

Children's Services

Exclusion Guidance Supplement August 2024

Hertfordshire County Council guidelines on exclusion from maintained schools, academies and Education Support Centres



Contents

Item	Page
Part 1: Introduction	3
1.1 About this supplement	3
1.2 Scope and terminology	3
1.3 The Inclusion Team – Duties	4
1.4 The Local Authority Representative role in the consideration of a suspension or permanent exclusion	5
1.5 Details of Local Authority contacts regarding exclusions	5
Part 2: Promoting positive behaviour and early intervention	7
2.1 Responding to poor behaviour	7
2.2 DfE guidance on behaviour management	8
2.3 Support for schools in behaviour management	8
Part 3: The headteacher's power to exclude	10
3.1 The parameters of a headteacher's power to use exclusion	10
3.2 The duty of care in relation to exclusions	10
3.3 Exclusions and the Equality Act 2010	11
3.4 The standard of proof to be applied in matters of school exclusion	11
3.5 Frequently asked questions	12
Part 4: Factors to consider before making a decision to exclude	15
4.1 Measures to prevent the need for exclusion	15
4.2 Off-site direction	15
4.3 Managed moves	16
4.4 Children at high risk of exclusion	16
4.5 Frequently asked questions	17
Part 5: The headteacher's duty to inform parties about an exclusion	18
5.1 The duty to inform parents about an exclusion	18
5.2 Informing social workers and VSHs about an exclusion	18
5.3 Informing the governing board about an exclusion	18
5.4 Informing the Local Authority about an exclusion	18
5.5 Frequently asked questions	19
Part 6: The governing board's duty to arrange education for excluded pupils	20
6.1 The education of pupils from the sixth day of an exclusion	20
6.2 Frequently asked questions	21
Part 7: The governing board's duty to consider an exclusion	22
7.1 The responsibilities of the governing board in relation to exclusion	22
7.2 Reviewing decisions to exclude and considering reinstatement	23
7.3 Exclusion hearings	24
7.4 Requests that a GDC hearing is held by remote access	25
7.5 Considering the evidence and reaching a decision	27
7.6 The governing board's duty to notify its decision	28
7.7 Frequently asked questions	28
Appendix 1 Questions to consider before taking a decision to exclude a child	32
Appendix 2 Summary of the governing board's duty to consider exclusions	34
Appendix 3 Guidance for headteachers regarding exclusion reports	35

Part 1: Introduction

1.1 **About this supplement**

This supplement is intended to compliment the statutory guidance on exclusions published by the DfE entitled, "*Suspensions and Permanent Exclusion from Maintained Schools, Academies and Pupil Referral Units in England, including Pupil Movement*" – August 2024 and should be read in conjunction with it. The DfE guidance may be found at

[School suspensions and permanent exclusions - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/school-suspensions-and-permanent-exclusions)

Cross references in this supplement to specific pages or paragraphs in the DfE's statutory guidance are shown in brackets and depicted in emboldened blue text, e.g. a reference to paragraph 1 of the DfE guidance would be shown in this supplement as (**DfE 1**)

Whilst schools, academies and Education Support Centres (ESCs) must have regard to the statutory guidance, this supplement offers additional support for those involved in the exclusion process and may be regarded as a guide to good practice. It updates and replaces all previous versions and is not a substitute for the statutory guidance.

[Exclusions - Hertfordshire Grid for Learning \(thegrid.org.uk\)](https://www.the-grid.org.uk/exclusions)

1.2 **Scope and Terminology**

Except where explicitly stated this supplement applies to all maintained schools, academies (including free schools) and all ESCs.

The term "school" is used to describe any institution to which this supplement applies unless otherwise stated.

The term "academy" is used to describe any category of academy, including free schools and AP ESCs.

The term "exclusion" is used in this supplement to describe the formal basis by which a child is removed from a school site, or is prevented from entering a school site, for a disciplinary reason. It may therefore refer to either a suspension or a permanent exclusion (see below).

The term "suspension" is used to describe the exclusion of a child on a temporary basis for a fixed period of time.

The term "lunchtime suspension" is used to describe the exclusion of a child during the lunch period only.

The term "permanent exclusion" is used to describe the exclusion of a child on a permanent basis.

The term "headteacher" is used to describe the headteacher of a maintained school, the teacher in charge of an ESC and the principal of an academy, unless otherwise stated.

The term "governing board" is used to describe the governing board of a maintained school, the management committee of an ESC and the board of trustees of an academy.

The term "parent" is drawn widely and is used to describe not only a child's birth (or biological) parents but also any person or corporate body that has parental responsibility for a child. This includes the Local Authority where there is a care order in respect of the child and any person who has day-to-day care of the child, e.g. a foster carer.

The term "school day" is used to describe any day that a maintained school, academy or ESC is in session and open to pupils in the relevant year group. For example, where a secondary school is open to children in Year 7 on a day that is otherwise not open to children in other year groups, the day in question would be a school day for a child in Year 7 but not a child in any other year group

The term "academic year" is used to describe the period between the first school day after 31st July and the first school day after the following 31st July.

The term "remote access" refers to a meeting arranged by the governing board that is carried out via electronic means such as a live video link.

1.3 **Inclusion Team – Duties**

The Inclusion Team carries out the following duties and should be contacted for:

- advice and guidance relating to exclusion from school;
- Local Authority duties in respect of the administration for exclusions;
- Local Authority representation at governor meetings;
- Local Authority representation at Independent Review Panels;
- Day 6 provision arrangements for permanently excluded children;
- Admissions to schools for in year applicants who meet FAP Group A;
- All managed moves between mainstream schools;
- All admissions for young people returning from ESCs/PBSs into mainstream schools; and
- Local Inclusion Panels

The local behaviour services should be contacted for advice, guidance and support for children that are experiencing poor emotional wellbeing and dysregulated behaviour in line with the Hertfordshire Behaviour and Emotional Wellbeing Strategy.

1.4 **The Local Authority Representative role in the consideration of a suspension or permanent exclusion.**

The statutory guidance issued by the Department for Education (“DfE”) in August 2024 entitled “*Suspension and 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*” (“*the DfE guidance*”) sets out the duty of the governing board to consider and decide on reinstatement of a suspended or permanently excluded pupil within 15 school days of receiving notice of a suspension or permanent exclusion from the Head Teacher if:

- it is a permanent exclusion;
- it is a suspension which would bring the pupil’s total number of school days out of school to more than 15 in a term; or
- it would result in the pupil missing a public examination or national curriculum test.

When considering an exclusion (in the case of a maintained school or PRU), the governing board must ensure that a representative of the Local Authority is invited and allowed to make representations or share information. The guidance does not provide that once invited the Local Authority must attend. The Local Authority’s role is limited in such circumstances. The Local Authority representative is not involved in the exclusion decision making process, their role being a neutral one. The Local Authority representative may, however, ask questions where further clarity is required.

In order to fulfil this role in the case of pupils who are permanently excluded, and where the Local Authority representative is unable to attend, the Local Authority will provide written questions to be tabled at the relevant governing board meeting. These will be sent to the clerk at least 24 hours in advance of the meeting. The Local Authority will request that a copy of the minutes of the meeting be provided once agreed by those governors present along with a copy of the decision letter.

The above process will also apply to those pupils permanent excluded from academies unless requested otherwise by the clerk.

The Local Authority will attend all IRP meetings requested by parents in relation to permanent exclusions.

1.5 **Details of Local Authority contacts regarding exclusions**

All general inquiries to the Local Authority regarding matters relating to school exclusion should be made to the Inclusion Team. Their contact details are as follows (term time 9.30-12.30pm – 1.30-4.30pm):

E-mail: statutoryschoolsexclusionduty@hertfordshire.gov.uk

Telephone: 01992 – 555911

E-mail (outside of term time or the above hours):
exclusions@hertfordshire.gov.uk

Further details regarding members of the Inclusion Team who serve different areas may be found at

[Exclusions - Hertfordshire Grid for Learning \(thegrid.org.uk\)](http://thegrid.org.uk)

Disclaimer: The information in this document is for general guidance and does not constitute legal advice. If you require legal advice, please contact a legally qualified adviser or solicitor. The guidance in this document is offered in good faith and every effort has been taken to ensure that it is accurate and appropriate. However,

Hertfordshire County Council does not accept liability for the completeness, accuracy or appropriateness of the guidance given in this document or for any loss, damage or inconvenience, however so caused, arising from the application of the guidance offered. Any such reliance as you place on the guidance given is therefore strictly at your own risk.

Part 2: Promoting positive behaviour and early intervention

2.1 Responding to poor behaviour

In most cases exclusion, especially permanent exclusion, will be the last resort after a range of measures have been tried to improve a pupil's behaviour, all without lasting success. Schools should put a wide range of strategies in place to address the types of behaviour which may lead to exclusion.

Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. Headteachers should also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems.

Where a pupil is at risk of exclusion and has a social worker, e.g. because they are the subject of a Child in Need Plan or a Child Protection Plan, the headteacher should inform and consult with the social worker, the Designated Safeguarding Lead (DSL) and the parents (**DfE 59**). Additionally, where a child in care is likely to be subject to an exclusion, the designated teacher should contact and work with the Virtual School as soon as possible and also engage with the child's foster carer(s) or children's home workers, as appropriate (**DfE 60**).

Schools are encouraged to implement the measures contained within HCC's Emotional Wellbeing and Behaviour Strategy which is designed to protect, champion and safeguard the entitlement of those children who are at risk of being out of education and may be found in the Hertfordshire Grid for Learning at the following website address

[hertfordshire-emotional-wellbeing-and-behaviour-strategy-2020-2023-v2](https://thegrid.org.uk/hertfordshire-emotional-wellbeing-and-behaviour-strategy-2020-2023-v2)
(thegrid.org.uk)

Hertfordshire Steps has been adopted by the local authority as its preferred approach to behaviour management in Early Years settings and schools. It has been agreed through the SEND Executive and forms part of Hertfordshire's Local Offer.

It is a therapeutic approach to emotional wellbeing, with an emphasis on consistency, on the teaching of internal discipline rather than imposing external discipline, and on care and control, not punishment. It uses

techniques to de-escalate a situation before a crisis occurs and, when a crisis does occur, it adopts techniques to reduce the risk of harm.

Schools should also consider putting a Pastoral Support Plan (PSP) in place for pupils deemed to be at risk of exclusion. This should specify the range of strategies and support measures to be implemented to address the particular behaviours of concern. Professional advice should be sought as necessary in drawing up the provisions of a PSP and be reviewed on a regular basis.

However, if approaches towards behaviour management have been exhausted then exclusion may need to be considered as a last resort. Hertfordshire County Council encourages headteachers to consider all available alternative before deciding on this option.

2.2 **DfE guidance on behaviour management**

The DfE has published a companion piece to the exclusion guidance called "*Behaviour in Schools*" July 2022. This may be found at

[Behaviour in schools - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

The DfE advises that exclusion should only be necessary when strategies, practices and interventions set out within the "*Behaviour in Schools*" guidance have not been successful in improving a pupil's behaviour or the use of more significant interventions or sanctions are required.

2.3 **Support for schools in behaviour management**

The management of pupil behaviour in Hertfordshire schools is supported by a network of Education Support Centres (ESCs) in different areas. These are known as Pupil Referral Units (or PRUs) in other Local Authorities.

Hertfordshire's ESCs provide a range of services including

- advice and guidance on behaviour management, both generically and in support of individuals;
- provision for pupils who have been permanently excluded;
- outreach staff who work in schools with pupils exhibiting persistently poor behaviour ;
- respite and alternative provision for pupils who are finding it difficult to regulate their behaviour in a mainstream school setting; and
- signposting to other specialist agencies, as appropriate.

Schools are expected to contact their local ESC for advice, support and guidance regarding pupil behaviour. The table below gives details of which ESC to contact for support for secondary age pupils in your area:

ESC	Telephone number	Areas covered	
		District	DSPL
North Herts	01462 - 419020	North Herts	1
Stevenage	01438 - 369119	Stevenage	2
Rivers	01992 - 453950	Broxbourne and East Herts	3 & 4
Links Hatfield	01707 - 346170	Welwyn Garden City and Hatfield	5 & 6
Links	01727 - 836150	St Albans	7
Dacorum	01442 - 247476	Dacorum	8
Chessbrook	01923 - 212025	Watford and Three Rivers	9

Behaviour support for primary age children may be accessed by contacting the institutions mentioned in the table below:

Provider	Telephone number	Areas covered	
		District	DSPL
North Herts ESC	01462 - 419020	North Herts (except Hitchin)	1 (except Hitchin)
Oughton Primary School	01462 - 450716	Hitchin	1 (Hitchin only)
The Willows at Peartree Spring Primary School	01438 - 233900	Stevenage	2
Rivers ESC	01992 - 453950	Broxbourne and East Herts	3 & 4
The Hub at Swallow Dell Primary School	01707 - 339079	Welwyn Garden City and Hatfield	5
The Hive at Summerswood Primary School	020 - 8953 - 3139	Borehamwood	6
Links ESC	01727 - 836150	St Albans	7
Dacorum ESC	01442 - 247476	Dacorum	8
The Acorn Centre at Warren Dell Primary School	020 - 8428 - 4571	Watford and Three Rivers	9

Part 3: The headteacher's power to exclude

3.1 The parameters of a headteacher's power to use exclusion

A pupil may be only be excluded on disciplinary grounds (**DfE 20**). It would be unlawful to exclude a pupil simply because they have Special Educational Needs (SEN) or a disability that the school feels it is unable to meet, or for a reason such as poor academic attainment. Truancy is also generally not regarded as a reason for exclusion as it would be perverse to prevent a child from attending school for not attending school. Exclusion would also be an inappropriate and potentially unlawful response to

- minor breaches of the school's behaviour policy such as failure to complete homework or bringing in dinner money;
- pregnancy
- the behaviour of a child's parent, e.g. their failure to attend a reintegration meeting following a suspension

Only the headteacher of a school can exclude a child (**DfE 1**). The headteacher may not delegate the power to exclude. However, the power to exclude may pass in a maintained school to a person designated as an acting headteacher in the headteacher's absence or pending the appointment of a headteacher. This person may or may not be the deputy headteacher but must be someone appointed to the role of acting headteacher. The governing board of a maintained school may wish to consider specifying the role of acting headteacher with the accompanying power to exclude in the job description of the member of staff they wish to designate as such. In an academy, the 'principal' includes 'acting principal' by virtue of regulation 21 of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.

3.2 The duty of care in relation to exclusions

Headteachers must take account of their legal duty of care when sending a pupil home following an exclusion (**DfE 3**). If a parent does not comply with an exclusion, for example by sending the excluded child to school or by refusing to collect the child from school, the headteacher must have due regard for the pupil's safety in deciding what action to take. An exclusion should not be enforced if doing so may put the safety of the pupil at risk. If efforts to resolve the issue with the parents are unsuccessful the school should consider whether to contact the Inclusion Team for advice. In some circumstances, police or community support officers could become involved. Where there is a persistent lack of parental co-operation the school may consider applying for a parenting order.

3.3 **Exclusions and the Equality Act 2010**

Headteachers must take their obligations under the Equality Act (2010) into account before taking a decision to exclude a child (**DfE page 10**). This includes the duty to make reasonable adjustments to meet the needs of a child with characteristics protected by the Act. Schools must also comply with their Public Sector Equality Duty under the Act to ensure that their policies and practices do not discriminate against pupils unfairly by increasing their risk of exclusion, e.g. as a consequence of unconscious bias.

Non-statutory advice from the DfE to help schools understand how the Equality Act affects them and how to fulfil their duties under the Act is available at

[Equality Act Advice Final.pdf \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

Further information on a school's obligations under the Equality Act is described in technical guidance published by the Equality and Human Rights Commission available at

[Technical Guidance for Schools in England | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://equalityhumanrights.com)

3.4 **The standard of proof to be applied in matters of school exclusion**

Headteachers must apply the civil standard of proof, i.e. "the balance of probabilities", when establishing the facts in relation to a decision to exclude a child (**DfE 3**). This means that a headteacher should accept that something has happened if the evidence available suggests that it is more likely to have happened than not. Headteachers should not apply the criminal standard of proof, sometimes referred to as "beyond reasonable doubt". Thus, if it is more probable than not that a pupil did what they are alleged to have done, the head teacher may exclude the pupil if this sanction is allowed under the school's behaviour policy. However, HCC's advice is that the more serious the allegation (and thus the possible sanction), the more convincing the evidence substantiating the allegation needs to be. This is not the same as requiring that the criminal standard of "beyond reasonable doubt" be applied but it does mean that when investigating more serious allegations, in determining whether it is *distinctly* more likely than not that the pupil has behaved as alleged, head teachers will need to gather and take account of a wider range of evidence. In some cases this may extend to evidence of the pupil's past behaviour *but only if relevant to the seriousness of the present allegation*. This is of particular significance if a child is permanently excluded for a first or "one-off" offence because it naturally follows that the offence must be of a very serious nature to warrant this sanction being applied as a result of a single incident.

3.5 **Frequently asked questions**

Q1. Is there a limit on the number of suspensions that a pupil may accumulate?

Yes (DfE 1). A pupil may be suspended for one or more fixed periods up to a maximum of 45 days in a single school year. There is no restriction on the number of days of suspension that may be imposed at any given point other than the overall yearly limit. The actual number of days of suspension that might be imposed at any single point will be at the headteacher's discretion, tempered by the provisions of the school's behaviour policy.

Q2. Can a pupil's behaviour outside school be considered grounds for an exclusion?

Yes, if this is specified in the school's behaviour policy (DfE 2). Schools may wish to describe the circumstances in which this might happen, e.g. for breaches of the school's behaviour policy off site that might impinge adversely on the maintenance of good order and discipline within the school.

Q3. Does a suspension have to be for a continuous period?

No (DfE 6 and 9).

Q4. Can a suspension be converted into a permanent exclusion?

No (DfE 10). However, whilst a suspension cannot be changed into a permanent exclusion, a suspension may, in exceptional circumstances, be followed by permanent exclusion as a separate exclusion event, e.g. where further evidence has come to light which, had it been known at the outset, might have led to a permanent exclusion in the first place.

Q5. Can an exclusion be cancelled?

Yes, but only where the exclusion in question has not been reviewed by the governing board (DfE 13 and 14).

Q6. In what circumstances may a pupil be removed from the school site or prevented from attending school on disciplinary grounds without following the formal exclusion process?

None (DfE 18 to 22). Any exclusion of a pupil must be carried out formerly and in accordance with the School Discipline (Pupil Exclusions and Reviews)(England) Regulations 2012 and with regard to the DfE's statutory guidance on exclusions. Informal or unofficial exclusions, e.g. sending a child home to 'cool off' that do not follow the formal school exclusion process are unlawful regardless of whether it occurs with the agreement of parents.

Q7. What is 'off-rolling?'

Off-rolling is the practice whereby a pupil is removed from a school's roll in unlawful circumstances (DfE 20 to 22). Examples of off-rolling include, but not limited to,

- *exerting undue influence over a parent to remove their child from the school under threat of permanent exclusion or threat not to withdraw a permanent exclusion in favour of an alternative;*
- *encouraging them to choose Elective Home Education; and*
- *influencing them to find a place at another school.*

Q8. Can a part-time timetable be put in place as a way of avoiding the need to exclude a pupil?

No (DfE 30). A part-time timetable should not be used

- *as a direct alternative to exclusion or*
- *to manage a pupil's behaviour.*

Guidance as to when it might be appropriate to arrange a part-time timetable is not given in the DfE exclusion guidance, but is covered to some extent on page 19 of the DfE's non-statutory guidance on school attendance ([School attendance guidance May 2022 \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/104441/school-attendance-guidance-may-2022.pdf)) where, under the heading "Can a school place a child on a part-time timetable?" it is stated "As a rule, no. All pupils of compulsory school age are entitled to a full-time education. In very exceptional circumstances there may be a need for a temporary part-time timetable to meet a pupil's individual needs. For example where a medical condition prevents a pupil from attending full-time education and a part-time timetable is considered as part of a re-integration package. A part-time timetable must not be treated as a long-term solution. Any pastoral support programme or other agreement must have a time limit by which point the pupil is expected to attend full-time or be provided with alternative provision".

Further information is given in both the exclusion guidance (DfE 30) and the attendance guidance as to how part-time timetables should operate where they are put in place and schools are also referred to HCC's guidance on the use of reduced timetables for pupils of compulsory school age available at

[Attendance: part-time students - Hertfordshire Grid for Learning \(thegrid.org.uk\)](https://www.thegrid.org.uk/attendance/part-time-students)

Q9. Can a child be prevented from returning to school after a suspension if the child's parent(s) are unable to attend a reintegration meeting?

No ([DfE 28](#)). This would in effect be punishing the pupil for the behaviour of the parent, which is not a valid reason for exclusion. HCC recommends that schools consider writing to parents with a record of the discussion that took place at a reintegration meeting expressing the necessary level of concern if the parent(s) failed to attend. (See also [DfE 27 to 31](#)).

Q10. What happens if parents do not comply with an exclusion, e.g. if they refuse to pick their child up from school or bring and leave the child at the school even though they may have been excluded?

Headteachers must put the safety and welfare of the child at the centre of their response to a situation such as this and discharge their duty of care. Beyond this headteachers should in the first instance seek to work cooperatively with parents to encourage them to comply with their responsibility to ensure that their child is not present in a public place at any time during school hours. Any parent who fails to do so without reasonable justification commits an offence and may be given a fixed penalty notice or be prosecuted ([DfE 67](#)). Schools should contact the Inclusion Team for assistance where this may be necessary.

Q11. Can a pupil be permanently excluded for a single serious incident?

Yes, if this is indicated in the behaviour policy of the school. Schools may wish to consider giving examples that indicate the severity of an offence that might in of themselves lead to a permanent exclusion, emphasising that the list is illustrative, not exhaustive. These examples could include

- serious actual or threatened violence towards another pupil or member of staff;
- sexual abuse or assault;
- carrying an offensive weapon;
- supplying an illegal drug.

Part 4: Factors to consider before making a decision to exclude

4.1 Measures to prevent the need for exclusion

HCC encourages schools to regard exclusion as a last resort and only after a diverse range of support strategies have been deployed to manage inappropriate behaviour without lasting success. HCC's recommended approach to promoting positive behaviour and early intervention is given in Part 2 above. (See also [DfE 32 to 35](#))

A table is given in Appendix 1 that headteachers may use to assist them in deciding whether or not it is necessary to exclude a pupil.

4.2 Off-site direction

Off-site direction is where the governing board of a maintained school uses powers under Section 29A of the Education Act 2002 to require a pupil to attend another education setting for the purpose of improving their behaviour ([DfE 36 to 47](#)). Off-site direction should be temporary, short term and monitored regularly. Academies may also be able to direct a child's education to be delivered off-site for the same purpose under their general powers. HCC recommends that academies check their particular articles of association to see if they may do this and take legal advice if necessary.

Off-site direction does not require parental consent but HCC recommends that parents are consulted in advance.

Pupils should be dual registered during an off-site direction to another school.

Certain parameters must be followed where off-site provision is arranged under the Section 29(A). These parameters include:

- (1) *Where a governing body determine that it will impose a requirement under Section 29A(1) of the 2002 Act, they must give the person prescribed in paragraph (3) a notice in writing of the imposition of the requirement containing the information prescribed in paragraph (4).*
- (2) *The notice must be given as soon as practicable after the determination has been made and not less than two school days before the relevant day*
- (3) *The prescribed persons are*
 - a. *the relevant person; and*
 - b. *where the pupil has an EHCP, the LA maintaining it*
- (4) *The prescribed information is*

- a. *the address at which the educational provision is to be provided for the pupil;*
- b. *particulars identifying the person to whom the pupil should report on first attending that address for the purposes of receiving the educational provision;*
- c. *the number of days for which the requirement will be imposed;*
- d. *the reasons for, and objectives of, imposing the requirement; and*
- e. *in relation to the provision*
 - i. *where two sessions per day are provided, the times at which the morning session commences, the afternoon session ends and the break between them commences and ends, or*
 - ii. *where a single session per day is provided, the times at which the session commences and ends.*

Further details and the parameter which apply are given the DfE exclusion guidance ([DfE 36 to 47](#)).

4.3 **Managed moves**

A managed move is the transfer of a pupil who is at high risk of permanent exclusion from one school to another school to give the pupil a fresh start and a new beginning ([DfE 48 to 52](#)). This may follow an off-site direction where the pupil has settled in well to their new provision.

Managed moves should be voluntary and agreed with all parties involved, including the parents and the admission authority of the new school. However, this does not, of course, remove the right of parents to apply for a place at any school they wish to and for their application to be processed in the normal way.

HCC offers a service to schools whereby it will act as an impartial broker, liaising as necessary with all relevant parties. Full details are given in HCC's managed move protocol which may be found at

[hcc-managed-move-protocol-2019 \(thegrid.org.uk\)](http://thegrid.org.uk/hcc-managed-move-protocol-2019)

4.4 **Children at high risk of exclusion**

HCC encourages schools to give special consideration to children belonging to groups that are especially vulnerable to being excluded from school ([DfE 53 to 62](#)). The exclusion rates for certain groups of pupils are consistently higher than average. This includes: pupils with SEN; pupils eligible for free school meals; looked after children; and children from certain ethnic groups. The ethnic groups with the highest rates of exclusion are Gypsy/Roma; Travellers of Irish Heritage and Caribbean pupils.

Whilst Governing Boards should be challenging and evaluating their school data ([DfE 108](#)), HCC advises that head teachers interrogate their exclusion data and work with local partners to identify which groups may be at particular risk of exclusion within their local context. They should consider what extra

support might be needed to identify and address the needs of pupils from these groups to reduce their risk of exclusion.

HCC anticipates and expects that schools will engage proactively with parents and relevant professionals to find alternatives to exclusion of children from these groups.

As well as having disproportionately high rates of exclusion, there are certain groups of pupils with additional needs that are particularly vulnerable to the impact of exclusion, including pupils with EHC Plans and looked after children. HCC advises that headteachers should, as far as possible, avoid permanently excluding any pupil with an EHC Plan or a looked after child.

Where a school judges that a child with an EHC Plan is at risk of exclusion the headteacher should consider requesting an early or interim/emergency review of the Plan to determine what additional support or alternative placement may be required.

4.5 **Frequently asked questions**

Q12. At what stage would it be appropriate to explore the possibility of a managed move with the family of a child who is at risk of permanent exclusion?

HCC recommends that a managed move should typically be considered only after a wide range of support strategies have been applied and which are not having any lasting success. These supports should include school-based strategies and external agency interventions. A managed move is more effective as a thoroughly planned strategy, not as a last-minute intervention at (or beyond) the point of permanent exclusion. Parents should not feel pressurised into accepting a managed move as a direct alternative to permanent exclusion. Moreover, managed moves are more likely to be a success for all concerned if the emphasis is on the "managed", not just simply the "move". Thus, exploring the possibility of a managed move where there is no imminent risk of permanent exclusion allows time for issues to be explored, approaches made and supports to be put in place to facilitate the transfer.

Q13. Should a child who has been in the care of the Local Authority but is no longer a looked after child be given the same level of consideration as a child who is currently looked after when it comes to matters of school exclusion?

Yes. No distinction is drawn between children who are currently in care and those who were previously in care as both groups are particularly vulnerable to the impacts of exclusion (DfE 58 to 62).

Part 5: The headteacher's duty to inform parties about an exclusion

5.1 **The duty to inform parents about an exclusion**

Whenever a headteacher suspends or permanently excludes a pupil they must, without delay, notify the parents of the period of the suspension or permanent exclusion and the reasons for it (DfE 63)

HCC has produced template letters that may be used at all points along the exclusion process including the notification of exclusions. HCC recommends that schools use these templates as they include all the items which are specified in the DfE exclusion guidance (DfE 64 to 68). These letters are available on the Hertfordshire Grid for Learning via the following link:

[Exclusions - Hertfordshire Grid for Learning \(thegrid.org.uk\)](http://thegrid.org.uk)

5.2 **Informing social workers and Virtual School Heads about an exclusion**

Whenever a headteacher suspends or permanently excludes a pupil they must, without delay, after their decision, also notify the social worker if the pupil has one and the Virtual School Head (VSH) if the child is in care (DfE 77 to 79).

5.3 **Informing the governing board about an exclusion**

The headteacher must, without delay, notify the governing board of:

- any permanent exclusion (including where a suspension is followed by a decision to permanently exclude the pupil);
- any suspension which would result in the pupil being suspended for a total of more than five days in a term; and
- any suspension which would result in the pupil missing a public examination or national curriculum test. (DfE 81 and 82).

The LA recommend that the Headteacher notify the governing board once a term of any other exclusions that have not already been notified (DfE 108-111).

5.4 **Informing the Local Authority about an exclusion**

The Local Authority must be informed without delay of any school exclusions (DfE 81). For a looked-after child, the Local Authority that maintains the child should also be informed, if this is not Hertfordshire. For a permanent exclusion, if the pupil lives outside the Local Authority area in which the school is located, the headteacher must also notify the pupil's 'home' Authority (DfE 84 and 85).

Schools which use SIMS may notify HCC of their suspensions via the Electronic Exclusions Sender, which is part of the Exclusion Module. For assistance, please contact the Herts for Learning Service desk by telephoning 01438 - 544466 or e-mailing them at <mailto:service@hfleducation.org> .

Schools which do not use SIMS should notify HCC of their suspensions by returning a completed 'X1 - suspension notification form' available at

[Exclusions - Hertfordshire Grid for Learning \(thegrid.org.uk\)](http://thegrid.org.uk)

to the Inclusion Team at exclusions@hertfordshire.gov.uk

Permanent exclusions should be notified to the Local Authority in the first instance by telephoning your local Inclusion Team Officer or, if they are not available, by calling 01992 - 556291. This should be followed up by e-mailing a copy of the letter notifying the parents of the permanent exclusion to the Inclusion Team at exclusions@hertfordshire.gov.uk and accompanying this with a completed 'X1 - permanent exclusion notification form', available at

[Exclusions - Hertfordshire Grid for Learning \(thegrid.org.uk\)](http://thegrid.org.uk)

5.5 **Frequently asked questions**

Q14. Should parents be contacted by telephone about an exclusion in the first instance?

Yes. This allows parents to ask any initial questions or raise concerns (DfE 73)

Q15. Can the notification of an exclusion be sent to parents electronically?

Written notification of the information that must be supplied in a letter sent to parents notifying them of an exclusion can be provided by delivering it directly to the parents , leaving it at their usual or last known home address, or posting it to that address (DfE 64). Where such a letter is posted, it should be sent by first class mail, without delay. Notices can be given electronically if the parents have given written agreement for this kind of notice to be sent in this way (DfE 65).

Q16. Where a governing board should be notified of an exclusion, should all of the governors on the board be notified individually?

If the Chair of the governing board has been informed, the board as a whole is deemed to have been notified.

Part 6: The governing board's duty to arrange education for excluded pupils

6.1 The education of pupils from the sixth day of an exclusion

A pupil of statutory school age who has been excluded from school, even one who has been permanently excluded, is as entitled to an education as a non-excluded pupil.

For suspensions of five days or fewer, and for the first five school days following a permanent exclusion (in either case counting the first day that the pupil is excluded as day one) head teachers should ensure that work is provided for the excluded pupil to complete at home which is appropriate to the child's age and ability and which meets any special educational needs that have been identified for the child, e.g. as part of an EHC Plan. Arrangements should also be made for this work to be marked. Online pathways such as Google Classroom ([Classes \(google.com\)](https://www.google.com/classes)) or Oak Academy ([Oak National Academy \(thenational.academy\)](https://www.thenational.academy)) can be used but schools should ensure that the work set is accessible and achievable by the pupil outside school.

For suspensions of more than five school days, the governing board must arrange suitable full-time education for any pupil of compulsory school age. It must begin no later than the sixth school day of the suspension (with the exception of Year 11 pupils who have no more public examinations to take). Where a child received consecutive suspensions, these are regarded as a cumulative period for the purposes of this duty. This means that if a child has more than five consecutive days of suspension, then education must be arranged for the sixth school day of suspension, regardless of whether this is because of one decision to suspend the pupil for the full period or multiple decisions to suspend the pupil for several periods in a row (**DfE 89**). Two successive suspensions must be separated by at least one session where the pupil is registered as being present at school for these suspensions not to be considered as consecutive (i.e. not in a row).

For permanent exclusions, the Local Authority where the child resides has the responsibility of arranging suitable full-time education for the pupil to begin from the sixth school day after the permanent exclusion took place, counting the first day of the exclusion as day one (**DfE 90**). It is therefore essential that schools notify any permanent exclusion as soon as possible so that appropriate arrangements may be made to facilitate the excluded pupil's on-going education.

6.2 **Frequently asked questions**

Q17. Does provision have to be arranged for a pupil in their final year of compulsory education and who does not have any further public examinations to sit?

No (DfE 93)

Q18. Are the requirements to arrange education for a looked-after child the same as any other child who has been excluded?

In the case of a looked-after child, or child with a social worker, the school should liaise with the Local Authority to arrange alternative provision from the first day following a suspension or permanent exclusion (DfE 94)

Part 7: The governing board's duty to consider an exclusion

7.1 The responsibilities of the governing board in relation to exclusions

Governing boards have a key responsibility in considering whether excluded pupils should be reinstated. They also have a duty to challenge and evaluate what their school's data is telling them about exclusions from the school and pupil movement more generally ([DfE 108 to 111](#)). These duties include

- monitoring the characteristics of pupils who have been suspended or permanently excluded to determine whether certain groups of pupils are being treated more harshly than others, perhaps as a result of unconscious bias and taking steps to address any issues which arise. This forms part of the board's Public Sector Equality Duty (PSED);
- monitoring and challenging data around off-site directions and managed moves (see paragraphs 4.2 and 4.3 above), checking to see if there are any patterns emerge, e.g. if high numbers of children with SEND are moving the board may wish the school to review its SEND support. The board may also wish to satisfy itself that any cost implications arising from off-site directions are being carefully considered and that the school is getting good value for money in terms of outcomes;
- ensuring that the placements of pupils directed to off-site education are being reviewed at appropriate times, that the procedures are being properly followed and checking to see that the interventions are achieving their objectives and that the pupils are benefitting from them;
- ensuring that there are no unofficial or informal exclusions taking place (see Q6 above) and that where children have been removed from roll that this has been done lawfully and that there is no off-rolling going on (see Q7 above and [DfE 18 to 22](#));
- monitoring whether there are any children are on part-time timetables and if so, whether there is a valid reason where these are happening and that the proper procedures are being followed (see Q8 above and [DfE 30](#));
- considering the circumstances in which exclusions have been cancelled/withdrawn to ensure that there is no improper practice e.g. parents being put under pressure to accept their child's removal from roll by a means other than by permanent exclusion so they don't have that on their school record, which could be considered as an example of off-rolling ([DfE 13](#));
- monitoring effectiveness and consistency in the school's implementation of its behaviour policy;
- checking to see that the correct absence codes are being recorded in the school's registers;
- monitoring instances of where pupils receive repeat suspensions;

- checking to see that appropriate off-site provision is being made for pupils who receive more than five days of suspension in any given term;
- making sure that appropriate interventions are being put in place to support pupils at risk of suspension or permanent exclusion;
- checking any variations in the rolling average of permanent exclusions to understand why this is happening and to ensure that they are only used when necessary; and
- the timings of moves and permanent exclusions, and whether there are any patterns, including any indications which may highlight where policies or support are not working.

7.2 **Reviewing decisions to exclude and considering reinstatement**

Parents have the right to make representations to the governing board about the exclusion of their child. If they do so, the governing board has a duty to consider these representations. However, the requirements on a governing board to do so depend on a number of factors. These are illustrated in the diagram in Appendix 2 ([DfE 97 to 107 and page 39](#)).

Where a governing board is legally required to meet to consider the reinstatement of an excluded child they should

- not discuss the exclusion with any party outside the meeting;
- ask for written evidence in advance of the meeting including witness statements and other relevant information held by the school such as those relating to a pupil's SEN and the pupil's school record. Schools usually supply this information in the form of an exclusion report which should, where possible, be circulated along with a list of those who will be present, to all parties at least five school days in advance of the meeting. Guidance for headteachers as to what to include in such a report is given in Appendix 3;
- allow parents to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing board should first seek parental consent);
- invite the pupil's social worker if they have one and, if the child is in care, the VSH, to attend;
- comply with their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example, where a parent or a pupil has a disability with mobility or communication that has an impact on their ability to attend the meeting or to make representations); and
- identify the steps they will take to enable and encourage the excluded pupil to attend and participate in the meeting, (e.g. by providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding; or how the excluded pupil may feed their views by other means if attending the meeting is not possible ([DfE 112](#)).

Where a governing board meets to consider the reinstatement of an excluded pupil this function is delegated to a subcommittee called the Governors' Discipline Committee (GDC).

Governors reviewing a headteacher's decision to exclude a child should be demonstrably impartial. This means that each panel member should not have had any prior involvement in the case e.g. by being party to the original decision, or know the excluded pupil or their family, or have a vested interest in the outcome.

HCC strongly recommends that any governor sitting on a GDC panel should have received adequate training to carry out their duty within the last two years ([DfE 88](#)). Given the need to also ensure that every governor is impartial as described above, governing boards are recommended to ensure that they get as many of their governors trained in exclusions as they can so they then have the widest pool of people to draw upon to form a panel should the need arise.

7.3 **Exclusion hearings**

The following parties must attend a GDC hearing:

- the governors on the panel. There should be at least three governors on the panel. HCC recommends that where there are more than three panellists it is helpful to have an odd number of governors as a majority decision may then be reached without the need to resort to a Chair's casting vote.
- a clerk. HCC recommends that governing boards secure the services of a clerk who fully understands and has experience of the exclusion process so that they may offer support and guidance as necessary.
- the headteacher, to explain why the decision to exclude has been taken

The following parties may attend a GDC hearing:

- the parents and the excluded pupil, if the parents wish that the child attends. If the excluded pupil is over 18 years of age they may represent themselves and do not have to be represented by their parents.
- representatives and supporters. Both the parents and the headteacher may bring a supporter or representative. It is at the panel's discretion as to whether either party may bring additional supporters or representatives. HCC advises panels to be permissive wherever possible.
- the excluded pupil's social worker if they have one and the VSH in the case of a child in care.

The Local Authority's Inclusion Team will typically submit questions to the clerk in advance of a GDC requesting that they be asked at the hearing and that the responses received be sent back.

The Local Authority will maintain a position of neutrality and not "push" for any particular outcome. However, the Local Authority may indicate where there is a lack of clarity, or where the statutory guidance appears not to have been followed.

HCC recommends that governing boards adopt the order of proceedings outlined below:

- Introductions. The Chair welcomes everyone and introduces the parties to each other.
- The headteacher gives their report.
- The governors may then ask the headteacher questions about their case.
- The parents may ask the headteacher questions as well.
- The Local Authority's representations and questions are then taken.
- The parent(s) may make their representations. If the excluded pupil is over 18 years of age they may represent themselves.
- The governors may ask the parent(s) questions. If the excluded child is present HCC recommends that any questions go to the parents or the parents representatives, rather than to the child (unless the excluded pupil is over 18 years of age).
- The headteacher may ask the parent(s) questions (or the excluded pupil if over 18 years of age).
- Representations may be taken from the social worker and/or VSH, if present.
- Headteacher sums up
- Parent(s) sum up

7.4 **Requests that a GDC hearing is held by remote access**

The arrangements for GDC hearings to be held by remote access are described in Part 11 and Annex A of the DfE's statutory guidance on exclusions ([DfE 242 to 257](#)). Key points are as follows:

- GDC hearings may **only** be held via the use of remote access if
 - requested by the parents of an excluded pupil under the age of 18, or by the pupil if over the age of 18 ([DfE page 66](#)), or
 - due to extraordinary events or unforeseen circumstances such as an unforeseen school closure due to floods, fire or outbreak of infectious illness/disease ([DfE 244 and 252](#))
- Remote access hearings should not be a default option and face to face meetings should always be encouraged ([DfE page 8 and 66](#)).
- Where a parent does not request a remote meeting, or does not state a wish either way, governing boards must hold the meeting in person unless

it is not reasonably practicable to do so due to extraordinary events or unforeseen circumstances as described above (DfE 244 and 252)

- Head Teachers and governing boards should not place pressure on the parent or excluded pupil (if they are over 18 years old) to request a meeting to be held via the use of remote access, even if doing so means that they will arrange a meeting any sooner (DfE page 76).
- Where a parent or excluded pupil (if over 18 years old) initially asks for a meeting to be held via remote access and subsequently decides to withdraw the request, the governing board should arrange the meeting to be held face to face without delay (DfE page 76).
- Social workers and VSHs must be allowed to join a meeting via the use of remote access, regardless of the format chosen, as long as the governing board is satisfied that they will be able to participate effectively, they can hear and be heard (and see and be seen if participating by video) throughout the meeting, and their remote participation will not prevent the meeting being fair and transparent (DfE 246)
- Before allowing a hearing to be conducted by remote access the governing board must assess whether the meeting can be held fairly and transparently and
 - confirm with all parties that they have access to the technology which will allow them to hear and speak throughout the meeting, and to see and be seen, such as via a live video link;
 - ensure all participants will be able to make effective representations or otherwise fulfil their function (DfE 248, 249 and 253); and
 - make every effort to check all participants understand the proceedings and be made aware of how to raise any issues that may prevent their effective engagement.

If these conditions are not met, the meeting should not be held via remote access and the governing board should consult with the parent (or excluded pupil if over 18) to discuss how a face to face meeting can be arranged that will be convenient for them without delay (DfE 250 and page 76)

- If, during a meeting held via the use of remote access, there are technological or internet network issues which compromise the ability for participants to be seen or heard or prevents the meeting from being held fairly and transparently and it is not reasonably practicable to resolve, a face to face meeting must be arranged by the governing board despite the parent's request. This should be done without delay (DfE 245).
- Where a hearing is held by remote access
 - the governing board must comply with relevant equalities legislation, e.g. by making any reasonable adjustments as may be required to allow those involved to fully participate in the proceedings (DfE 247)

- should provide clear instructions about how to join the meeting virtually and distribute the joining instructions in a timely manner ahead of the meeting;
- indicate a named person who any participant should contact if they have any questions before the meeting takes place;
- consider holding a 'test meeting' with any participant to check the available technology is suitable, and that all participants understand how to access the meeting;
- ensure that the chair of governors is prepared to explain the agenda at the start and provide clear guidance on how the meeting will be run, for example how participants should indicate they wish to speak, how any 'chat' functions should be used, whether there will be any breaks in proceedings and how parents and excluded pupils can access advocacy services during the meeting. It would be appropriate for the clerk to indicate how these matters were addressed in the minutes of the hearing. (DfE page 77)

The use of remote access does not alter the legal and procedural requirements incumbent upon the governing board as laid out in the DfE's statutory guidance on exclusions. Parents may, for example, be joined by a friend or representative as they would in a face to face hearing (DfE page 77)

7.5 **Considering the evidence and reaching a decision**

When establishing the facts in relation to an exclusion the governing board must apply the civil standard of proof, i.e. 'the balance on probabilities' (is it more likely than not that the excluded pupil has done what they are alleged to have done) rather than the criminal standard of 'beyond reasonable doubt' (DfE 117).

In light of its consideration, the governing board may either:

- decline to reinstate the pupil; or
- direct the pupil's reinstatement, either immediately or by a particular date (DfE 118)

These are the only two options open to the governors. They may not, for example, replace a head teacher's decision to permanently exclude a pupil with a suspension because they feel the headteacher acted too harshly. They may also not attach conditions to a reinstatement.

If the governing board decides against the reinstatement of a pupil who has been permanently excluded the parent(s) (or the excluded pupil if over 18 years of age) can request that the governors' decision is reviewed by an Independent Review Panel (IRP) (DfE 120). Details of the IRP process fall outside the scope of this supplement but may be found in the DfE's statutory guidance (DfE 150 to 268)

In reaching a decision as to whether a pupil should be reinstated or not, the governing board

- must consider both the interests and circumstances of the excluded pupil and that of other pupils, staff and the school community (DfE 114); and
- should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair (DfE 124). In determining whether a headteacher has acted reasonably, governors should not reach their decision on the basis of what they would have done in the headteacher's place, but rather review what the head teacher did and take a view on whether the headteacher took a decision that a headteacher acting reasonably could have taken in the circumstances of the case. Another way of looking at this is to take a view on whether the headteacher took a decision that was so unreasonable that a headteacher who was acting reasonably could not have taken this decision in the circumstances of the case.

7.6 **The governing board's duty to notify its decision**

Where legally required to consider reinstating a suspended or permanently excluded pupil, the governing board must notify the parent or the pupil if they are 18 years or over, the headteacher and, where relevant, the Local Authority, the pupil's social worker and/or the VSH of its decision, and the reasons for it, without delay. Where the pupil resides in a different Local Authority area the governing board must also inform the pupil's 'home' Local Authority (DfE 131).

Details of what must be included in the governing board's letter are given in the DfE's statutory guidance (DfE 132 to 140).

7.7 **Frequently asked questions**

Q19. What happens if cannot adhere to the statutory time scale for a GDC hearing?

Where a governing board has a duty to meet to consider the reinstatement of an excluded child they must make reasonable endeavours to arrange the meeting within the statutory time limits set out in the diagram in Appendix 2 and must try to have it at a time that suits all relevant parties. However, its decision will not be considered invalid simply on the grounds that it was not made within these limits (DfE 105). HCC recommends that proceedings are at least instigated within the statutory time scale even if they have to be adjourned to a later date and that appropriate records are made of the process that was followed. Parents should always be notified of any delay and provided with reasons for the adjourned date, seeking their agreement wherever possible.

Q20. What happens if the governors can meet within the deadline but the parents say they cannot attend and want the hearing held at a later date?

There is no 'right' answer to this but it is an example of a situation where one has to choose between the lesser of the two evils. In this instance it would be easier to defend a decision to allow the parents to make representations than to adhere strictly to the deadline, especially in light of the fact that the governors' decision would not be considered invalid merely because it had been taken out of time, as stated above. Again, HCC recommends that proceedings are at least instigated within the statutory time scale even if they have to be adjourned to a later date and that appropriate records are made of the process that was followed.

Q21. What happens if the parents want to bring a legal representative with them?

They may do so if they wish, but this should be notified beforehand. This will give the headteacher an opportunity to decide if they wish to be legally represented as well. In the unlikely event that the parents turn up with a legal representative who had not been expected the panel may choose to offer the headteacher an adjournment to a later date if they wish to secure legal representation for themselves.

Q22. Can the governors on the panel meet up before the hearing with the clerk to discuss the case?

Yes. HCC considers this to be consistent with good practice. It allows the governor on the panel to decide who is going to ask which questions. It allows the clerk an opportunity to answer any questions about the procedure to be followed. The Clerk has no influence over the panel other than offering legal and procedural advice.

Q23. How does the hearing get started?

HCC recommends that the governors meet with the clerk in the room where the hearing is to take place before the hearing is due to begin. No other single party should be with them. At the appointed time the clerk fetches the other parties and escorts them into the hearing room at the same time. After the hearing the clerk should escort all parties other than the governors out of the room at the same time. It is important that the clerk does not allow any one party to have access to the decision-makers (the governors) when the other parties are not present, less they make a representation that another party might have challenged. The same protocol should be observed for adjournments during a hearing.

Q24. Can the governors ask to see documents which they feel are important but which were not supplied in the school's exclusion report?

Yes, this should be relevant evidence reasonably required by the governors to aid them in their understanding and decision making and to help clarify facts. No parties should be disadvantaged so any new evidence taken by the panel should also be made available to all the

other parties as well. This may result in the need for an adjournment so that people have time to read and consider the new material. Governors should take care when requesting additional material that they are not perceived to be doing so in order to allow one of the parties to improve their case, which would indicate bias. However, it may be appropriate to do so in a situation where, for example, the headteacher has made reference in the exclusion report to a certain document like a PSP which has not been included in the pack and the governors feel it is necessary to see this item in order to reach a fair and balanced decision.

Q25. Should the minutes of the meeting be circulated to all parties after the hearing?

The governing board should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the governing board. These minutes should be made available to all parties on request and the record of discussion should state clearly how the decisions have been reached (DfE 122) by applying the legal test included at DfE 124.

Q26. What should the governors do if the excluded child is very young but the parents wish to bring them to the hearing anyway?

The governing board may wish to make suitable arrangements to allow the child to attend in accordance with the parent's wishes by, for example, allowing the child to enter the hearing at a certain point to tell the panel what they would like to say (DfE 107). The governing board should exercise reasonable discretion and judgement in such cases. The meetings can be emotive so the governing body should notify parents in advance (if they are aware that the parent is bringing the child), that they may ask one parent to leave the room with the young child if they feel it is not in the child's best interests to hear all representations made about them which may be upsetting for the child.

Q27. What happens if the panel feels that it requires legal advice before reaching a decision?

DfE guidance states that the governing board's decision should be communicated "without delay" (DfE 131). However, if the panel feels that it needs to take legal advice before reaching a decision it would be reasonable to argue that this does not constitute undue "delay". Parents should, however, be kept informed as to the reason why they have not received notification of the outcome of the hearing as promptly as they may have expected.

Q28. Can a headteacher withdraw an exclusion even during a governing board's hearing to review it?

No, an exclusion can only be cancelled if the governing body has not yet met to consider whether a pupil should be reinstated (DfE 13).

Q29. Can a remote hearing be held so that some of the participants are present face to face and others attend by remote access (sometimes referred to as a "hybrid" hearing)?

The regulations allow for Social Workers or VSHs to join a hearing by remote access that, as a whole, is taking place in person should they wish to do so, but not anyone else. This suggests that other parties should not remotely attend a face to face hearing. Notwithstanding the provisions for Social Workers and VSHs, it would be difficult for a governing board to establish a fair and transparent process where all other parties had an equal opportunity to participate in proceedings if some were only present remotely, even if this was at their own request. HCC therefore strongly recommends that hybrid meetings for anyone other than Social Workers and VSHs are avoided

Appendix 1

Questions to consider before taking a decision to exclude a child

Question	Notes
What is the pupil alleged to have done?	
Has a thorough investigation been carried out?	
Has the pupil been allowed and encouraged to give their version of events?	
Does the evidence suggest that it is more likely than not that the pupil has done what they are alleged to have done?	
Does the alleged behaviour constitute a serious breach of the school's behaviour policy?	
What does the behaviour policy say about the consequences of such behaviour?	
How has the child's behaviour affected the education and welfare of other members of the school community?	
How has the child's behaviour affected their own education and welfare?	

What do we know about the root causes of the pupil's behaviour?	
Are there any mitigating factors that need to be taken into account before deciding on how to respond to the pupil's behaviour, e.g. any SEN, the child was provoked or has suffered a recent bereavement?	
Are there any aggravating factors that need to be taken into account before deciding on how to respond to the pupil's behaviour, e.g. the behaviour was premeditated, warnings about similar behaviour in the past have been ignored, no contrition or willingness to accept responsibility?	
What support has been given to the child and what impact has it had?	
What further steps could be taken to support the child?	
Have reasonable adjustments been made if the pupil has characteristics protected by the Equality Act 2010?	
Should a risk assessment be carried out, or updated if one already exists?	
Are there any ways forward that would avoid the need to resort to exclusion, e.g. a process of restorative justice or an off-site direction?	
What consultations have taken place/are felt necessary before taking a decision about how to respond to the behaviour?	
Where relevant, have the VSH and/or social worker been consulted?	

Conclusion:

A summary of the governing board's duties to consider reinstatement

Conditions of exclusion

Governing board duties

Does the exclusion meet any of the following conditions?

- It is a permanent exclusion
- It is a suspension that alone, or in conjunction with previous exclusions, will take the pupil's total number of days out of school above 15 for a term. This includes suspensions that total 15.5 days
- It is a suspension or permanent exclusion that will result in the pupil missing a public exam or national curriculum test*

↓ Yes

↓ No

The governing board must convene a meeting to consider reinstatement **within 15 school days** of receiving notice of the suspension or permanent exclusion.⁶²

*If the pupil will miss a public exam or national curriculum test, the governing board must take reasonable steps to meet **before** the date of the examination. If this is not practical, the chair of governors may consider pupil's reinstatement alone.

⁶³

Will the suspension(s) take the pupil's total number of school days out of school above five but less than 16 for the term?

↓ No

Yes

The governing board must consider any representations made by parents but does not have the power to decide whether to reinstate the pupil.

Has the parent made representations?

↓ Yes

↓ No

The governing board must convene a meeting to consider reinstatement within 50 school days of receiving notice of the suspension.

The governing board is not required to consider the suspension and does not have the power to decide to reinstate the pupil.

Appendix 3

Guidance for headteachers regarding exclusion reports

Where the governing board has a duty to review a headteacher's decision to exclude a child the headteacher should provide a report, to be circulated where possible to all relevant parties at least five school days in advance of the review.

The report should set out the grounds for the exclusion and the details of the case. Although there is no prescribed format for an exclusion report, headteachers may wish to consider the following suggested structure. The pages of the report should be numbered for ease of reference during the hearing.

- A overarching statement from the headteacher to include
 - an introduction that includes the reason for the exclusion precisely as worded in the letter sent to the parents notifying the exclusion. It may also be appropriate to include background information, but only if it is relevant to the case;
 - an overview of the case. For an exclusion based on multiple breaches of the school's behaviour policy over a period of time it would be appropriate to take a chronological approach that summarises the behaviours that have been observed and the supports that have been put in place. For exclusions based on a one-off serious incident it would be appropriate to again take a chronological approach detailing the sequence of events as they unfolded and details of the investigation that took place. It would be inappropriate to mention behaviours not related to the reason for the exclusion;
 - an account of how the decision to exclude was reached and the factors and circumstances that were taken into account. These might include those mentioned in Appendix 1.
 - a conclusion that illustrates why the decision to exclude was necessary. This might include a comment about the head teacher's duty of care and the need to balance the needs of the individual against the needs of the whole school community.

- A behaviour log containing brief details of incidents that have occurred in the past with the relevant dates and actions taken. It may be appropriate to include more detail in relation to the more serious incidents, e.g. those that may have led to suspensions, such as incident reports, witness statements and details of the investigations that were carried out. It would not be appropriate to include a behaviour log if the child was excluded for a one-off offence, unless the behaviours mentioned are directly relevant to the reason for the exclusion.

- Where a pupil has been excluded for multiple breaches of the school's behaviour policy it would be appropriate to include a section in the

exclusion report containing details of the interventions that have taken place to modify the pupil's behaviour and how they may have been adapted according to changing needs. This is especially important for a pupil who has characteristics protected by the Equality Act 2010, where there is a legal requirement to make reasonable adjustments. In these circumstances it would be helpful to show how the adjustments made are linked to the child's needs and what professional advice was sought in determining what measures should be taken. It may also be appropriate to detail the support that has been put in place for a child who has been excluded for a one-off serious incident, e.g. a child with SEN whose behaviour can be linked to their need. However, care should be taken to avoid describing measures that have been taken to support children excluded for a one-off incident where these measures were not relevant to the incident as this might be interpreted as an attempt to communicate behaviours not related to the reason for the exclusion.

- It would be helpful to have a section which contains all correspondence relating to the exclusion, including the letter notifying the exclusion and the letter inviting the parents to the hearing. Where a pupil has been excluded for multiple breaches of the school's behaviour policy it would also be appropriate to include copies of any previous suspensions that have taken place.
- A further section could contain relevant documents, e.g. PSPs along with reviews, EHCPs (again with reviews), IEPs, risk assessments, etc.
- A copy of the school's behaviour policy. It is useful to highlight that part of the policy which has been breached and which indicates that exclusion of the type imposed is a sanction that might be applied in circumstances such as those alleged. This could be followed by a description of the ways in which the provisions of the policy are made known to pupils and parents.