the Review Panel considers it is unreasonable to expect the governing board to have been aware of at the time of its decision, the Review Panel can take account of the evidence when deciding whether to recommend that the governing board reconsider its decision.

The Review Panel must have regard to the views of the SEN expert, social worker and Virtual School Head where any of these are present.

11.0 THE REVIEW PANEL’S DECISION

When considering the governing board’s decision in light of the principles applicable in an application for Judicial Review, the Review Panel should apply the following tests:

- **Illegality** – did the governing board act outside the scope of its legal powers in deciding that the pupil should not be reinstated?
- **Irrationality** – did the governing board rely on irrelevant points, fail to take account of all relevant points, or make a decision so unreasonable that no governing board acting reasonably in such circumstances could have made it?
- **Procedural impropriety** – was the governing board’s consideration so procedurally 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 Review 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 board 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

headteacher who took the decision to permanently exclude was also to vote on whether to the pupil should be reinstated).

Where the criteria for quashing a decision not to reinstate have not been met, the Review Panel should consider whether it would be appropriate to recommend that a governing board reconsiders its decision not to reinstate the pupil. This should not be the default option but should be used where evidence of procedural flaws has been identified that do not meet the criteria for quashing the decision, but which the Review Panel believes justifies a reconsideration of the governing board's decision.

In all other cases the Review Panel should uphold the governing board's decision.

Following the review, the Review Panel must issue written notification to all parties without delay. This notification must include:

- the Review Panel's decision and the reasons for it;
- where relevant, details of any financial readjustment / payment to be made if a governing board subsequently decides not to offer to reinstate a pupil within ten school days; and
- any information that the Review Panel has directed the governing board to place on the pupil's educational record.

12.0 FINANCIAL READJUSTMENT/PAYMENT

In the case of a maintained school or PRU, where a Review Panel has quashed the governing board's decision and directed that it reconsiders reinstatement, the Review Panel should order that an adjustment must be made to the school's budget, unless the governing board subsequently offers to reinstate the pupil. The only exception to this is where a school does not have a delegated or separate budget from the Local Authority, from which the readjustment can be made.

In the case of an Academy, where the Review Panel has quashed the governing board's decision, the Review Panel should order that the Academy must make a payment directly to the Local Authority in which the Academy is located, unless the governing board offer to reinstate the pupil.

The Review Panel should order that the readjustment (or in the case of an Academy, payment) is due automatically if the governing board has not offered to reinstate the excluded pupil within 10 school days of being notified of a direction to reconsider reinstatement. The Review Panel does not have to reconvene to issue this order.

The sum of this adjustment/payment must be £4,000, and would be in addition to any funding that would normally follow an excluded pupil.

The Review Panel does not have the power to order an adjustment or payment in circumstances where it has only recommended that the governing board reconsiders its decision.

13.0 REMEDIES AFTER THE REVIEW HEARING

A parent can complain to the Local Government and Social Care Ombudsman about maladministration by the Review Panel for a Local Authority, Voluntary Controlled or Voluntary Aided School. The Ombudsman can make recommendations if he or she finds that there has been maladministration. The Ombudsman might recommend a fresh hearing, if this was practical, and the Local Authority would normally be expected to comply. <https://www.lgo.org.uk/>

A parent can complain to the Education and Skills Funding Agency about maladministration by the review Panel in the case of an Academy School. Guidance on how to complain can be found here:

<https://www.gov.uk/government/publications/complain-about-an-academy>

Judicial Review

If either the parent or the governing board considers that the Review 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 was granted, the Court would consider the lawfulness of the Review Panel's decision. If it found the Review Panel's decision to be unlawful, or unreasonable (in the narrow legal sense of 'unreasonable', i.e. irrational or perverse), it could quash the decision and direct the Local Authority or Academy Trust to hold a fresh hearing before a newly constituted Review Panel.