



Department  
for Education



# **OFFICIAL RESPONSE TO THE CONSULTATION ON**

## **Revised Behaviour in Schools Guidance**

**and**

## **Suspension and Permanent Exclusion Guidance**

**March 2022**

## Introduction

In response to the Timpson Review of School Exclusion<sup>1</sup>, the government committed to working with sector experts to publish clearer, more consistent guidance to support schools to create positive behaviour cultures and ensure suspensions and permanent exclusions are conducted in a lawful, reasonable and procedurally fair way. This consultation seeks views on proposed revisions to the Behaviour in Schools Guidance, the Suspension<sup>2</sup> and Permanent Exclusion Guidance and associated changes to regulations.

The revised Behaviour in Schools Guidance provides advice to headteachers, school leaders and staff on developing and implementing a behaviour policy which creates a school culture with high expectations of behaviour.

The revised Suspension and Permanent Exclusion Guidance provides greater clarity to headteachers, independent review panels and governing boards on their responsibilities when considering suspensions and permanent exclusions and reflects proposed changes to the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012. We have also provided best practice on areas such as managed moves and off-site direction to clarify the use of these interventions to schools, governing boards and local authorities.

## Who this is for

Changes to the *Behaviour in Schools Guidance*:

- School leaders, school staff and governing boards<sup>3</sup> of maintained schools, academy schools, free schools, non-maintained special schools, pupil referral units (PRUs), alternative provision (AP) academies and AP free schools
- Parts of this guidance will also be relevant to independent schools
- Foundations, sponsors and others such as diocesan authorities with an interest in the governance of schools
- Organisations supporting governing bodies to develop more effective governance, including training providers developing learning and development programmes for governance
- Local authorities

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<sup>1</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/807862/Timpson\\_review.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf)

<sup>2</sup> The term 'suspension' refers to fixed-period exclusions

<sup>3</sup> The term 'governing body' means the governing body of a maintained school, the academy trust of an academy or the management committee of a PRU.

- Parents<sup>4</sup>
- Pupils
- Teaching unions
- Unions that represent other school staff
- Organisations representing pupils and their parents

Changes to the *Suspension and Permanent Exclusion Guidance*:

- Headteachers and governing boards of maintained schools, academy schools, free schools, PRUs, AP academies and AP free schools
- Local authorities
- Independent Review Panel (IRP) members
- Clerks to IRPs
- Parents
- Pupils
- Teaching unions
- Unions that represent other school staff
- Organisations representing pupils and their parents
- Social workers and virtual school heads

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<sup>4</sup> The term 'parents' also includes carers

## About this consultation

This consultation seeks feedback on revisions to the following documents:

### **Behaviour in Schools Guidance**

The revised Behaviour in Schools Guidance aims to provide schools with practical advice and information to support them to effectively improve and maintain high standards of behaviour.

### **Suspension and Permanent Exclusion Guidance**

The proposed revisions to the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 are reflected in the revised Suspension and Permanent Exclusion Guidance.

The Suspension and Permanent Exclusion Guidance sets out a number of proposed legislative changes to provide greater clarity around when a suspension or permanent exclusion cannot be withdrawn, expanding the headteacher's duty to inform relevant professionals of their decision to suspend or permanently exclude a pupil and regulating remote meetings for governing boards and independent review panels. The guidance also includes information on the use of managed moves, examination of data by governing boards and off-rolling.

We have sought to improve the clarity of these documents and ensured that they are consistent with other government guidance, such as the Mental Health and Behaviour in Schools Guidance<sup>5</sup> and Keeping Children Safe in Education guidance (KCSIE)<sup>6</sup>.

Changes to both documents have been made based on feedback through the call for evidence on behaviour management strategies, in-school units and managed moves launched in June 2021 and views shared during wider stakeholder engagement. We have also considered evidence gathered during the Timpson Review of School Exclusion.

Draft versions of the revised Behaviour in Schools Guidance (2022) and Suspension and Permanent Exclusion Guidance (2022) have been published alongside this consultation, and the two guidance documents should be read in conjunction.

We would like to hear your views on our proposals. By participating in this consultation, you will enable us to improve the *Behaviour in Schools Guidance* and *Suspension and Permanent Exclusion Guidance* in line with the Government's vision. Clear and effective guidance will support schools and local authorities to offer every child, regardless of

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<sup>5</sup> <https://www.gov.uk/government/publications/mental-health-and-behaviour-in-schools--2>

<sup>6</sup> <https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

their background, an excellent education in a calm, orderly, safe and supportive environment and use suspensions and permanent exclusions in a lawful, reasonable and procedurally fair way.

## Deadline

The consultation closes on 31<sup>st</sup> March 2022.

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## Official Response

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*In Autumn 2020, Voice – the Union for Education Professionals became a section of Community Union. Voice Community | Education & Early Years represent teachers, lecturers, tutors, school support staff, early years and childcare professionals in workplaces throughout the UK.*

*This Official Response will be published on our website [www.community-tu.org](http://www.community-tu.org) following the closing date of the consultation.*

# Changes to the Behaviour in Schools Guidance

## Background

The Government is clear that good behaviour is key to school improvement and we will support headteachers to create calm, orderly, safe and supportive school environments. Disorderly classrooms have a significant impact on children's ability to learn and can have an effect on a child's mental health and wellbeing.

The current Behaviour and Discipline Guidance was last substantially revised in 2011, with updates in 2014 and 2016. This guidance outlined the responsibilities schools have in developing a behaviour policy and provided a guide to the law on the authority of school staff to sanction pupils.

The revised guidance, named *Behaviour in Schools Guidance*, provides further advice which reflects the importance of the proactive and preventative work that schools can undertake to ensure high standards of behaviour. This includes recognising the importance of school culture, and how this is developed through the behaviour policy and the engagement of pupils. Additional guidance is provided on how to design and implement behaviour policies which set out high expectations of behaviour and support all pupils to meet them.

## Proposal and rationale

The *Behaviour in Schools Guidance* has been rewritten to more effectively support schools to maintain high standards of behaviour and provide more practical advice for all school staff. The revised guidance is organised into four themes to support schools to address behaviour at all stages.

### Creating and maintaining high standards of behaviour

**Section one** looks at how to create and maintain high standards of behaviour, with a focus on developing a clear vision of what expected behaviour looks like and the strong leadership needed to implement this vision. This chapter draws upon the findings of Tom Bennett's review 'Creating a culture' (2017) to provide practical guidance on how to create a whole-school environment in which pupils are more likely to behave well. It also addresses how all staff should explicitly teach and exemplify positive behaviour, to ensure pupils know what is expected of them and how to achieve it.

There is guidance on developing and communicating the behaviour policy and the role and expectations of school leaders, staff, pupils and parents to help create and maintain behaviour standards in schools. This includes a specific section on how pupils with special educational needs and disabilities (SEND) should be supported to meet

behavioural standards and the related duties of schools in the Children and Families Act 2014 and the Equality Act 2010.

The concept of a national minimum expectation of behaviour benchmarks behaviour expectations across schools in alignment with Ofsted's good grade description for behaviour and attitudes.

The guidance indicates how rewards and positive recognition should be applied consistently and clearly to reinforce the expectations and routines of the school's behaviour culture.

### **After incidents of misbehaviour**

**Section two** sets out how schools should respond robustly to incidents of misbehaviour in order to deter further incidents, restore order and protect pupils from further disruption or harm. It provides guidance on how schools can use sanctions lawfully. It also outlines how sanctions should be applied in a fair and consistent manner and the relationship between sanctions and pupils with SEND. A small section signals how schools should support pupils following behavioural incidents and the pastoral support that may be required.

There is comprehensive advice on removal rooms, how they should be used where necessary and the difference between a removal room and separation spaces. There is also information on the governance of removal rooms and what schools should consider when removing pupils with SEND or who are otherwise vulnerable.

### **Preventing recurrence of misbehaviour**

**Section three** looks at how schools can prevent the recurrence of misbehaviour and reduce the likelihood of suspension and permanent exclusion. Along with guidance on early intervention strategies that can help pupils better manage their behaviour, there is information on how schools can monitor and evaluate their behaviour policy. The section on in-school units (ISU) includes a definition, the aims of an ISU and what good governance of these units looks like.

### **Responding to specific behavioural incidents**

**Section four** focuses on how schools should respond to specific behaviour incidents. It provides guidance to schools on their authority to respond to misbehaviour and their duties relating to safeguarding and protecting the welfare of all pupils with clear reference to KCSIE guidance. It also includes advice on criminal behaviour and behaviour outside the school premises, building on the 2016 guidance.

The guidance covers how schools should respond to incidents of sexual violence and sexual harassment, including the importance of addressing inappropriate behaviour to prevent it leading to a culture of unacceptable behaviours and an unsafe environment

for children, in line with current safeguarding guidance. It also supports schools in addressing behaviour incidents which occur online.

The guidance recognises headteachers' autonomy in setting a policy on mobile phones within their school. It outlines that any policy on mobile phones should take into account the need for phones to be used for reasons such as medical grounds or to enable children with SEND to access the curriculum.

## **Section one – creating and maintaining high standards of behaviour**

### **Response**

Voice Community have approached this consultation with caution. We have long been proponents of local decisions that are made for the benefit of the children and staff within a school. Therefore, we agree that a school should demonstrate and encourage respect for others and good behaviour as generally understood terms and we are pleased to see that the objectives are for *ALL* pupils to learn and reach their full potential. However, in order for this to be a success it will be of vital importance for schools to carefully define good behaviour and to be mindful of not creating unacceptable consequences for subjects, learning styles, and those with SEND where these definitions clash.

We have previously cautioned about a 'national minimum expectation for behaviour' fearing that it may negatively impact upon those least able to meet the expectations and actively prevent them from learning. We are pleased that the proposals do not make any simplistic demands but understand that school leaders must define the expectations within this framework.

Expectations – such as rules and sanctions – should be clear but should also be sufficiently graded to allow escalation and de-escalation, recognising that all children are different and will respond in different ways to the rules. Whilst we agree that this should be consistent across the school, it must also be sufficiently flexible to not lead to unacceptable consequences for some subjects and learning styles. For example, good behaviour in vocational workshops would not require pupils to always be quietly sat working. Similarly, shouting may be necessary in some louder environments.

Consistency must not lead to severity and should not lead to an increase in pupil suspension nor permanent exclusion. One of the ways this can be monitored is through improved learning environments and a reduction in classroom management incidents. Whilst this will provide data that can be analysed, student voice can also provide soft data and insight into the success of the approach and its consistent application across the site. Student Voice is also a useful way of engaging pupils in the politics of the school. Although it can be time consuming it is a useful way of pupils working together and behaving professionally due to the professional environment of a committee or group meeting.

As we have said in the past, the most successful strategies are those which are supported by the local community. We suggest that parents be encouraged to know the school behaviour policy. The policy should also be modelled by community volunteers and those working within the school. It will take time to build positive relationships with parents and the community and schools should be supported with funding to encourage this engagement.



## Section two – after incidents of misbehaviour

### Response

Where behaviour incidents take place, it is important that schools have a range of strategies to support and manage the situation. Staff must be properly trained in the necessary approaches and their use should be monitored. Training in de-escalation techniques is an essential part of any behaviour management strategy and should be seen as a key part of Keeping Children Safe in Education and school's local policies. Training should be revised every year to ensure all staff are supported.

The use of any behaviour response, technique or sanction should be recorded and monitored to understand any patterns of behaviour or response. This will draw attention to pupils and staff who require support and mentoring. It will also highlight those against whom responses and sanctions are being used to ensure they do not inadvertently target vulnerable individuals, or those with protected characteristics.

De-escalation is an important part of any behaviour management strategy and as mentioned above, staff should be trained and practised in employing it. This means “transferring your sense of calm and genuine interest in what the [pupil] wants to tell you by using respectful, clear, limit setting [boundaries].”<sup>1</sup>

The US Crisis Prevention Institute advocate the follow tips for the de-escalation process<sup>2</sup>

1. Move to a private area  
or remove peer spectators
2. Be empathetic and non-judgemental
3. Respect personal space
4. Keep your tone and body language neutral and non-threatening
5. Avoid over-reacting. Speak softly and slowly.
6. Consider the thoughts behind the feelings
7. Ignore challenging questions - “Please tell me again when the problem started?”
8. Set boundaries but choose boundaries wisely  
“It's important for you to be calm in order for us to be able to talk.
9. Allow silence
10. Allow time for decisions

Although de-escalation, used well, will avert more serious incidents, it is important to note when de-escalation is used as this is an incident in itself. All incidents must be followed up with pastoral support, such as through targeted discussion with the pupil accompanied by a brief call home. A low-level response may initially be sufficient, but it is vital that all sanctions follow a clearly defined process to ensure consistency.

Where issues cannot be de-escalated or where calm cannot be restored and pupil and staff safety is at risk it may be necessary to remove the pupil from the classroom for the benefit of the pupil themselves, the pupils that remain and for the staff. It is important to note that the employer has a duty of care to all staff, including protection from assault. Therefore, as mentioned earlier, staff training and support from senior leaders will be essential in ensuring any removal takes place safely.

We are pleased to see that the guidance recommends pupil removal to isolation rooms as “a last resort” as the last decade has seen an increase in the use of isolation rooms for a wide number of lesser behaviour issues which should not be encouraged. We would like to see that further emphasised in paragraph 83 such that “removal may be used as a response to misbehaviour” **only as a last resort.**

Paragraph 82 explains that isolation is now defined as “where a pupil, for disciplinary reasons, is required to spend a limited time out of the classroom, at the instruction a member of staff”. “The use of removal should allow for continuation of the pupil’s education in a supervised setting”

- a. restore order and calm following an unreasonably high level of disruption
- b. enable disruptive pupils to be taken to a place where education can be continued in a managed environment.

There are many reasons why behavioural units, both in-school and separate provision succeed and fail, this is often the same as for other types of specialist and mainstream provision. All education provision requires adequate funding, suitable facilities and resources and above all, a dedicated and highly trained staff body. Sadly, in many facilities, staff are overworked and improperly resourced making it difficult for them to achieve their aims.

The majority of separate provision have purpose-built facilities designed to support social, as well as academic development. They have clear rules that encourage and reinforce good behaviour whilst also having appropriate sanctions. This is something which is not always possible for in-school provision which can find it has to follow the same discipline procedure as is in place for all other pupils, which is not always applicable and may actually impair success.

The Behavioural Insights Team<sup>3</sup> identified four key factors for addressing behaviour:

1. Make it easy – people have a tendency to follow the path of least resistance.
2. Make it attractive – use of incentives, location and design
3. Make it social – reinforce the positive messages by having other people doing it.
4. Make it timely – maybe consider the timing of events and prompt behavioural change when they are more likely to be receptive.

Systems based on cognitive research such as this stand a better of chance of succeeding, but too much in-school provision is inadequately funded, disappointingly resourced and is often staffed from within the existing staff body, rather than with dedicated staff who have the skills and training to implement the necessary interventions.

Not all withdrawal from lessons happens for reasons of discipline. Much additional support, nurturing, tutoring and school social work requires withdrawal. These important preventative actions must not be associated with one another, not by staff but even more importantly by the children themselves. It is especially the case that vulnerable pupils, who may experience both types of withdrawal spaces, are not confused by their use and purpose. With this in mind it will be important that the two spaces are physically different and operated in different ways to demonstrate this.

1. Pope K. Crisis intervention in dealing with violent patients: De-escalation techniques. [www.paetc.org/wp-content/uploads/2014/10/De-escalation-PACE.pdf](http://www.paetc.org/wp-content/uploads/2014/10/De-escalation-PACE.pdf)
2. [https://www.jointcommission.org/assets/1/6/CPI-s-Top-10-De-Escalation-Tips\\_revised-01-18-17.pdf](https://www.jointcommission.org/assets/1/6/CPI-s-Top-10-De-Escalation-Tips_revised-01-18-17.pdf)
3. [https://www.behaviouralinsights.co.uk/wp-content/uploads/2015/07/BIT-Publication-EAST\\_FA\\_WEB.pdf](https://www.behaviouralinsights.co.uk/wp-content/uploads/2015/07/BIT-Publication-EAST_FA_WEB.pdf)

## Section three – preventing recurrence of misbehaviour

### Response

As stated above, the most successful interventions require understanding of the whole situation within and without of the setting, and considerable engagement with parents and carers. Much of what occurs in school is heavily influenced by factors outside the direct control of the school. Therefore, addressing one incident may only affect one symptom of a larger problem, however it is wholly unreasonable to require any school-based staff to undertake wider community investigations as this is the remit of social workers and the police and it is essential that they are properly resourced to do so in association with the school so that the whole system is joined up.

Older pupil and staff mentors can be effective in supporting those at risk of misbehaviour. In some situations, those who have previously been mentored themselves provide the most successful mentors.

Staff can run planned group interventions that take place in small groups outside of normal lessons. But where these happen, they must be properly funded so that staff can be trained and resourced to guarantee the outcomes. Additional staff will be expected to be present on site to ensure the safety of all participants according to health and safety legislation. And any strategy should be in line with a school's ethos and culture and in line with the behaviour policy, but proactive preventative measures can be cost effective in the long term. However, Voice Community are cognisant of the workload implications for staff. Any activity which takes teachers and support staff away from the primary purpose of educating must be carefully assessed and the workload implications taken into account.

Not all interventions have to be in person. The brave new world of virtual learning can be beneficial and provide a safe environment for one-to-one support. Sometimes it will be beneficial to engage with specialist provision. Where these interventions are provided by specialist providers or multi-agency partners it is essential to make these as convenient for the pupil and family as possible. It is the view of Voice Community that specialist providers and multi-agency partners need to be more widely available and flexible in their availability. This flexibility may mean that it is less convenient for the specialist providers and other multi-agency partners or indeed the setting and this will require additional funding, staff and extended availability which can be actioned through judicious use of virtual sessions. But evidence suggests that effective engagement, is more likely to lead to successful outcomes.

## Section four – responding to specific behavioural incidents

### Response

Under the 2019 guidance schools must have a policy on Relationships and Sex Education. This should cover four interconnected areas of learning:

- Personal care and hygiene
- Relationships and sex education
- Appropriate behaviour, including addressing sexualised behaviour
- Safeguarding

Appropriate behaviour isn't just a curriculum heading though, this is a culture which needs to be embedded into the school in order to support the teaching of RSE and also to challenge and external influences and pressures children may experience.

According to research conducted in 2018 by the Parliament of Australia, *“whilst exact statistics vary ... studies have shown that high percentages of children and young persons above the age of 10 have been exposed to pornographic material, with males being at a significantly greater risk of exposure.”*<sup>1</sup> With website *TheConversation* noting that *“porn viewing has increased by up to 24% this year”*<sup>2</sup> it is critical that schools, colleges and AP settings are properly prepared to tackle sexualised behaviour issues as well as other misbehaviour that may arise.

The RSE policy needs to be clear and understood by pupils, and by parents, staff and volunteers too. All staff and regular volunteers in all schools and other education settings need regular training to help them manage behaviour and to understand whether sexual behaviour is developmentally typical, problematic, harmful or abusive and know what action to take. Trustees and school governors should also have a good understanding of what sexualised behaviour is, when it can pose a risk to children and how to keep children safe.

As the consultation document makes clear, *“sexual violence and sexual harassment are never acceptable and will not be tolerated.”* And ‘banter’ should be challenged as there is evidence that this can normalise unhealthy relationships.

Research<sup>3</sup> shows that many children and young people who display harmful sexual behaviour (HSB) have a history of maltreatment and family difficulties. Some children and young people displaying HSB have been sexually abused themselves, but most victims of sexual abuse do not go on to abuse others.

The Centre of Expertise on Child Sexual Abuse (CSA Centre) highlights the damaging effects of stigmatising young people children and young people as ‘mini adult sex offenders’ – all children are victims and will require appropriate support. They go on to say, *“given that many young children displaying HSB have themselves experienced abuse, interventions identified as effective with child victims are relevant: these include developmentally appropriate behavioural or cognitive behavioural approaches which are also trauma-informed and multi-systemic, intervening with both the child and their wider family.”*<sup>4</sup>

Whilst there is limited published research on effective interventions, there is a general consensus that interventions need to be holistic and child-focused and involve families. As Voice Community have already said, the most effective strategies are those which take an holistic view and include a wide range of support and this is confirmed by the CSA Centre.

A setting's policy document must acknowledge the role of the LADO and police when responding to behavioural incidents and a full and robust internal investigation should be undertaken following advice. Malicious and vexatious claims must always be investigated, and appropriate action be taken. Whilst sometimes this can be a call for help, it is never acceptable and can cause extreme harm to those who are victim of it. Appropriate process must always be followed before any sanction is imposed.

And whilst it is difficult for schools to control, behaviour expectations of pupils online should be the same as in-class settings. Online safety is an important part of RSE, and this is where understanding and regulating the use of the internet and mobile phones, amongst other devices, should be explored. Children do need to understand the impact that excessive online use can have – especially if it detracts from other important aspects of life such as homework, socialising, exercising, eating meals, and sleeping, but they also need to appreciate the learning and employment benefits of such devices.

1. [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Social\\_Policy\\_and\\_Legal\\_Affairs/Onlineageverification/Report/section?id=committees%2freportrep%2f024436%2f72615](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Social_Policy_and_Legal_Affairs/Onlineageverification/Report/section?id=committees%2freportrep%2f024436%2f72615)
2. <https://theconversation.com/yes-your-child-will-be-exposed-to-online-porn-but-dont-panic-heres-what-to-do-instead-149900#:~:text=According%20to%20some%20sources%2C%20the,on%20porn%20and%20their%20kids>
3. <https://www.csacentre.org.uk/our-research/the-scale-and-nature-of-csa/>
4. <https://www.csacentre.org.uk/resources/key-messages/harmful-sexual-behaviour/>

# Changes to the Suspension and Permanent Exclusion Guidance

## Background

This Government believes that every child deserves an excellent education, regardless of their background, and schools should be calm, orderly and safe environments that support their pupils to succeed. Good behaviour in schools is essential to ensure all pupils can benefit from the opportunities provided by education, and it is important headteachers have the knowledge and confidence to suspend or permanently exclude pupils where it is warranted. It is equally important that the obligations on schools are clear and well understood, to ensure any suspension or permanent exclusion is lawful, reasonable and fair.

In 2017, the exclusions guidance was updated in a small number of areas to provide greater clarity to headteachers, governing bodies and independent review panels on their responsibilities in relation to suspension and permanent exclusion decisions. The changes included reflecting amendments to the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007 that specified a governing body's duty to arrange education from the sixth school day of a suspension is triggered by consecutive suspensions totalling more than five school days. The guidance was also updated to reflect the changes brought in by the Children and Families Act 2014 regarding the education of pupils with SEN. In addition, two non-statutory annexes were added to the guidance, one for headteachers and one for parents.

## Proposal and rationale

Building on the revisions made in 2017 and the evidence gathered through the Timpson Review of School Exclusions, we are providing further clarifications to the guidance and proposing associated legislative changes.

## Proposed legislation changes

The proposed changes to the guidance which will be reflected in the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 are as follows:

### **Withdrawn/rescinding suspensions and permanent exclusions**

We have specified that once a suspension has begun (that is, when the pupil is no longer attending school), the headteacher may not bring it to an end earlier than the end-date that was originally fixed, and a headteacher may not bring a permanent exclusion to an end after it has begun. This is to ensure suspensions and permanent exclusions are always reviewed by the governing board, where required.

## **Social workers and Virtual School Heads (VSHs)**

We will expand the headteacher's duty to inform relevant professionals of their decision to suspend or permanently exclude a pupil, following recommendations in the Children in Need Review<sup>7</sup> and Timpson Review of School Exclusions.

The revised guidance also contains new advice about the involvement of social workers and VSHs at other stages of the exclusion process. Where a child with a social worker or a child who is looked-after is suspended or permanently excluded, their social worker or the VSH must be notified, alongside parents. If a child with a social worker or who is looked-after is moved out of their school, through a managed move, direction off-site into AP, their social worker or the VSH should be notified. Where relevant, social workers and VSHs should attend, if possible, governing board and independent review panel meetings concerning a suspension or permanent exclusion. They should also be allowed to share important information that helps the governing board or review panel understand the experiences of a pupil and their welfare. This is to allow social workers and VSHs the opportunity to raise any concerns and consider whether this decision would mean the level of risk to a child may change and act accordingly.

## **Remote meetings**

We would like to consult on a permanent change to regulate remote meetings for governing boards and independent review panels so that they can remain a permanent option in any circumstances. This is a measure that would benefit governing boards, parents and pupils and enable schools to meet the statutory timescales sooner for such reviews as set out in the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.

## **Additional changes**

Other changes to the Suspension and Permanent Exclusion Guidance that do not require changes to legislation are as follows:

## **Managed moves**

We have provided new guidance which sets out the department's expectations on how managed moves should be used. A managed move should only be offered as a permanent transfer, and only when the pupil has been attending the proposed new school under an off-site direction and a review of the direction has established that the pupil has settled well into the school and should remain there on a permanent basis. The system we have described in the revised guidance is lawful but, depending upon

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<sup>7</sup> <https://www.gov.uk/government/publications/review-of-children-in-need>

responses to the consultation, we may decide to change the system and this may involve changing legislation.

### **Data**

We have included guidance for governing boards around understanding their school's data to assist identifying any variation and disparity in the level of suspensions and permanent exclusions and pupil movements out of their school.

### **Off-rolling**

A suspension or permanent exclusion, such as sending a pupil home 'to cool off', is unlawful when it does not follow the formal school exclusion process and regardless of whether it occurs with the agreement of parents. It would also be unlawful to exclude a pupil simply because they have additional needs or a disability that the school feels it is unable to meet, for reasons relating to academic attainment/ability or due to the failure of a pupil to meet specific conditions before they are reinstated, such as attending a reintegration meeting. If any of these unlawful exclusions are carried out and it leads to the deletion of a pupil's name from the register, this is known as 'off-rolling'.



## Questions

### Proposed changes to the regulations

Paragraph 12 sets out how a headteacher may not bring a permanent exclusion to an end after it has begun. In addition, a headteacher may not end a suspension earlier than the agreed end-date once it has begun (that is, when the pupil is no longer attending school).

- 1. Do you agree with this proposed change in the law? If not, please explain why.**
- 2. Is the associated guidance at paragraph 12 sufficiently clear? If not, please explain why.**

The required level of evidence to support a headteacher's decision to suspend or permanently exclude a pupil needs to be sufficient that the decision is based on every available fact. If the decision to exclusion is sound, then there is ordinarily no need for it to be rescinded within the short time frame of a suspension.

However, it would be foolish to think that there are no circumstances when a decision of this magnitude might need to be rescinded. And for that reason, it is vital that there is an appeals process to permanent exclusion which would allow for decisions to be overturned where evidence suggests the original decision was misguided.

The guidance at paragraph 12 and prior to it does not give due weight to this important aspect of fair process.

Paragraph 54 introduces a deadline for the headteacher to notify the parents of a pupil's suspension or permanent exclusion, the reasons for this and the period of any suspension. The obligation to do this 'without delay' will remain, but the regulations will also specify that in no case must this take longer than three days.

- 3. Do you agree with this proposed change in the law? If not, please explain why.**
- 4. Is the associated guidance at paragraph 54 and throughout sufficiently clear? If not, please explain why.**

Voice Community agree that parents and carers should be informed of suspension or permanent exclusion in a timely manner and “without delay”. We believe that three days is appropriate for the formal notification of the decision in writing, but this must be accompanied by immediate notification via telephone or in-person to ensure the safety and wellbeing of the pupil is maintained.

Paragraph 68-70 expands the headteacher’s duty to inform relevant professionals of their decision to suspend or permanently exclude to include social workers. As a result, if a pupil with a social worker is excluded, the social worker must be notified in writing and involved in the governing board meeting and independent review panel, where possible.

- 5. Do you agree with this change in the law? If not, please explain why.**
- 6. Is the associated guidance at paragraphs 68-70 sufficiently clear? If not, please explain why.**

Where a social worker is already engaged with the family, it would seem appropriate for them to have already engaged with the school long before the issue of suspension or exclusion. The onus must not be entirely on the school and social work teams must play an equally active role in supporting the school, the family and pupil to engage with each other.

Once the decision has been made to suspend or exclude, it seems reasonable, where the school is aware of social work involvement, for notification of the decision to be shared within a reasonable timeframe.

It is unreasonable for schools to dedicate excessive time in tracking down a specific individual such as an individual social worker, so it will be vital that the administrative processes are effective to avoid any pupil being failed by the system.

Virtual School Heads (VSH) should already be closely involved with a school if a looked after child (LAC) is at risk of suspension or permanent exclusion. Paragraphs 68-70 extend the headteacher's duty to inform a VSH if a LAC is suspended or permanently excluded. If a LAC is excluded, the VSH must be notified in writing and, where possible, involved in the governing board meeting and independent review panel.

- 7. Do you agree with this change in the law? If not, please explain why.**
- 8. Is the associated guidance at paragraph 68-70 sufficiently clear? If not, please explain why.**

Similarly, where a pupil is at risk of suspension or permanent exclusion it is incumbent upon all parties to work together *before* any decision is actioned. The school can benefit from the support that these external agencies can provide, and closer working can support the pupil in the event that suspension or permanent exclusion does happen.

Again, where the school is aware of the involvement of these agencies it is reasonable for them to be informed in writing in the same way as social workers and other agencies involved should be informed.

It is unreasonable for schools to be required to dedicate excessive time in tracking down a specific individual so it will be vital that the administrative systems for notifying Virtual School Heads are effective to avoid any pupil being failed by the system.

During the coronavirus pandemic when school attendance was restricted, the department amended the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 to regulate the use of remote meetings for governing board considerations of reinstatement and independent reviews. We are proposing to make these rules a permanent option in any circumstances. This is a measure that would benefit governing boards, parents and pupils and enable schools to meet the statutory timescales sooner for such reviews as set out in the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.

- 9. Do you agree with virtual meetings being made a permanent option under any circumstances? If not, please explain why.**
- 10. Do you think virtual meetings should be made at the request of the parent only? Please explain why.**

In most sectors of work the value, benefit and ease of meeting virtually has been very high. Meetings which otherwise could not have taken place have occurred through systems such as Zoom and Teams where the participants can see as well as hear each other.

Furthermore, the reduction in environmental impact through a decline in travel and the associated cost impacts there should also not be underestimated.

The underfunding and high workload of schools and social care does mean that they can often be more effective when travel is removed from the equation and Voice Community would be supportive of virtual meetings being made a permanent option.

However, where a pupil is at risk of permanent exclusion efforts should be taken to ensure that all parties are represented and have their voices heard. It is often easier for this to happen in a face-to-face meeting, and we would advocate this remaining an option for situations such as these.

## Proposed non-statutory changes to the guidance

We have sought to provide best practice on the use of managed moves and off-site direction and how they should be used as an early intervention measure for pupils at risk of exclusion. We have set out our expectation of the process and the safeguarding measures that should be put in place for pupils in paragraphs 31-43.

### **11. To what extent is the process outlined clear and suitable for all involved? Please explain why.**

Voice Community agree that wherever possible in-school interventions, such as outreach support from AP schools should be used to meet a child or young person's individual needs and circumstances but these need to be much more widely available so as to truly be a supportive mechanism in the education system.

Though there are one or two typos noted in the draft guidance, the guidance proposed is generally clear in the process and where maintained schools can find the necessary information. However, the guidance on alternative provision only legally applies to maintained schools "the legislation does not apply to academies, they can arrange off-site provision for such purposes under their general powers" we would like to see the guidance be more strongly recommended or even required of academies. Otherwise, the move to a more fully academies sector will mean this guidance is null and void.

### **12. Please describe both the benefits and risks of introducing stricter oversight of pupil movements between education settings, such as a revised statutory framework for all pupil movement between education settings.**

As we noted in our response to the Initial Call for Evidence, the most effective schools are part of a system that works closely together with its community. Some schools have distanced themselves from their local community and therefore the appropriate support for pupils and parents within their immediate area can be lacking. Unnecessarily moving pupils away from their local area causes huge disruption to the individual and their family and can rapidly escalate the problems making re-integration more challenging.

Bringing greater oversight of pupil movements under stricter controls should not be necessary in a system where all of the component parts work together for the benefit of the pupils, however too many aspects of the education system set schools up in competition with each other which does not benefit pupils. Rather than bringing in more centralise control, Voice Community would like to see closer partnership working between schools and other local agencies for the benefit of all in the local area.

**13. Following a period of suspension or off-site direction, what are the best approaches to reintegrating a pupil into a mainstream setting? Please explain why and copy and paste any relevant information.**

Please see previous answer for some comments on closer partnership working to support re-integration.

The guidance emphasises the importance of monitoring and understanding suspension and permanent exclusion data. Schools, local authorities, and local forums should work together to track and review the information on children who leave schools, by exclusion or otherwise, to establish a shared understanding of how the data on the characteristics of such children feeds local trends. Where patterns indicate possible concerns or gaps in provision, we expect headteachers and other local leaders to use this information to ensure they are effectively planning to meet the needs of all children.

**14. Do you agree with this revision? If not, please explain why.**

Agree

Throughout the revised guidance we have set out when and where pupils should be included in the suspension and permanent exclusion process.

**15. Is this sufficiently clear? If not, please explain why.**

This is clear.  
Voice Community would like to see this guidance legally apply to all schools so that a consistent approach applies across England.

The current limit on the total number of days a pupil can be suspended in a school year is 45 school days:

**16. Should this limit be changed or not? Please explain how and why.**

**17. What potential impact would there be if the 45-day limit for suspensions in a school year was reduced? Please explain why.**

It is important that Headteachers have the necessary powers to promote learning and maintaining appropriate behaviour is an important part of this. Sad though it is, it is vital that headteachers retain the right to suspend pupils where necessary, and that work be provided to continue the learning wherever possible.

Voice Community is aware that 45 days in any academic year could mean a pupil losing almost a quarter of their time in school and we would not be supportive of any moves to increase this.

There has been a steady increase in the number of suspensions over the past few years rising to 438,265 in 2018/19. However, the number of pupils receiving multiple suspensions has fallen, although this could have been impacted by the emergence of the pandemic part way through the 2019-2020 academic year.

Although the statistics seem encouraging, Voice Community would be supportive of further investigation into the impact of reducing the maximum number of days a pupil can be suspended within an academic year before any decision is made.

To inform the wider special educational needs and disabilities (SEND) Review and Alternative Provision (AP) Reforms programme, we would like to understand more about the barriers to providing alternative provision before the sixth school day of a suspension or permanent exclusion. Your answers to the following questions will help us to understand what more we need to do to ensure timely support and education is put in place:

**18. In your experience, what continuity of education is provided following the suspension or permanent exclusion of a pupil before the sixth school day?**

**19. What are the barriers to providing alternative provision before the sixth school day when a child is suspended or permanently excluded from school? Please explain why.**

**20. Following a suspension or permanent exclusion, after how many school days should there be a requirement for schools to provide alternative provision for a pupil (currently 6 school days)? Please explain why.**

In the experience of Voice Community members, the issue is often not with a failure to provide work in a reasonable timeframe, but that the relationship between the schools and home has already deteriorated so far that it is difficult to engage the pupil in any way to support the learning that needs to take place. Therefore, in cases of permanent exclusion it is reasonable for schools to provide a reasonable quantity of work to be completed.

The expectation to provide alternative provision within six days can prove impossible in many local areas. Key to restoring this is local partnership working and the provision of the necessary funding to support this work. Specific Alternative Provision centres are increasingly rare due to the rising costs of operation and the move away from local authority maintenance. This has left some areas with no AP provision in their area which is unacceptable.

Furthermore, an increasing number of pupils with complex needs are being referred to AP often with scant regard for their individual needs. Where schools have difficulties in securing funding and resources to support pupils, this is magnified in a small AP unit and is exacerbated by the lack of availability in some local areas.

Voice Community also have some concerns around the provision and regulation of AP. And the further reduction of the role of the Local Authority has worsened this oversight. Any change to, removal of or expansion AP needs to be considered within the local area that it is likely to serve. However, the existence of available provision may encourage schools to move more pupils into AP, when it may not necessarily be in a pupil's best interests. This perverse incentive would risk damaging SEND support and further reduce the inclusion of vulnerable children.

Recently, a High Court case considered the legal position for mandatory off-site education for the purpose of keeping pupils apart for safeguarding reasons. This case involved allegations of child-on-child sexualised behaviour by young pupils in a primary school setting. We need to consider, following the court's decision, whether it is right to suspend or permanently exclude based on safeguarding reasons rather than just disciplinary reasons. We would like to know how this will affect practice in schools and whether there is any further need to clarify or change the law or guidance in this area.



**21. Do you think it is positive or negative that the Court has made it clear that pupils can be temporarily excluded for safeguarding reasons as described in the judgement? Please explain why.**

The recently introduced Relationships Education makes clear that pupils need to learn social skills including sharing, boundaries and consent, however where boundaries are crossed, and safeguarding issues present themselves there can often be no alternative but to remove in order to protect other vulnerable children.

As this is an emerging area of law, it is difficult for us to comment further, and we would recommend that issues such as this should be considered on a case-by-case basis.

**22. Are there any particular issues you feel are not covered in the revised *Suspension and Permanent Exclusion Guidance*?**

## Equality Act 2010 duties

Under the Equality Act 2010, schools must not discriminate against, harass or victimise pupils because of: sex; race; disability; religion or belief; sexual orientation; pregnancy/maternity; or gender reassignment. The Suspension and Permanent Exclusion Guidance sets out how this must be taken into consideration when suspending or permanently excluding a pupil.

**23. What do you consider to be the equalities impacts of the revised guidance on individuals with particular protected characteristics?**

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Department  
for Education

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