



Dispelling the Myths Around Unlawful School Exclusions

Abstract

Schools are being blamed for the rise in CCE. This paper will articulate the stringent legislation around excluding a child from school in the United Kingdom and the steps schools take to avoid an exclusion.

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Dispelling the myths around unlawful school exclusions

In 2019, the then Education Secretary, Damon Hinds, called for headteachers to exclude fewer children. The Timpson Report (2019) found that 78% of excluded pupils either had special educational needs or were eligible for free school meals, which translates in children from low socio-economic homes. It also identified that black boys were 1.7 times more likely to be permanently excluded than white boys. Although these figures are stark and show a clear disparity between the exclusion of black boys, children with special educational needs, and boys suffering from emotional and mental health difficulties, excluding children from education is not a decision headteachers take lightly.

Recently in the press, and within reports from several academics, correlation between school exclusions and Child Criminal Exploitation is being drawn. Schools are being blamed for the rise in CCE. I think it is only fair that I articulate the stringent legislation around excluding a child from school in the United Kingdom and the steps schools take to avoid an exclusion.

Common reasons why children are being excluded from schools:

- persistent disruptive behaviour (behaviour that is in breach of the school's behaviour policy)
- a physical assault against an adult
- a physical assault against a pupil
- verbal abuse or threatening behaviour against an adult
- verbal abuse or threatening behaviour against a pupil
- damage to school property
- and bullying.

More recently, children bringing weapons or drugs to school has become a reason for permanent exclusion. Parents send their children to school with the belief they are safe and free from harm. The stark reality is weapons are being brought into schools by children as young as 8 years old.

What you should know as a parent

There are two types of exclusion. One a fixed term exclusion (suspended) - this is when your child can be temporarily removed from school for up to 45 days in any one school year.

Second, a permanent exclusion. This means your child will be expelled from school and will become the responsibility of the local authority where they are legally bound to provide full time education for your child such as in an alternative provision (PRU). In incredibly special circumstances, home tuition may be an option.

Due to the support expectation in the school's policies, you should be informed long before an exclusion, your child may be at risk of exclusion. This may not apply if your child is excluded without warning for one of the reasons below.

There are statutory guidelines that the headteachers must take into account before deciding to exclude your child. The decision to permanently exclude your child should only be taken in response to a serious breach or persistent breaches of the school's behaviour policy and where allowing you child to remain in school could seriously harm the education or welfare of your child or other pupils in the school.

The decision to exclude your child is the legal responsibility of the headteacher but exclusion must be upheld by the board of governors or Trustees.

A serious breach is defined as:

- in possession of an illegal drug
- supplying an illegal drug
- sexual abuse or serious assault
- serious actual or threatened violence against another pupil or member of staff
- carrying an offensive weapon
- arson

Persistent breaches could be:

- A child refusing to follow instructions
- Unacceptable behaviour which has been previously been reported and for which school sanctions and other intervention have not been successful in modifying the pupils' behaviour
- Disruption to the running of the school or academy causing disruption to the education of other students.

As hard as it is to believe, young people do present these behaviours in both primary and secondary school settings.

A child could be excluded for disciplinary reasons, such as breaches of the behaviour policy, or refusal to listen to instructions. However, a child cannot be excluded for non-disciplinary grounds, such as the actions of a parent or academic ability.

It is also unlawful to send a child home without formally recognising it as an exclusion.

As all behaviour policies state, you as a parent should be informed and asked for your support if your child is displaying persistent disruptive behaviour. If you have not been made aware this will make your evidence in your appeal stronger.

Before your child can be excluded from school, there are a number of measures schools and academies must carry out. These include, having an up to date behaviour policy, agreed by the board of governors or trustees, and made available to all parents (usually on the school website). This policy will promote good behaviour, self-discipline and respect, zero tolerance to all forms of bullying, and a statement ensuring children complete learning set by their teachers. Clear school rules will support the expectations of the school's behaviour policy.

This policy should be reviewed annually with its review date clearly stated in the policy. Considering COVID, school should have updated their policy to reflect the adaptations needed to be made as a result of the impact lockdown could have had on the pupils/students and procedures. This may be not be in the policy but in an addendum somewhere else on the school's website.

If your child is displaying behavioural difficulties, the school has a responsibility to identify the possible reasons for this behaviour and the appropriate support and strategies needed to be put in place to help your child manage these difficulties.

There is also a clear expectation that schools work in partnership with your child and you when drawing up a behaviour support plan. Where appropriate with your agreement, the schools should also make referrals to outside agencies to ensure that your child's needs are properly assessed and understood. This could include a referral to.

- the local paediatric service,
- behavioural team,
- CAMHS or EWMHS (Emotional Wellbeing and Mental Health Support)
- counselling service.

Schools should also take into consideration whether the school environment is one of the possible triggers for your child's behavioural difficulties, which could be due to their sensory needs.

As a parent you can also request external support for your child if you have concerns regarding their behaviour at school. If you feel the school is not listening to your concerns, you can speak to your child's General Practitioner (GP)

Headteacher's responsibilities

The head teacher has a duty to inform parents about an exclusion. Whenever a head teacher excludes a pupil they must, without delay, notify parents of the period of the exclusion and the reason(s) for it. They must also, without delay, provide parents with the following information in writing:

- the reason(s) for the exclusion.
- the period of a fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent; parents' right to make representations about the exclusion to the governing board and how the pupil may be involved in this.
- how any representations should be made; and

- where there is a legal requirement for the governing board to consider the exclusion, that parents have a right to attend a meeting, to be represented at that meeting and to bring a friend.

Written notification of the information mentioned above 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. Notices can be given electronically if the parents have given written agreement for this kind of notice to be sent in this way.

'Unlawful exclusions also include exclusions where the school has failed to follow the statutory guidance without good reason' Coram Children's Legal Centre

Statutory guidance states that the school should notify parents, without delay, of the reasons for exclusion; the period of exclusion; their right to make representations to the governing body and how to do so.

Where an excluded pupil is of compulsory school age the head teacher must also notify the pupil's parents of the days on which they must ensure that the pupil is not present in a public place at any time during school hours. These days would be the first five school days of an exclusion (or until the start date of any alternative provision or the end of the exclusion where this is earlier).

Any parent who fails to comply with this duty without reasonable justification commits an offence and may be given a fixed penalty notice or be prosecuted. The head teacher must notify the parents of the days on which their duty applies without delay and, at the latest, by the end of the afternoon session.

If alternative provision is being arranged, then the following information must be included with this notice where it can reasonably be found out within the timescale:

- the start date for any provision of full-time education that has been arranged for the child during the exclusion.
- the start and finish times of any such provision, including the times for morning and afternoon sessions where relevant.
- the address at which the provision will take place; and
- any information required by the pupil to identify the person they should report to on the first day.

When notifying parents about an exclusion, the head teacher should set out what arrangements have been made to enable the pupil to continue their education prior to the start of any alternative provision or the pupil's return to school.

When notifying parents about an exclusion, the head teacher should also draw attention to relevant sources of free and impartial information. This information should include:

- a link to the statutory guidance on exclusions
<https://www.gov.uk/government/publications/school-exclusion>

- a link to sources of impartial advice for parents such as the Coram Children's Legal Centre (www.childrenslegalcentre.com), or ACE Education (<http://www.aceed.org.uk>) and their advice line service on 03000 115 142 on Monday to Wednesday from 10 am to 1 pm during term time); and
- where considered relevant by the head teacher, links to local services, such as Traveller Education Services, the Information Advice & Support Services Network (formerly known as the local parent partnership) (<https://councilfordisabledchildren.org.uk/information-advice-and-support-servicesnetwork/about>), the National Autistic Society (NAS) School Exclusion Service (England) (0808 800 4002 or schoolexclusions@nas.org.uk), or Independent Parental Special Education Advice (<http://www.ipsea.org.uk/>).

The head teacher should ensure that information provided to parents is clear and easily understood. Where the parents' first language is not English consideration should be given, where practical, to translating the letter or taking additional steps to ensure that the details of the exclusion and their right to make representations to the governing board have been understood. Once a child has been excluded from school parents will be given the opportunity to lodge an appeal against the exclusion.

References

Exclusion from maintained schools, academies and pupil referral units in England
(publishing.service.gov.uk)
Parent kind - Exclusion from school
Coram Children's Legal Centre

Join in the discussion at the Exclusion Summit on the 18th January 2021

Box office will open on the 24th December 2020