

OXFORDSHIRE SCHOOL/ACADEMY/PRU
PERMANENT EXCLUSION REVIEWS

SHOULD I APPLY FOR A REVIEW BY AN INDEPENDENT REVIEW PANEL?

**A PARENTS' GUIDE TO
EXCLUSION REVIEWS**

This Guidance only applies to permanent exclusions from schools and Pupil Referral Units maintained by the Local Authority, Academy schools and alternative provision Academies which occur on or after 1 September 2012.

For further information

Contact details

Telephone – 01865 810180 or
Email: schoolappeals@oxfordshire.gov.uk

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Introduction

The Education Act 2002 (as amended by the Education Act 2011), requires all Local Authorities (LAs), Academies & Pupil Referral Units (PRUs) to make arrangements to enable parents to apply for a review of the decision of a Governing Body of a maintained school, or Proprietor of an Academy, or Management Committee of a PRU not to reinstate a pupil who has been permanently excluded from a school maintained by an LA, Academy or PRU.

N.B. Further reference to Governors/Governing Bodies in this Guidance includes Proprietors of Academies and management committees of PRUs.

This guide will help you decide whether or not to apply for a review of the decision to permanently exclude your son/daughter.

1. Who has the right to apply for a review?

The “relevant person”, defined as:

- (i) Where a pupil has reached the age of 18 it is the pupil him/herself; or
- (ii) Where a pupil is under 18, his/her parent.

IMPORTANT

Under the Education Act, the definition of “parent” is broad. In addition to a child’s birth parents, it includes any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person who the child lives with e.g. a foster carer.

2. Is there any point in applying for a review?

It is for you to decide but it is **important you know that**:

- An Independent Review Panel (IRP) has no power to reinstate your child.
- **You may have the decision reviewed by an IRP even if you do not want your son/daughter to return the school / Academy / PRU.**
- You can apply for a review even if you did not make a case to, or attend, the meeting at which the Governing Body considered your child’s permanent exclusion.
- An IRP of three people (who have **no connections with the school**) will hear your review.
- The IRP carefully considers your case and that of school/Academy/PRU.

- If you think that your child's special educational needs (SEN) have not properly been taken into account or the Governors' meeting was unfair in any way you should consider applying for a review.

3. Are there circumstances where I do not have a right to a review?

Yes, there are two:

- 1 You lose your right to a review hearing if your application is received after the 15th school day after the day on which you are informed, in writing, of the Governors' decision not to reinstate your child.
- 2 If you withdraw your application for a review, you also lose your right to a hearing.

IMPORTANT

- 1 Make sure you **send your application for review as soon as possible** after you receive the letter from the Governors telling you your son/daughter has not been reinstated.
- 2 **Give the matter careful consideration** before you withdraw your application.

4. How do I apply for a review?

There are 4 steps to follow:

- 1 Either **fill in the enclosed form or write a letter as soon as possible**.
- 2 In either case you must **set out your reasons for applying for a review** and, if relevant, state how you consider your child's SEN are relevant to the exclusion.

IMPORTANT: Whether or not your child has recognised special educational needs, you have a right to require that the Local Authority / Academy appoint an SEN expert to attend the review.
- 3 You **must** request an SEN expert attends the review hearing **at the time you apply for a review** of the Governors' decision.
- 4 **Sign and date the form / letter and send it to:**
Clerk to Review Panel
Education Appeals & Reviews
County Hall
New Road
Oxford OX1 1ND

NB The Clerk **must** receive the application form / letter within **15 school days** of the date you received Governors' decision letter.

5. When will my review be heard?

The IRP must meet to consider your application for review no later than the 15th school day after the day on which your application was received. However, an IRP may adjourn the hearing if there is good reason e.g. SEN expert unavailable to attend or there are parallel criminal proceedings.

PLEASE NOTE

Two or more reviews may be combined and dealt with in the same hearing if the IRP considers that it would be fair and expedient to do so because the issues raised by the reviews are (a) the same or connected and (b) the parties to each review agree.

6. Who will be at the Review Hearing?

- You and your partner; where requested, a friend; representative or legal adviser (who would attend at your own cost); and, if you wish, your son/daughter. (NB If you have any special requirements e.g. interpreter, signer please contact 01865 810180).
- The Independent Review Panel (3 members).
- The Clerk to the Review Panel.
- If attending, the legal or other representative of the Governors.
- The Head Teacher / Principal of your son's/daughter's school/ academy/PRU.
- Any witnesses called by either the school / academy / PRU or by you.
- If school / PRU is maintained by the Local Authority (LA), an LA representative will normally attend.
- If school / alternative provision has academy status, an LA representative may attend at your request but may only make representations with the consent of the Academy.
- An SEN expert, but only when you requested one attends at the time you lodged your application for review. NB The LA/Academy bears this cost.
- If attending, and where relevant, the alleged victim or his/her representative may be present for part of the review hearing.

PLEASE NOTE: There is a limit to how many people can be accommodated. If either party wishes to bring more than one representative, the Clerk to the IRP would have to speak to the IRP members to seek their agreement.

Sometimes there is also an observer. This may be someone who is training to be an Independent Review Panel member or Clerk to Panel.

You will be asked if you object to an observer being present for any part of your review hearing.

7. Who is the SEN expert?

The SEN expert will be someone with appropriate expertise and experience of special educational needs (SEN). It may be possible to offer you a choice of SEN experts.

The final decision on the appointment of the SEN expert is for the LA/Academy to make but the LA/Academy should take reasonable steps to ensure you have confidence in the impartiality and capability of the SEN expert.

The SEN expert will not have, or at any time have had, any connection with the Local Authority, School / Academy / PRU, or the incident leading to the exclusion, which might raise doubts about their ability to act impartially. He/she will not have any connection with you or your child (or his/her sibling). The SEN expert must also declare any known conflict of interest before the start of the review hearing.

IMPORTANT

The SEN expert's role will not include making an assessment of your child's special educational needs.

8. Who are the Independent Review Panel members?

The IRP will have three members and:

- One must be, or have been within the previous five years, a Head Teacher / Principal;
- One must be, or have been:
 - (i) a governor of a maintained school,
 - (ii) a member of a pupil referral management committee,
 - (iii) a director of an Academy,

provided they have served in that capacity for at least 12 consecutive months within the last 5 years, and they have not been a teacher or Head Teacher during the last 5 years;

- One must be a lay person, that is, someone who has never worked in a school in a paid capacity (disregarding any experience as a school governor or volunteer).

NB 1) The Lay member must be the Chairperson of the Panel.

2) All the IRP members (and their clerk) will have received the required training.

IMPORTANT

Anyone who has, or has had, a connection with the school or with any of the parties involved in the case **cannot** sit on the Independent Review Panel.

9. What powers does the Independent Review Panel have?

The IRP does not have the power to reinstate your child but can decide to:

- uphold the exclusion, i.e. refuse your application; or
- recommend that the governing body reconsiders their decision; or
- quash the decision and direct that the governing body / proprietor considers the exclusion again.

IMPORTANT

The IRP may only quash the decision on the principles applicable to judicial review. Therefore, the IRP should apply the following tests:

- **Illegality** – did the Head Teacher / Principal and/or Governing Body act outside the scope of their legal powers in taking the decision to exclude?
- **Irrationality** – was the decision of the Governing Body not to reinstate your child so unreasonable that it was not one a sensible person could have made?
- **Procedural Impropriety** - was the process of exclusion and the Governors' consideration so unfair or flawed that justice was clearly not done?

NOTE

Procedural impropriety means not simply a breach of minor points of procedure but something that has a significant impact on the quality of the decision making process. The Department for Education's Guidance (paragraph 149) gives the following examples:

- Bias;
- Failing to notify parents of their right to make representations;
- Governing Body making a decision without having given parents an opportunity to make representations;
- Failing to give reasons for a decision; or
- Being a judge in your own cause e.g. if the Head Teacher who took the decision to exclude were also to vote on whether to uphold the exclusion.

The IRP may also:

(a) direct the governing body to place a note on your child's educational record;

(b) in the case of a local authority school/PRU, order that a readjustment be made to the school's budget or, in the case of an Academy, order that the Academy must make a payment directly to the local authority in which the Academy is located, in the sum of £4,000 if, following a decision by the IRP to quash the original decision, the governing body:

- (i) reconsiders the exclusion and decides not to reinstate your child (where you want your child to be reinstated), or
- (ii) fails to reconsider the exclusion within 10 school days after notification of the IRP's decision.

10. Does anyone have the power to reinstate my child?

Yes. Two bodies have this power:

1) First-tier Tribunal (HESC) (Special Educational Needs and Disability).

In addition to the right to apply for a review to be heard by an IRP, under the Equality Act 2010, if you believe the exclusion has occurred for a reason related to your child's disability, you can make a disability discrimination claim to this Tribunal. You must lodge your claim within 6 months of the date your child was permanently excluded.

VERY IMPORTANT

Where you request reinstatement, the **Tribunal will fast track your claim** i.e. it will be heard within 6 weeks of your application. However, if you apply for a review to the IRP at the same time on any ground, the Tribunal will not fast track your request for reinstatement but will hear your claim **after** the IRP hearing.

Where you make a claim to this Tribunal but do not want your child reinstated at the school, the Tribunal will hear your claim within its usual time scales (see Appendix for contact details)

2) County Court

If you consider that your child has been harassed, victimised, or directly or indirectly discriminated against because of their sex; race; religion or belief; sexual orientation; because of pregnancy/maternity; or because of gender reassignment, you can make a discrimination claim to the County Court, which you must lodge within 6 months of the date your child was permanently excluded.

PLEASE NOTE

Alternatively, you can choose to make these claims to the IRP. However the IRP **does not** have the power to direct reinstatement.

If you make a claim to the IRP, you should put the reasons for claiming discrimination in writing on the application form (or letter). You may also wish to contact the Equality Advisory Support Service (EASS) for further help and advice (see Appendix).

You can make a claim of discrimination to the First-tier Tribunal and/or County Court **before** deciding to apply for a review hearing. Where this is the case you **must** apply for a review hearing within 15 school days of the date the discrimination claim is finally determined.

Where you make such claims **at the same time as** applying for the IRP to review the decision to permanently exclude your child, the arrangements for the IRP review hearing must not be delayed or postponed.

11. When will I hear the outcome of the review hearing?

The Clerk will telephone you as soon as possible after the IRP has decided on your case and will also write to you, the Head Teacher / Principal, Governing Body detailing the IRP's decision without delay. This is usually within 2 working days of the IRP having made its decision.

12. Is the Independent Review Panel's decision binding on anybody?

Yes. The "relevant person" (see Question 1), the Governing Body; the Head Teacher / Principal; and the LA are bound by the IRP's decision.

However, where you or the school / academy / PRU apply for a judicial review of the IRP's decision and are successful in that application, the High Court may order a re-hearing of the review.

13. What happens if I need an interpreter/signer or other help?

You may have an interpreter or signer at your review hearing. If you would like the Clerk to arrange this for you, free of charge, please ask the Clerk well before the hearing. Alternatively, if you would prefer, you may arrange for your own interpreter/signer to come with you but at your own cost.

14. Is there anyone who can help me with preparing for my review?

In the first instance, please contact the Clerk to the Review Panel who can help you with any queries or concerns you may have. S/he may be contacted on **01865 810 180**.

If you would like further advice or information, please see Appendix for contact details of the following:

- **The Coram Childrens Legal Centre**
Provides free legal advice on exclusions and review hearings and **can advise you on how to make your case**
- **IPSEA**
Provides free legally based advice on SEN/Disability issues
- **Oxfordshire Parent Partnership Service (OPPS)**
If your son/daughter has Special Educational Needs (SEN), you may wish to contact OPPS which offers local support to parents/carers of children with SEN.
- **Advisory Centre for Education (ACE)**
See website details
- **The Equality & Human Rights Commission (EHRC):**
Provides advice regarding all discrimination claims - see EASS contact details
- **Department for Education (Central Government)**
The DfE has produced guidance, which the Head Teachers, Governing Bodies and Review Panels must have regard to. It can be obtained on:

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusions/g0210521/statutory-guidance-regs-2012>

APPENDIX: Useful contact details

Enquiries about this Guidance and the review process in Oxfordshire should be addressed to:

Clerk to the Review Panel
Education Appeals and Reviews
Law & Culture
County Hall
New Road
Oxford OX1 1ND

Tel: 01865 810180

Fax: 01865 783195

E-mail: schoolappeals@oxfordshire.gov.uk

The Coram Childrens Legal Centre:

Tel: 0808 802 0008 (Mon – Fri 8.00 am – 8.00 pm)

Website: www.childrenslegalcentre.com/

IPSEA

Tel: 0800 018 4016)

Website: www.ipsea.org.uk

Advisory Centre for Education:

Website: www.ace-ed.org.uk

Oxfordshire Parent Partnership Service:

OPPS
County Hall
New Road
Oxford

Tel: 01865 810 516

Email: parentpartnership@oxfordshire.gov.uk

The Equality Act 2010:

Advice / help on discrimination claims:

Equality Advisory Support Service (EASS)

FREEPOST

Equality Advisory Support Service

FPN4431

Helpline:

Telephone: 0808 800 0082

Textphone: 0808 800 0084

Monday – Friday, 9am to 8pm

Saturday, 10am to 2pm

Find out about call charges: <https://www.gov.uk/call-charges>

Website: <https://www.gov.uk/discrimination-your-rights>

The Secretary of State for Education can be contacted at:

Department for Education (DfE)

Sanctuary Buildings

Great Smith Street

London SW1P 3BT

Tel: 0370 000 2288

Typetalk: 18001 0370 000 2288

Website: www.education.gov.uk/help/contactus/df

First-tier Tribunal (HESC) (for disability discrimination claims only)

HM Courts & Tribunals Service

Special Educational Needs & Disability Tribunal

1st Floor, Darlington Magistrates Court

Parkgate

Darlington

DL1 1RU

Tel: 01325 289350

Email: sendistqueries@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunalssend/appeals

Oxford Combined Court Centre (for racial and other discrimination claims)

St Aldates

Oxford

OX1 1TL

Tel: 01865 264200

To obtain **Education Acts and relevant Regulations:**

Website: www.legislation.gov.uk