

**A PARENTS' GUIDE TO  
PUPIL EXCLUSION  
INDEPENDENT REVIEW PANELS**

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**For further information**

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## 1. Introduction

In law you have the right to ask that an Independent Review Panel (IRP) be arranged to **Review** the decision taken by the School Governing Body (GB) not to reinstate your child following their permanent exclusion from school.

## 2. What powers do the IRP Have?

The IRP has no power to direct the GB to reinstate your child, or remove from your child's school record the fact that s/he was permanently excluded.

Having reviewed the decision of the GB to permanently exclude your child, the IRP can:

- Uphold the exclusion
- \*Recommend the GB reconsiders reinstatement (the GB may still come to the same decision and not allow your child back into school)
- \*Quash the decision and direct the GB to reconsider reinstatement (the GB may still make the same decision and if they do £4000k will be taken away from their budget. This payment will go to the Local Authority towards the cost of providing alternative educational provision for your child.)

\*The IRP have no powers to make the GB take this action.

## 3. Does Anyone Have the Power to Reinstate My Child?

**YES:** If you believe your child has been discriminated against under the Equality Act 2010 you can make a claim to the First Tier Tribunal for Disability Discrimination or a County Court for other forms of discrimination i.e. Race or Religion. If you take this route you must do so within six months of the GB's decision to permanently exclude.

The First Tier Tribunal and the County Court unlike the IRP does have the power to reinstate your child.

For further information about how this process works and how to make a claim, please follow the link below.

Coram Children's Legal Centre

[http://www.childrenslegalcentre.com/index.php?page=school\\_exclusions](http://www.childrenslegalcentre.com/index.php?page=school_exclusions)

The Coram Children's Legal Centre is the largest provider of free legal advice, assistance and representation on children's rights in the UK.

**The rest of this Guide only relates to Permanent Exclusions and Independent Review Panel's (IRP's)**

#### **4. How do I Request an IRP?**

Following the GB meeting they will have advised you that they have not reinstated your child.

You need to set out in writing your request for an IRP providing reasons for wanting a Review i.e. why you feel the decision not to reinstate your child was illegal, procedural unfair or the decision was irrational.

This request needs to be returned to the Clerk within 15 school days of receiving the letter from the GB. If you miss this deadline you lose the right to an IRP hearing, and the decision of the GB not to reinstate your child becomes effective.

You can still request an IRP meeting even if you did not attend the GB meeting.

#### **5. Can I Request an IRP and Lodge a Claim of Discrimination with the First Tier Tribunal or County Court?**

**Yes:** You can request an IRP and still follow a claim for discrimination.

#### **6. Special Educational Needs (SEN) Expert Request**

When requesting an IRP you can also request that the IRP is assisted by an SEN Expert, whether or not the school/GB recognises that your child has special educational needs (SEN). The role of the SEN Expert is to provide impartial advice to the Panel about how SEN could be relevant to the exclusion; they act as an expert witness.

When completing the IRP request you must indicate whether you would like an SEN Expert to be present. To assist the Clerk with this request, could you also indicate which Council Officers, if any, you have been dealing with if your child or their siblings have SEN needs?

#### **7. What Happens After I Make a Request for an IRP Hearing?**

The Clerk will write to acknowledge your request and make the necessary arrangements to set up a hearing.

#### **8. Is There a Deadline by Which Time the IRP Needs to Meet?**

**YES:** The Clerk has 15 school days from the date your written request was received to set up an IRP.

## **9. Who will be at the IRP Meeting?**

You and your partner, friend or legal advisor and your child will be invited. Also in attendance will be:

- The three IRP Panel Members.
- The Clerk to the IRP.
- A representative from the GB and Headteacher (HT).
- Any witnesses where relevant.
- The alleged victim or their representatives if relevant.
- An SEN Expert if you have requested this.
- \*A Local Authority observer if you have requested one.

\*For non academy schools only

There is a limit to how many people can be accommodated. If parties wish to bring more than 1 representative with them, they need to advise the Clerk, who will then speak to the IRP Chairman to seek their agreement.

## **10. Who Are the IRP Members?**

The IRP is made up of three people, one from each of the following groups:

- A Lay Member who acts as the Chairman. This person will not have worked in any school in a paid capacity (they could have been a Governor or volunteer);
- A School Governor who has served as a Governor for at least 12 consecutive months in the last five years; and
- A current Head teacher or retired Head teacher (within the last 5 years)

None of the Panel can serve if they have a connection to you or the school. They have to be fair and impartial.

## **11. What is the role of the Clerk?**

The role of the Clerk is to:

- a) Keep all parties involved in the IRP hearing informed;
- b) Circulate copies of the relevant paperwork;
- c) Offer procedural advice to all parties;
- d) Provide all parties' details of those attending and their role; and
- e) Attend the Review hearing, take minutes and produce a letter confirming the IRP's decision;

The Clerk will have been trained and have an up to date understanding of the process.

## **12. What is the Role of IRP?**

The IRP will consider the evidence and Review the decision of the GB not to reinstate your child.

The Chairman of the IRP will outline the procedure to be followed and explain to all parties that the Panel is independent of the school and Local Authority.

The Panel will want to support all parties involved to ensure everyone is heard. The Panel will want to make sure that the Review is accessible, non-threatening and non adversarial.

The Panel will have a number of questions of all parties involved, as there will be a number of lines of enquiry they will need to check.

## **13. What are the Roles of GB and HT?**

To present their reasons for excluding your child from the school and answer any questions either you or the IRP have.

## **14. Should I Attend the Review?**

**YES:** if at all possible: You are best placed to tell the IRP why you think the decision to permanently exclude your child was flawed, and ask questions of the GB/HT.

## **15. Can I Bring Someone With Me to Help Me?**

**Within reason Yes:** You may bring a family member or friend, character witness or a representative with you. They can simply support you or speak on your behalf.

You will need to tell the Clerk in advance of the Review who you will be bringing and in what capacity.

Normally, the IRP would expect to receive written statements from character witnesses, rather than they attend in person.

#### **16. Should I Bring My Child to the Review?**

**YES if your child is old enough:** Your child should be encouraged to attend so their voice can be heard. If they attend the IRP will no doubt have questions for them.

#### **17. What is the Role of the Alleged Victim?**

If your child was permanently excluded for assaulting another pupil for example, that pupil or their parents or both have the right to attend the Review and speak to the Panel about the incident and the impact the incident has had on them.

If the alleged victim and their parent(s) attend in person they will not be present for the whole hearing, but be invited to address the Panel at a set point in the proceedings, and then asked to leave. All parties present can ask them questions.

If they choose not to attend then they may submit a written statement instead, which all parties will have sight of.

#### **18. What is the Role of SEN Expert?**

If you have requested an SEN Expert to be present, they will attend the Review hearing.

The SEN Expert will be a professional who has had experience of the assessment and support of SEN pupils, as well as a legal understanding of the requirements of schools in relation to SEN and disability.

The SEN Expert acts like an expert witness, providing impartial advice to the Panel on how special education needs might be relevant to your child's case. The SEN Expert will base their advice on the evidence given to the Panel.

The SEN Expert **cannot** make an assessment of your child's special needs.

The SEN Expert will advise whether the school policies which relate to SEN or the use of these policies in relation to your child were lawful, reasonable and procedurally fair.

If the school does not recognise your child has SEN, the SEN Expert should advise the Panel whether s/he believes the school acted in a legal, reasonable and procedurally fair way in respect to the identification of any SEN needs that your child may potentially have and any contribution that this could have made to the circumstances of your child's exclusion.

#### **19. What Happens if I Do Not Attend the IRP?**

Due to the fact that the IRP has to meet within 15 school days of your Review request being received, the Panel will meet whether you are there or not. If you have a genuine reason for not being there the IRP may consider adjourning the Review. However, if you provide no genuine reason and offer no explanation for your absence, the IRP will carry on with the Review in your absence.

#### **20. What Information will be Available at the Review?**

Where possible the Clerk will circulate to all those involved paperwork for the Review. This may include:

- a. Copies of the relevant papers such as:
  - The GB decision letter to permanently exclude
  - The documents submitted to the GB by the HT
  - The minutes of the GB meeting
  - Your application for a Review
  - Any policies or documents that the GB was required to consider when making their decision
- b. Witness statements (these should be signed and dated, but can be anonymised if there is fear of retaliation); and
- c. Physical evidence could also be made available E.g. if your child was caught with a weapon in their bag while in school or CCTV footage if available.

#### **21. Is Late Paperwork Allowed?**

Submitting paperwork on the day of the Review should be avoided, as this could result in an adjournment.

#### **22. Can New Evidence be Put Forward?**

**YES:** But the school/GB can not introduce new reasons for permanently excluding your child.

### **23. Can IRP's be Combined?**

**YES:** If your child and another pupil were permanently excluded for the same incident and all parties agree, the two Reviews can be combined.

### **24. How is the IRP Conducted?**

The key aim is to apply the rules of natural justice so all parties are able to put their case and the Review is conducted in such a way that no outsider could consider there was any unfairness or bias. The structure of the Review would be:

- Chairman's Introduction;
- Case for GB/HT;
- Questions to the GB/HT;
- \*Local Authority view (non Academy schools only);
- Questions to the Local Authority;
- Alleged victim's statement (if required);
- Parent's case including your child's view;
- Questions to parent's and pupil;
- SEN Expert view (if required);
- Questions to the SEN Expert;
- Summing up GB/HT; and
- Summing up Parent's/Pupil

\* A Local Authority view can only be provided for non- academy schools. The Officer providing the Local Authority view can only comment on whether the GB consideration of the HT decision to permanently exclude your child was conducted fairly. In the context of the incident, the Local Authority may provide a view as to whether the decision to permanently exclude was proportionate. For example if the reason for the permanent exclusion was because your child brought a weapon into school, the Local Authority Officer could comment on where this had occurred in other schools and whether permanent exclusion had resulted.

### **25. How Does the IRP Make a Decision?**

The role of the IRP is to review the GB decision not to reinstate your child following their permanent exclusion.

In reviewing the decision the IRP must consider the interests and circumstances of your child, including the circumstances in which your child was excluded e.g. were they in or outside the school, was it a one off incident, was it persistent poor behaviour, was your child being bullied?

The IRP must also consider the interests of other pupils and people working in the school.

**26. What Standard of Proof Do the IRP Apply?**

The IRP will apply the Civil Standard of proof i.e. on the balance of probabilities it is more likely than not that a fact is true.

They do not apply the Criminal Standard of proof of beyond reasonable doubt.

**27. What Decisions Can the IRP Make?**

The IRP can decide to:

- i. Uphold the exclusion decision and your child will not be allowed to return to the school.
- ii. Recommend that the GB reconsiders reinstatement; or
- iii. Quash the decision and direct that the GB reconsiders reinstatement.

**28. Does the IRP Decision Have to be Unanimous?**

**NO:** the decision is based on a majority vote, with the Chairman having the casting vote. The decision is binding on all parties involved in the Review.

**29. What Must an IRP Find in Order to Quash a Decision and Direct that GB reconsiders reinstatement?**

The IRP must find a significant flaw in the GB decision not to reinstate your child, to the degree the decision was so unsound the decision could be called unsafe.

The IRP must apply the principles of a Judicial Review and apply the following tests:

- i) Illegality – did the HT and/or GB act outside the scope of their legal powers in taking the decision to exclude e.g. it was not the Head teacher who took the decision to permanently exclude, or your child was permanently excluded for non-disciplinary reasons e.g. your child was permanently excluded because of your behaviour or lack of educational attainment.
- ii) Procedural impropriety – was the process of the exclusion and the GB consideration so unfair or flawed that justice was clearly not

done, e.g. you were not allowed to present your case to the GB or bias i.e. the Head teacher who has a vested interest in the outcome of the GB decision was allowed to vote on whether your child should be reinstated with the GB or failing to give reasons for the GB decision to permanently exclude. Procedural impropriety is not just a simple breach of minor points of procedure, but something that has a significant impact on the quality of the decision making process;

- iii) Irrationality – the decision of the GB not to reinstate your child was so unreasonable that it was not one a sensible person could have made in the circumstances of the case, e.g. there are independent witness statements which prove your child was not in school when the incident occurred, and yet the GB still does not reinstate your child.

If the criteria for quashing a decision cannot be met, but there were some minor flaws the GB could be asked just to reconsider reinstatement.

In all other cases the IRP should uphold the exclusion.

### **30. What Does the IRP Take into Consideration?**

In deciding whether the GB's decision was flawed and therefore whether to quash the decision the IRP can only take account of the evidence that was available to the GB at the time they made their decision.

This would include any evidence which the IRP considered would or should have been available to them if they had been acting reasonably i.e. witness statements collected by HT.

If evidence is presented that the IRP considers it was unreasonable to have expected the GB to have been aware of at the time of their decision, the IRP can take account of the evidence when deciding whether to recommend the GB to reconsider reinstatement.

If present the IRP must also take into consideration the views of the SEN Expert.

### **31. What Happens Following the IRP Meeting?**

The Clerk will write to you explaining the decision made and the reasons for it.

If the IRP decision was to uphold the exclusion your child will require an alternative educational placement. You will have to find a new school for your child to attend.

If the decision was to recommend the GB reconsiders reinstatement, the GB must do this within 10 school days of being given notice of the IRP decision. Following their reconsideration the GB without delay must tell you of the decision, i.e. whether to reinstate your child or not. If they decide not to reinstate your child you have no further right to appeal. Your child will require an alternative educational placement.

If the decision was to quash the decision and direct the GB to reconsider reinstatement, the GB must do this within 10 school days.

If the GB does not offer to reinstate your child you must be told of this, and an adjustment may be made to the school's budget of £4,000. You have no further right of review and must find a new school for your child to attend.

If the GB offers to reinstate your child but you decline this offer, no readjustment needs to be made to the school's budget. However, the IRP may ask for a note to be placed on your child's record. This would include noting that where a pupil is not reinstated following a direction to quash and reconsider, the exclusion would not count towards the rule that an admission authority may refuse to admit your child because she/he has been excluded twice.

### **32. Police Involvement and Parallel Criminal Proceedings**

Just because the Police are involved in the incident or parallel criminal proceedings are taking place does not mean that the IRP can not progress the Review. The IRP would need to consider:

- Whether any charge has been brought against the pupil and, if so, what the charge is;
- Whether relevant witnesses statements and documents are available;
- The likelihood of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the school; and
- Whether an adjournment or declining to adjourn, might result in injustice.

### **33. What Can I Do if I Am Unhappy About the Independent Review Process?**

For schools other than Academies you can ask the Local Government Ombudsman (LGO) to investigate. This **is not** a right of appeal as the LGO can only investigate written complaints about procedural flaws in how the Review was conducted. You have 12 months in which to approach the LGO.

You can employ a solicitor and seek a Judicial Review in the High Court. This must be done within 3 months after receiving the letter informing you of the decision.

In relation to Academy schools you would need to contact the Complaints, Academies Central Unit, Education Funding Agency, Earlsdon Park, Butts Road, Coventry CV1 3BH [academy.questions@education.gsi.gov.uk](mailto:academy.questions@education.gsi.gov.uk) . Or seek a Judicial Review as above.

Useful Contact details:

Information on school discipline and exclusions issued by the Department for Education

<https://www.gov.uk/school-discipline-exclusions/exclusions>

Coram Children's Legal Centre

[http://www.childrenslegalcentre.com/index.php?page=school\\_exclusions](http://www.childrenslegalcentre.com/index.php?page=school_exclusions)

ACE Education also run a limited advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time. Information can be found on their website: <http://www.ace-ed.org.uk/>

National Autistic Society (NAS) School Exclusion Service (England) can be contacted on 0808 800 4002 or via [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk)

Independent Parental Special Education Advice <http://www.ipsea.org.uk/>

Guidance on making a claim of discrimination to the First-tier Tribunal (Special Educational Needs and Disability)

<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>) or the County Court.