

Response ID ANON-SN1K-Q6X9-N

Submitted to **Exclusion guidance 2017**

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Introduction

1 What is your name?

Name:

The National Network of Parent Carer Forums

2 What is your email address?

Email:

info@nnpcf.org.uk

3 In what capacity are you responding?

Please select:

Other (please state)

If other please state:

On behalf of parent carers who are member of the National Network of Parent Carer Forums.

4 If you are responding as part of an organisation please state the name of the organisation.

please state:

The National Network of Parent Carer Forums (NNPCF) is made up made up of local Parent Carer Forums from across the 152 Local Authority Areas of England, and has a steering group which consists of 10 Parent Carer Representatives from each of the nine regions in England, and the Co-chairs of the Network. Our current membership is in excess of 85,000 arent carers. These parent carers representatives link into the regional Parent Carer Forum Networks.

The NNPCF Steering Group has where possible worked within their regions to gather evidence to support our response to this consultation. We elieve that our response helps to identify the most common experiences and views of Parent Carers of children and young people SEND (birth-25).

5 Would you like us to keep your responses confidential?

No

If yes, reason for confidentiality:

Consultation questions

6 We have attempted to clarify in paragraph 3 of the Guidance that exclusions cannot be extended or converted. Extending a fixed-period exclusion involves excluding the pupil for a further fixed-period exclusion on the expiry of the original term. The so-called conversion of a fixed-period exclusion into a permanent exclusion involves issuing a further, separate permanent exclusion. This clarification does not have any significant practical consequence on the process or accountability for exclusion decisions. Is this clearly expressed?

Yes

Further comments:

7 In paragraphs 8, 65 and 137 we have expanded on what is meant by 'civil standard of proof'. We have attempted to clarify that 'on the balance of probabilities' means it is more likely than not that a fact is true and that the decision-maker(s) should accept that something happened if it is more likely that it happened than that it did not happen. This will help those making decisions on exclusions understand how to establish the facts of the case. Does this insertion make this standard clearer?Does this insertion explain clearly what is meant by the 'civil standard of proof'?

Not Answered

Further comments:

As parents and carers of children and young people with SEND we are concerned that 'civil standard of proof' and 'on the balance of probabilities' tests do not support the Statutory guidance "Exclusion from maintained schools, Academies and pupil referral units in England" which states that:

"The decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race."

or the Equalities Act 2010 which requires schools to make reasonable adjustments or 'to take such steps as it is reasonable to have to take to avoid the substantial disadvantage to a disabled person caused by a provision, measure or practice applied by or on behalf of

a school, or by the absence of a supportive aid or service.'

The NNPCF believes that children and young people with special educational needs and disabilities are being disadvantaged by the application of these tests for behaviours that are associated with their special educational need of disability.

Through clarification of the 'balance of probabilities' the Department has introduced the concept of "a fact" but without any reference to the need for some evidence in order to prove a fact. (In a civil case the person asserting an event would have to provide some evidence to support their claim and it would have to be relevant to the case to be included as a fact. Without that there is no "fact".) The way this guidance is worded suggests that any assertion is a fact. It is also unclear that the balance has to be weighted towards the way the decision is made i.e. if it's not clear then the case is not proved on the balance of probabilities. It is particularly important for children and young people with SEND to determine the facts of a particular incident to determine if the sanction is appropriate and fair.

The expansion of "civil standard of proof" does make it clearer, however, the NNPCF strongly disagree with the principle that a child or young person with SEND should be excluded on the basis of a 51% chance(or more) that the incident did occur given the severity and impact on the child/young person's future life potential/outcomes and family.

8 In paragraphs 29 and 34 we have attempted to clarify head teachers' responsibilities regarding notifying parents of an exclusion. The clarifications relate to: a. providing information about when their child may not be out in public following an exclusion; and b. notifying parents when they issue a further exclusion. Are these paragraphs clear?

No

Further comments:

Paragraph 29 is not clear as to when the exclusions notice must be given.

The impact of having a SEND child excluded has a profound impact on both the child and their family. The NNPCF would welcome recognition of this fact in the guidance so that head teachers reflect carefully before excluding children and young people with SEND. This could be included under the issue of providing information about when their child may not be out in public. For example, it would be helpful to give some examples of what would be reasonable justification of child to be out in public. This is particularly important for parents of SEND children who can't always leave their child at home unattended even when secondary school age. They could give examples such as pick up and drop off of younger children/ GP visits etc. Anything really just to show understanding of the impact this has on SEND parents.

9 In paragraphs 45 and 75-82 and in section 7, we have attempted to clarify the responsibilities of the governing body when a pupil is excluded. These clarifications relate to: a. the legislation issued in December 2014 regarding consecutive fixed-period exclusions and their implications regarding arranging alternative provision; b. the information the governing body must and should provide to parents when deciding not to reinstate their child;c. the governing body's duties over removing a permanently excluded child from roll and informing the local authority of this; andd. its responsibilities for marking the attendance register following an exclusion.Are these paragraphs clear?

No

Further comments:

Paragraph 82 lists sources of independent advice but does not include IPSEA who have some excellent exclusions resources and is pan-disability.

10 In paragraphs 47-48 and 181-189 we have attempted to clarify the role of the local authority when a pupil is excluded. We have attempted to make clearer: a. the local authority's legal duties in arranging alternative education for excluded pupils; b. the local authority's duty when a pupil with an Education, Health and Care (EHC) plan is excluded (this is simply an update, to reflect that statements of special educational need are being phased out and replaced by education, health and care plans - the policy is unchanged); and c. its legal responsibilities regarding financial readjustments and payments related to an exclusion. Are the responsibilities of the local authority clear?

No

Further comments:

Paragraph 47 does not make it clear that reviewing the EHC Plan does not take away the duty on either the Governors or LA to arrange a suitable education after the 6th day.

The change in wording suggests a change in emphasis even though you state that the policy is unchanged). The old wording stated that in the event of a child with a Statement of Special Educational Needs being excluded the statement should be reviewed and the parents would have the right to express a preference for a different school. The actual wording was "In addition, where a pupil has a statement of SEN, the local authority must ensure that an appropriate full-time placement is identified in consultation with the parents, who retain their rights to express a preference for a school that they wish their child to attend, or make representations for a placement in any other school."

The new wording only states the local authority may need to review the EHC Plan. The NNPCF are very concerned that this position is much weaker and will enable the local authority to default to not doing anything unless the parent appeals/complains. This is not in the spirit of the Children and Families Act 2014 nor does it reflect the Section 19 principles of this Act.

The NNPCF believe that the emphasis should be on an interim review following an exclusion to ensure all SEN are identified, assessed and met unless there is a very good reason not to (e.g. a one off incident not relating to the disability).

Consultation questions

11 In paragraphs 56-57, 172 and 176-180 we have attempted to clarify the role of the governing body in reviewing an exclusion decision. The clarifications relate to: a. its duty regarding reviewing exclusion decisions that take a pupil's number of days excluded to between 5

and 15 in one term; b. what it should do when an exclusion means a pupil would miss a public examination or national curriculum test; and c. how the governing body should approach reconsideration of its decision when recommended or directed to do so by an IRP. Do these revisions improve clarity in these areas of the governing body's role?

Yes

Further comments:

12 In paragraph 93 we have attempted to make clear that it is a legal duty for the local authority and academy trust to make sure any independent review panel is accessible to all parties. Is this new addition clear?

Yes

Further comments:

13 In paragraphs 76d and 125-130 we have attempted to clarify the role of the Special Educational Needs (SEN) expert to an IRP. This includes attempting to clarify: a. The role of the SEN expert at an IRP ; and b. the experience and expertise the expert should have. Do the revisions make these elements of the SEN expert role clear?

Yes

Further comments:

14 In paragraphs 142, 155, 157 and 158-159 .We have attempted to clarify the responsibilities of the IRP in coming to a decision about an exclusion. This includes attempting to clarify: a. the evidence the panel should consider; b. what the panel should do if it is aware that the parents do not want their child to return to the excluding school; c. what knowledge of the exclusion process is expected of the panel; and d. what tests the panel should apply when making a decision on the exclusion. Are these paragraphs clear?

Yes

Further comments:

15 In paragraphs 147, 163, 170 and 151. we have attempted to clarify the notifications the IRP must make once it has reached a decision. This includes: a. its duties and responsibilities in ordering financial payments; b. what it must order the governing body to do following the IRP decision; c. who it should notify of its decision; and d. what it should include in the notification. Do these revisions make it clear what information the IRP notifications must include?

No

Further comments:

Paragraph 147 is not clear

Consultation questions

16 We have also corrected descriptions of legal requirements that were not clear enough in the previous version. The main corrections are: a. in paragraphs 60, 66 and 192 that the governing body should decide whether or not to reinstate the excluded pupil, not whether or not the headteacher's decision to exclude was correct; b. in paragraphs 138, 143, 161 that the independent review panel should decide whether or not the governing body was right to not reinstate the pupil, not whether the headteacher was right to exclude the pupil; c. in paragraphs 149 and 156 that an independent review panel is not legally required to adjourn if unavailable members mean it does not have appropriate representation but that it is advised to do so, bearing in mind the circumstances and potential impact on those involved in the case; d. in paragraphs 151 and 174 that an independent review panel is not legally required to direct the governing body to amend a reinstated pupil's record to note that the twice-excluded rule should no longer apply to the pupil. We have, however, advised panels to do so in the statutory guidance; and e. in paragraph 176 that when an independent review panel directs a governing body to reconsider they must look afresh at the question of reinstating the pupil in light of the findings of the IRP. Do you agree that the proposed guidance accurately and clearly states the legal position?

No

Further comments:

The NNPCF are qualified to confirm this and would suggest that the guidance reviewed by an independent legal expert.

17 We have produced an additional, non-statutory document for head teachers (Annex B). Is this document helpful for head teachers undertaking an exclusion? Are there any points that would benefit from further clarification?

Yes

Further comments:

The NNPCF welcome any additional, non-statutory guidance which will help head teachers to make an informed and fair decision with regards to excluding children and young people with SEND.

The NNPCF would like further clarification here about what impact the Equalities Act should have on a school's behaviour policy. This was covered earlier on in the guidance document but we are concerned that a comment here about reflecting the Equalities Act could lead some head teachers to think that as long as they are treating all pupils the same they are not discriminating. The annex should be really clear that this means making reasonable adjustments to support that pupils have and sanctions that are applied should be appropriate. It is not just about treating everyone in the same way.

It mentions that sanctions need to be monitored to determine any inconsistencies but it is not clear about the grounds for possible inconsistencies (e.g. appropriate sanctions for a SEN child). The document should also say that action is being taken to remove the inconsistencies where these are unlawful or not fair.

The governing body should have a clear process in place for considering exclusion decisions and should undertake training on Equalities Act. Equality is not directly discriminating. Training should give governors a thorough understanding of the Equalities Act to enable them to effectively review a SEND exclusion case.

A reminder of the key issues they need to be aware of would be helpful to avoid this point being skipped through as obvious.

18 We have included an additional non-statutory document for parents (Annex C). Is this document helpful for parents whose child has been excluded? Are there any points that would benefit from further clarification?

Yes

Further comments:

It would be helpful to include the following 1) A statement that an exclusion must be lawful, reasonable and fair. 2) That unlawful exclusions include part time timetables, early pick-ups and lunch times. 3) It needs to be clearer that all permanent exclusions can be referred to an Independent Review Panel not just where there is an SEN issue. 4) IPSEA should be included as a source of free, independent advice. The NAS also have very helpful information for families affected by autism 5) Schools should set and mark work during the first 5 days.

19 Do you have any other views about the clarity of this guidance?

comments:

Pupils with identified special educational needs (SEN) accounted for just over half of all permanent exclusions and fixed period exclusions in 2014/15.

DfE data shows that:

- 1) pupils with SEN support had the highest permanent exclusion rate and were over 7 times more likely to receive a permanent exclusion than pupils with no SEN
- 2) pupils with an Education, Health and Care (EHC) plan or with a statement of SEN had the highest fixed period exclusion rate and were almost 7 times more likely to receive a fixed period exclusion than pupils with no SEN
- 3) physical assault against an adult is the most common reason for fixed period exclusion from special schools - accounting for around a third of permanent exclusions and a quarter of fixed period exclusions in 2014/15.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539704/SFR_26_2016_text.pdf (accessed online 20/04/2017).

These figures do not reflect the 'soft' or 'informal' exclusions.

The Statutory guidance "Exclusion from maintained schools, Academies and pupil referral units in England" confirms (at paragraph 13) that 'informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. The Guidance goes on to say that any exclusion of a pupil, even for short periods of time, must be formally recorded.

The NNPCF are extremely concerned that forums are reporting an increase in 'soft' exclusions and that often these are going unrecorded. Many parents of children with SEND accept what they are told by schools and parents are being given incorrect and unlawful messages; in some cases parents accept to a reduced timetable as an alternative to a threat to permanently exclude.

Both the quantitative formal data and the qualitative informal evidence suggests that the current guidance on Exclusion does not work for children and young people with SEND. The guidance therefore needs to change to strengthen the messages that the decision to exclude a pupil must be lawful, reasonable and fair. Schools have a statutory duty not to discriminate against pupils on the basis of protected characteristics, such as disability or race and schools should give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion.

Schools must have a behaviour policy explaining the circumstances in which exclusion (a ruling that a child may no longer attend a particular school's premises) may occur. A permanent exclusion can only be given:

- in response to a serious breach, or persistent breaches, of the school's behaviour policy and
- where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

Too often head teachers use this as an opportunity fail to make reasonable adjustments or to ensure that the child's special educational needs are met. Forums are reporting an increase in schools failing to meet children's needs (especially for children and young people with ASD and associated behaviours that challenge). This is set to get worse as Local Authorities and Schools face reductions (in real terms) to their budgets and the number of children and young people with SEND (and the complexity of need) continues to increase.

According to the School Census Data (January, 2016) there are at least 73,000 children of school age with complex needs and more children with complex needs are being educated in mainstream schools with Local Authorities stating that there is a real shortage of specialist placements for some children.

If we are to prevent placement breakdowns and reduce the rate of exclusions for children with SEND, there needs to be a fundamental shift in thinking around exclusion guidance for children and young people with SEND. The NNPCF therefore requests that the guidance emphasises that the importance of considering the impact on the child or young person with SEND and their families is considered prior to the decision to exclude being taken.