A consultation on revised statutory guidance and regulations for exclusions from schools and pupil referral units in England

Consultation Response Form

The closing date for this consultation is: 17 February 2012.

Your comments must reach us by that date.
THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online response facility available on the Department for Education e-consultation website (www.education.gov.uk/consultations).

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential. [ ]

Reason for confidentiality:

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WC1X 0JL
If your enquiry is related to the policy content of the consultation, you can contact the Exclusion Team by

email: exclusion.consultation@education.gsi.gov.uk

Alternatively you can contact the PCU helpline on:

Telephone: 0370 000 2288

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 0370 000 2288

e-mail: consultation.unit@education.gsi.gov.uk
The Education Act 2011 established new arrangements by which a governing body’s decision to uphold a permanent exclusion can be reviewed. In summary, independent appeal panels are being replaced by independent review panels, which will have different powers. Parents will also now be able to apply to the First-tier Tribunal (Special Educational Needs and Disability) to hear cases alleging disability discrimination. These arrangements will apply to all permanent exclusions from maintained schools, pupil referral units, Academy Schools and Alternative Provision Academies (including Free Schools) which take place from 1 September 2012.

These new arrangements have led to consequential changes in the duties and powers of those involved in the exclusion process. In order to improve the process some additional changes have been made to these duties and powers. Statutory guidance on exclusions has also been updated.

The provisions in the Education Act 2011 form part of the Government’s wider reforms in relation to exclusion and alternative provision. These reforms include an increased focus on the use of early intervention for pupils displaying persistent disruptive behaviour, for example through the informed use of multi-agency assessments. We are also trialling a new system of exclusion in a number of local authorities over the next three years which will support schools to intervene earlier with pupils at risk of exclusion.

This consultation seeks comments on revised regulations and guidance. The draft regulations that accompany this consultation cover maintained schools. Regulations covering pupil referral units will mirror these regulations. Changes to regulations covering reintegration interviews, information about pupils and school finance, as well as consequential amendments to other regulations, will also be required to reflect the changes being made. Regulations in relation to Academies will be drafted following this consultation based upon the regulations for maintained schools.

The objective is to ensure that the revised guidance gives sufficiently clear information to people involved in the exclusion process. Revised guidance on the use of alternative provision is due to be released next year and the exclusion guidance will be updated as appropriate. Suggestions for brief inserts and/or revisions to this exclusion guidance are welcome. However, in line with the Department’s aim to provide more effective guidance, it is not the intention to widen the scope of the document or lengthen it.

Whilst respondents are welcome to answer every question some questions apply directly to specific groups of people. Respondents may, therefore, wish to complete only those questions which are directly relevant to them. In order to make this easier the questions are grouped as follows.

Questions 1 to 16 are general questions for all respondents.

Question 17 is aimed at head teachers, Principals and teachers in charge of pupil referral units (PRUs).
Question 18 is aimed at school governors and management committee members.

Questions 19 and 20 are aimed at local authority officials and Academy Trust members.

‘Head teacher’ in this consultation questionnaire applies equally to the Teacher in Charge at a Pupil Referral Unit and Principals of Academies. ‘Governing Body’ applies equally to a PRU Management Committee and ‘Governor’ to Member of a Management Committee. Apart from where specifically stated, the duties of a local authority to arrange an independent review panel also apply to Academy Trusts.

Please tick the box that best describes you as a respondent:

- [ ] Head Teacher/Principal/Teacher in Charge
- [ ] Teacher/School Professional
- [ ] School Governor/Management Committee Member
- [ ] Parent
- [ ] Local Authority Official
- [ ] Pupil
- [ ] Voluntary/Community Organisation
- [ ] SEN Professional or Practitioner
- [ ] Other (please specify)

Please Specify:

Please tick to indicate which phase of education you are involved with:

- [ ] Primary
- [ ] Secondary
- [X] Combined
- [ ] Not relevant

Please tick to indicate which type of school your answers relate to:

- [X] Maintained School
- [ ] Pupil Referral Unit
- [X] Academy/Free School
- [ ] Other (Please specify)
Please Specify:
Questions for all respondents

Application of these procedures to Academies

Under current arrangements Academies are required to mirror the exclusion process for maintained schools by virtue of their funding agreements. However, these arrangements would not allow the new system of exclusion to be applied in full or consistently across different Academies. It is the intention, therefore, to create regulations for Academies that would mirror those for maintained schools. These regulations would apply to Academy Schools, including Free Schools and Alternative Provision Academies / Free Schools. The significant differences between the regulations for maintained schools and Academies would be:

- Academies’ governing bodies would not be required to allow a local authority officer to make representations when they are considering the reinstatement of a pupil, although a local authority officer may attend the meeting at the invitation of a parent;
- Academy Trusts (not the local authority) would be responsible for making arrangements for the review of any decision of the governing body not to reinstate a pupil who has been permanently excluded from the Academy;
- Academy Trusts would be responsible for appointing the Special Needs Expert where appropriate;
- Academy Trusts would not be required to allow a local authority officer to make representations at an independent review panel for which they were responsible, although a local authority officer may attend at the invitation of a parent;
- the regulations would place a duty on Academies to make a financial payment to the local authority equivalent to that of a maintained school, if directed to do so by an independent review panel.

The differences relating to local authority participation in an exclusion from an Academy reflect the current system of independent appeal panels. The regulations on financial penalties are required as a local authority cannot readjust the budget of an Academy.

1. Do you agree with the scope of the proposed regulations for Academies? If not, what further changes should be made so that the regulations are appropriate for Academies?

   X  Yes   No   Not sure
Comments:

As members of the Special Educational Consortium (SEC), we support their position on Academies. Therefore we believe that it is important that these regulations are fully applied to academies. We are concerned that recent research has shown there is some evidence that pupils excluded from Academies do not receive the same safeguards as those in Local Authority maintained schools\(^1\). We support the recommendation from this research report that the Department for Education should monitor exclusions in Academies in order to reduce the disproportionate number of exclusions in some of these schools\(^2\).

In terms of the application of the guidance to Academies, we support that local authority officers may make representations when governing bodies are considering the reinstatement of a pupil and at independent review panels when invited by parents. However, we would like this to be extended so that local authority officers can make representations when invited by the pupil themselves and by the relevant teacher or head teacher of the academy or an individual member of the independent review panel.

**Early intervention for pupils at risk of exclusion**

Where possible, it is important for schools to identify any underlying causes of disruptive behaviour and intervene to prevent problems escalating to the point of exclusion. Paragraphs 17 to 19 provide statutory guidance to head teachers on this issue.

2. Do you think that the guidance on early intervention is sufficiently clear? If not, how might it be improved?

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Comments:

We welcome the early intervention approach as we believe schools should understand the underlying causes of disruptive behaviour. Exclusion should only be used as a last resort when all other options have been explored.

We support the recommendation in the guidance that the scope of multi-agency assessments cover mental health and problems within the family/at home to identify causes of behavioural issues. Our practitioners have found that these assessments work well, particularly in special school settings where exclusions are rare.

However, further clarification is needed of the types of behaviour that


\(^2\) Ibid
would trigger an assessment of this kind. The guidance should suggest the kinds of behaviours that are not deemed serious enough to be sanctioned by exclusion but would prompt a multi-agency assessment. This is particularly an issue for pupils who are not on the SEN register but could benefit from a multi-agency assessment if they have needs that have not yet been identified. The example given in paragraph 17 only refers to a child with SEN.

Recommendation: Further clarification is needed on what behaviour would trigger a multi-agency assessment or other early intervention strategy. As the guidance here refers to children with SEN, disability or additional needs further clarification is needed for a child who potentially has unidentified SEN.

The SEN Code of Practice imposes a duty to review all pupils’ statement of SEN on an annual basis. However, we believe that an annual review is too infrequent to resolve ongoing disruptive behaviour likely to lead to exclusion. Interim reviews can be called when a school identifies that a pupil with SEN ‘is at serious risk of disaffection or exclusion’. Our practitioners find that these interventions are often too late. Ideally there should be regular contact or meetings between the school and parents for all pupils who are on the SEN register to update on their progress and deal with any issues as they arise.

Recommendation: We feel that as part of their early intervention strategy, the guidance should ensure that schools have regular contact or meetings with parents to update on the progress of pupils with disability or SEN. This should be more frequent than the requirement for an annual review of a statement of SEN for those with identified disability or SEN.

Exclusion of pupils from groups with disproportionately high exclusion rates

There are a number of groups of pupils who are particularly vulnerable to exclusion. This includes pupils with special educational needs (SEN), pupils with disabilities, pupils from certain ethnic groups and looked after children. To ensure that all pupils are treated fairly we have sought to clarify schools’ legal duties in relation to these groups and to provide specific statutory guidance on exclusion.

Exclusion of pupils with a protected characteristic

Paragraphs 8 to 9 sets out how schools’ duties under the Equality Act 2010 apply in relation to exclusions. This includes highlighting that it is unlawful for a governing body of a school to discriminate against, harass or victimise a pupil because of a protected characteristic, such as race or disability. Paragraph 20 provides statutory guidance to head teachers on addressing the

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needs of pupils from ethnic groups which have disproportionately high rates of exclusion.

3. Do you think the explanation of how the Equality Act 2010 applies in relation to exclusions and the statutory guidance on exclusion of pupils from ethnic groups vulnerable to exclusion is sufficiently clear? If not, how might it be improved?

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Comments:

Overall, the explanation of how the Equality Act 2010 applies to exclusions is clear. However, it could be improved by including reference to the Equality and Human Rights Commission guidance for education providers/schools. This would ensure that those reading the statutory guidance had access to a fuller explanation of how the Equality Act applies, particularly in relation to school exclusion. We also support the SEC response to this consultation that suggests that in order to avoid confusion: paragraphs 8 and 9 of the statutory guidance should separate the issues of discrimination against individuals and the public sector equality duty.

We have some concerns over the guidance in relation to ethnic groups vulnerable to exclusion. The Children’s Society has a long history of working with children and families from the Gypsy, Roma and Traveller (GRT) community. Disproportionate levels of exclusions amongst GRT children is strongly linked to high levels of bullying and discrimination amongst these groups. External research studies show and experiences from our own projects support this view, that exclusions often arise out of incidents of bullying in schools and fighting associated with racist name-calling. One study on Traveller pupils from Scotland found that several young people had been excluded directly as a result of fighting in retaliation to being called names.

Prejudicial attitudes among some professionals mean that tolerance and understanding of Traveller children’s behaviour is also more limited and decisions to exclude are made more readily. In addition, parents from marginalised communities lack the confidence and ability to challenge these decisions effectively, leading to higher exclusion rates among these groups.

Therefore it is essential that all schools ensure that bullying against any group of children, but particularly marginalised groups like Gypsies and Travellers is never tolerated, and that schools support children and families to overcome these issues. This will be important as more freedom is given to schools.

7 Lloyd, G and Stead, J (2001) Name calling and the experiences of Travellers in school, in Children and Society, pp. 361-374
Recommendation: We believe the guidance should specify that schools’ anti-bullying policies should make specific reference to the vulnerability of particular groups to discrimination and the widespread prejudiced attitudes that exist in wider society towards these groups. Schools should consider providing more support in these areas.

The guidance should make reference to the important role that local independent voluntary sector groups play in supporting GRT children at risk of being excluded such as The Children’s Society Roma New Migrants Project in London and The Children’s Society Roma project in Sheffield. This is particularly important given the widespread closure of Traveller Education Services (TES) across the country. A Freedom of Information request in August 2011 revealed that nearly half of 127 local authorities have either abolished their TES or drastically cut staff levels.\(^8\) Our New Migrants Roma project in Newham, London has seen a large increase in referrals since the closure of the TES in Newham which has meant a severe reduction in support for children who are being bullied or at risk of exclusion, as well as outreach work and, advice to schools and other professionals on GRT work.

Recommendation: The guidance should specify that schools should take an active approach in making links and engaging voluntary sector organisations as they will have built trust with children and their families and can advocate on their behalf and mediate between them and the school. We have seen the best outcomes for GRT children at risk of being excluded where we have worked in partnership with other agencies to find the best solution for the child.

Exclusion of pupils with special educational needs

The new system of exclusion has additional safeguards to protect pupils with special educational needs (SEN). This includes the right for parents to request that a SEN expert attends an independent review panel. The expert’s role will be to provide impartial advice to the panel on how SEN could be relevant to the exclusion, for example, whether a school has complied with their legal duties in respect of SEN when excluding the pupil.

Parents will have the right to request a SEN expert, whether or not a school recognises that their child has SEN. The duty on the governing body to notify parents of this right is set out in paragraph 68; the duties of the local authority to appoint a SEN expert, and associated statutory guidance, are set out in paragraphs 95 to 106; and statutory guidance to SEN experts on performing their role is set out in paragraphs 149 to 151.

4. Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to enable the SEN expert to perform their role effectively? If not, how might it be improved?

\[\square\text{Yes} \quad \text{X} \quad \square\text{Not sure}\]

\(^8\) http://www.independent.co.uk/news/uk/politics/cuts-threaten-traveller-childrens-schooling-2330282.html
Comments:

The Children’s Society supports the position of SEC that the SEN expert should be able to comment on whether a school’s actions are in general reasonable, given the evidence in the individual case. The guidance is currently confusing as it states that the SEN expert should “not express judgement on a school’s policies or actions because they believe a different approach should have been followed” (paragraph 151) but also that the SEN expert should consider whether “the school policies... in relation to the excluded pupil could be construed as unlawful, unreasonable, irrational or disproportional” (paragraph 149).

Recommendation: The Children’s Society recommends that the statutory guidance clarify the role of the SEN expert so that they are able to comment on whether the school’s actions were reasonable in regards to the individual case.

The Children’s Society understands the need for the SEN expert present at an independent review panel to be impartial and independent (paragraph 98). However, it is unclear in the guidance what information the SEN expert will have access to and what they can base their advice on. We believe some information about the child is essential for the SEN expert to fulfil their role such as information on the SEN or disability the child has and the events/behaviour leading to the pupil’s exclusion. For example seeing a copy of their statement of SEN, recent reports from any diagnostic-specific support services involved with the child (e.g. speech and language therapy, occupational therapy) as well as recent behavioural reports from the school.

Recommendation: The guidance needs to clarify what information the SEN expert will be given prior to the independent review panel. We recommend that the SEN expert should have access to relevant information about the child such as any statement of SEN, recent reports from external professionals involved with the child and recent school behavioural reports.

We also support the SEC recommendation that where a disabled child or child with SEN is at risk of exclusion, a review should be undertaken of their SEN and whether reasonable adjustments have been made to accommodate the pupil. This should take place before they are subject to permanent exclusion and information about the outcome of this assessment should be available in advance to any SEN expert present at the independent review panel.

Paragraph 102 sets out our expectation that the SEN expert will be a professional with suitable expertise and experience of the requirements on schools in relation to identifying and supporting special educational needs and disability. The guidance states that this could be an educational psychologist, a specialist SEN teacher or a behaviour support teacher.
5. Do you believe these examples are sufficient to enable the local authority to identify individuals that are suitable for the role? If not, please explain what other examples of expert would clearly meet the criteria of having the required expertise and experience of the SEN requirements on schools.

☐ Yes  ☒ No  ☐ Not sure

Comments:

The Children’s Society supports the SEC’s recommendation that paragraph 102 should be amended to state that local authorities “should ensure that the SEN expert is a professional with suitable expertise and experience”.

We feel that the examples given in paragraph 102 of the guidance could be further expanded to include speech and language therapists, a CAMHS professional/clinical psychologist, occupational therapist, professionals from an in-school behaviour and education support team, SEN experts with experience of working in a Pupil Referral Unit, music therapist and other diagnostic-specific support services. This list includes other highly specialised professionals who are involved in the assessment process and help to develop behaviour management strategies to prevent pupils from being excluded. A more expansive list of possible SEN experts will help to ensure that Local Authorities are able to identify and offer SEN experts with a wider range of expertise and who can provide the appropriate impartial advice about how SEN might be relevant to a pupil’s exclusion.

Recommendation: The Children’s Society recommends that the examples of SEN expert should be expanded to include “speech and language therapists, a CAMHS professional/clinical psychologist, occupational therapist, professionals from an in-school behaviour and education support team, SEN experts with experience of working in a Pupil referral unit, music therapist and other diagnostic-specific support services”.

We believe it is important that local authorities provide a broad choice of SEN experts. However, paragraph 104 of the guidance states that local authorities should take “reasonable steps to offer a choice of SEN expert”. Our concern is only a choice of a small number of SEN experts with specific areas of expertise could be offered. Given that children can experience a wide range of complex educational needs or disabilities the guidance on the appointment of SEN experts should reflect this. The choice of SEN expert should be dependent upon the individual case of each child and their specific needs and reason for exclusion.

Recommendation: Paragraph 104 should be amended to read as follows:

“Local authorities should ensure that parents have confidence in the independence and capability of the SEN expert. This includes offering a choice of SEN experts with a broad range of different SEN expertise. Local authorities should provide parents with
Exclusion of looked after children

Looked after children can be particularly vulnerable to exclusion. Paragraphs 21, 25 and 27 provide, or draw attention to, statutory guidance on minimising the impact of exclusion on these children.

6. Do you think the statutory guidance in relation to the exclusion of looked after children is sufficiently clear? If not, how might it be improved?

Yes [ ]  No [x]  Not sure [ ]

Comments:

We welcome that the guidance acknowledges that looked after children are particularly vulnerable to exclusion. However, we believe the guidance could go further to support looked after children.

We know from our work with looked after children that they experience considerable disruption and trauma in their lives that can significantly impact on their behaviour, attendance and educational achievement. For example, one of our advocates worked with a girl who was placed 30 miles from her school. She experienced difficulties with attendance and getting to school on time but did not want to move schools as remaining in a familiar educational environment with her friends provided stability in a difficult period. Her school and teachers did not recognise that the distance she travelled to get to school was a major factor in her difficulty with attendance and lateness.

This example illustrates how schools in general do not always fully understand and how teachers are not always aware of the circumstances that may lead to looked after children facing challenges and barriers to learning. Schools need to develop an inclusive approach and maintain an inclusive environment. Teachers also need to be given training and support to increase their sensitivity to the needs of looked after children within their classes to avoid unintended stigmatising effects.

Given the issues that looked after children face in schools, it is concerning that the statutory guidance does not mention the role of the designated teacher for looked after children or the role of the child’s social worker. We welcome that paragraph 21 of the guidance states that schools should co-operate with foster carers and the local authority to avoid excluding a looked after child. However, we believe that the guidance should also refer to the role of the child’s social worker.

Recommendation: Paragraph 21 should state that the child’s social worker should be involved at the earliest opportunity to avoid exclusion.
Under the Children and Young Persons Act 2008 all maintained schools are required to appoint a designated teacher to promote the educational achievement of looked after children on the school roll. The statutory guidance on the designated teacher states that they should be involved in any discussions related to the possibility of exclusions of looked after children in partnership with others in the school and the governing body and the local authority.\(^9\)

**Recommendation:** Paragraph 21 should include a reference to the role of the designated teacher for looked after children.

Paragraph 27 of the statutory guidance states that schools and local authorities should work together to ‘try’ and put in place alternative provision for looked after children from the first day following their exclusion. We welcome that the guidance acknowledges the importance of minimising the disruption exclusion can cause especially for looked after children. However, we believe this could be put more strongly as we the word ‘try’ is unnecessary and could be misinterpreted. We support the Social Exclusion Unit’s recommendation that ‘local authorities should make immediate arrangements to provide full time education for children (in care) who do not have a school place’\(^10\).

**Recommendation:** Paragraph 27 should states that schools and local authorities should arrange alternative provision from the first day of the exclusion for looked after children. To strengthen this requirement, the guidance should include the statement that ‘No looked after child should be excluded from a school/Pupil Referral Unit without discussion with the local authority to ensure that there is suitable alternative provision available elsewhere’\(^11\).

We believe it is critically important that children and young people have a voice and feel that they are being listened to during the exclusion process (see response to question 9). This is particularly significant for looked after children as they may not have a parent or guardian to support them in expressing their wishes or presenting their case.

**Recommendation:** We believe reference to ensuring that looked after children in particular have a voice and are listen to during the exclusion process should be included in the statutory guidance.

Independent advocates play a vital role in enabling looked after children to express their feelings and have a voice, particularly for those children with disabilities or SEN. Advocates are the only professionals that can provide independent support to looked after children in this situation as social workers are employees of the local authority, designated teachers are part of the school and foster carers may not have the specialist knowledge or expertise needed.

**Recommendation:** We believe there should be a requirement for looked

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\(^9\) Department for Children, Schools and Families (2009) The role and responsibilities of the designated teacher for looked after children: Statutory guidance for school governing bodies

\(^10\) Social exclusion Unit (2003) A better education for children in care

\(^11\) This statement appeared in the previous statutory guidance on exclusions
after children to be entitled to access to an independent advocate when they are facing the exclusion process (as they do for complaints) and that this should be included in the statutory guidance. The guidance should also refer to The Children Act 1989 Guidance and Regulations Volume 2: Care Planning, Placement and Case Review that outlines that consideration must be given to securing the support of an advocate for a child in care who needs support in communicating their wishes and feelings about decisions affecting them.

Informing parents about an exclusion

There are some significant changes to the exclusion process about which parents need to be aware. This includes the right of a parent to request that a SEN expert attend an independent review panel and the option for parents to ask the First-tier Tribunal to hear cases of permanent exclusion in which disability discrimination is alleged.

Following an exclusion head teachers are currently required to provide parents with information about the exclusion ‘without delay’ (paragraph 29 of the guidance). Head teachers are also required to provide parents with information about any alternative provision that has been arranged for their child and notify them that they must ensure that their child is not found in a public place for the first five days of an exclusion without good reason

Currently, there are different requirements for when this extra information must be provided. Whilst, in practice, the information is often provided at the same time, these differences in the requirements are unhelpfully complicated. The Government, therefore, proposes to change the relevant regulations so that head teachers are required to provide all information relating to an exclusion without delay and, in the case of information about alternative provision arrangements, at least 48 hours before the provision is due to start (paragraphs 32 to 34 of the guidance).

7. Do you agree with this approach to simplify the requirements on when information relating to an exclusion should be provided?

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We understand that it is useful for schools to have simplified requirements regarding when information relating to an exclusion should be provided to parents. However, we believe it is still important for parents to receive suitable and timely information on their child’s exclusion. Our recommendations for improving the accessibility of information provided for parents are outlined in response to question 8 below.

The overall duties on head teachers, governing bodies and independent review panels to keep parents informed at each stage of the exclusion process, and associated statutory guidance, are provided in paragraphs: 29 to 40 (for head teachers); 68 to 72, 173 and 176 (for governing bodies); and 154 to 158 (for independent review panels). In addition, the Department for Education is funding the Coram Children’s Legal Centre to provide free and impartial advice to parents in relation to exclusions.

8. Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to ensure that parents will be properly informed about the exclusion process? If not, how might it be improved?

| Yes | X No | Not sure |

Comments:

As stated above we believe that the information provided to parents about an exclusion should be as accessible as possible particularly for those parents who may have literacy issues, do not speak English as a first language or have learning disabilities. The information sent out in the letter to parents should be written in accessible, easy-to-read and informative language so that all parents are able to understand their rights and responsibilities in regard to their child’s exclusion. The letter should also be translated into other languages where necessary for those parents whose first language is not English or do not speak the language at all.

Recommendation: The guidance should state in paragraph 29 that the information provided to parents should be accessible and easy to read particularly for parents with additional needs. The information should also be translated into other languages, where parents’ first language is not English to improve accessibility.

Paragraph 29 states the information to parents should be sent out ‘in writing and without delay’. However, we believe parents should be notified immediately by telephone (if possible) following an exclusion, as per the previous statutory guidance on exclusion. This should be followed
up by a letter with the full information as outlined in paragraph 29. This initial telephone call would ensure the parents with additional needs are fully informed about the exclusion and can speak directly to a member of staff to access extra support if needed.

Recommendation: Paragraph 29 should include reference to contacting parents by telephone immediately following an exclusion.

Pupils’ participation in the exclusion process

We believe that it is important that pupils should be encouraged and supported to participate throughout the exclusion process. Whilst there is not currently an intention to legislate to give pupils the right to challenge their own exclusion, we propose to place a requirement on head teachers to set out how the excluded pupil may be involved in the governing body’s consideration of an exclusion (paragraph 29). We have also revised the statutory guidance to place an increased emphasis on supporting pupil participation (paragraphs 14, 15, 16, 54, 115 and 116).

9. Do you think that the guidance on supporting pupil participation is sufficiently clear? If not, how might it be improved?

☐ Yes  X No  ☐ Not sure

Comments:

As key supporters of the Children’s Rights Alliance for England (CRAE) we support their response to this consultation and their position on pupil participation in the exclusion process.

We welcome that the revised statutory guidance has an increased emphasis on supporting pupil participation. We believe all children have the right to participate in decisions about their lives as outlined Article 12 of the UN Convention on the Rights of the Child.

However, we are disappointed that the guidance does not fully incorporate pupil participation into the exclusion process. We support the UN Committee on the Rights of the Child recommendation that the government ‘ensure that children who are able to express their views have the right to appeal against their exclusion ...’13 We believe that to enact this right; the government should legislate to give pupils the right to challenge their own exclusion.

Recommendation: The exclusions guidance and regulations must ensure that all students have an opportunity to make representations in relation to their exclusion and have an opportunity to appeal against their exclusion

We also have more specific concerns about the guidance as it is currently drafted in relation to pupil participation as outlined below:

Paragraph 14 states that head teachers should give pupils the opportunity to present their case before taking the decision to exclude ‘where practical’. We believe ‘where practical’ should be removed as we believe all pupils should be able to present their case and should be accommodated, encouraged and supported to do so.

**Recommendation:** ‘where practical’ should be removed from paragraph 14.

We welcome that paragraph 15 states that head teachers should take account of contributing factors such as bereavement, bullying and mental health issues. We believe ‘whether the child has caring responsibilities in the home’ should also be included as research has shown many young carers can have difficulties at school particularly with attendance and homework\(^\text{14}\).

**Recommendation:** Paragraph 15 should include reference to ‘whether the child has caring responsibilities in the home’.

Paragraph 29 outlines the information that head teachers should notify parents of after an exclusion has taken place, including the parents’ right to make representations about the exclusion to the governing body and ‘how the pupil may be involved in this’. We do not think that placing pupil involvement as an add-on to the information given to parents is sufficient as pupils may not see this information.

**Recommendation:** A new bullet point should be included into paragraph 29 (after the third bullet point) stating that: ‘how the pupil can be involved in making representations about their exclusion to the governing body and this should be in language accessible to the young person.’

We welcome that paragraph 54 and paragraph 115 state that pupils should be encouraged and enabled to attend the governing bodies meeting to consider reinstatement and the independent review panel meeting. We believe this could be strengthened by stating that schools/the panel should ensure that children and young people have a voice and that they feel they are being listened to. The meetings should take place in an atmosphere where they feel comfortable and able to speak openly. Moreover, paragraph 116 states that to support pupil participation at the independent review panel meeting they should make ‘reasonable efforts’ to provide information and conduct discussions in an accessible way. We believe ‘reasonable efforts’ should be removed as the information and discussion must be accessible for the pupil in order to ensure they are fully included throughout the meetings.

**Recommendation:** Paragraphs 54 and 115 should be improved to ensure that pupils feel fully included and able to have their views heard when attending independent review panel and governing body meetings on their exclusion.

\(^\text{14}\) Dearden and Becker (2004). Young Carers and Education. Carers UK.
Governing bodies' consideration of an exclusion decision

Currently, where a governing body is required to meet to reconsider an exclusion they are not able to do so until six school days after they have been notified by the head teacher that the exclusion has taken place. We feel that this is unnecessarily restrictive, especially where there is a risk of a pupil missing an external exam. It is, therefore, proposed to remove this restriction, whilst making clear that governing bodies will still be expected to try and arrange the meeting for a time that all parties, including parents, are able to attend (paragraphs 46 to 52 of the guidance).

10. Do you agree with the proposal to allow governing bodies to meet in order to consider reinstatement earlier than six school days after being notified?

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Comments:

The use of fixed period exclusion

There is currently a limit of 45 days of fixed term exclusion per year for any pupil (paragraph 1 of the guidance). Where a pupil is subject to repeated fixed period exclusions it is important that a school considers whether this is providing an effective sanction for their behaviour. Schools might, for example, consider whether it would be more appropriate to use their power under section 29A of the Education Act 2002 which allows them to refer a pupil off-site for educational provision to improve their behaviour (the Department intends to issue guidance on the use of this power next year).

11. What should the limit on the number of school days of fixed period exclusion in a school year be under the new system?

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<tr>
<th></th>
<th>Higher</th>
<th>X Lower</th>
<th>The same</th>
<th>Not sure</th>
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Comments:

We believe that the limit on the number of the school days of fixed period exclusion should be significantly lower than 45 days. Being excluded for 45 days during the year works out as missing more than half a term (which are usually 6 or 7 weeks). Missing this much schooling is very disruptive for a pupil and his or her learning and can be detrimental to their educational development. Research has shown that repeated use of school exclusions can increase alienation from education and even push pupils towards more risky behaviours.\(^\text{15}\).

*Recommendation: The limit on the number of school days of fixed period exclusions in a school year should be substantially lower than 45 days under the new system.*

Reintegration interviews

Currently, a head teacher must arrange a reintegration interview with parents for any fixed period exclusion of a primary-aged pupil or for a fixed period exclusion of six or more school days of a secondary-aged pupil. It is important for schools to agree a strategy for managing the future behaviour of an excluded pupil (paragraph 38 of the guidance). However, the Government intends to remove the legal requirement for a reintegration interview as it creates an unnecessarily bureaucratic approach to reintegration for pupils, parents and schools.

12. Do you think the guidance on pupil reintegration following a fixed period exclusion is sufficiently clear? If not, how might it be improved?

<table>
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<tr>
<th></th>
<th>Yes</th>
<th>X No</th>
<th>Not sure</th>
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</table>

\(^{15}\) Evans, J (2010) *Not present and not correct: Understanding and preventing school exclusions* Barnardo’s
The Children’s Society opposes the intention to remove the legal requirement for a reintegration interview for any fixed term exclusion of a primary-aged pupil or for a fixed period exclusion of more than six or more school days of a secondary-aged pupil. We are concerned that removing this legal requirement will lead to some schools no longer holding reintegration interviews in these circumstances. We strongly support the use of reintegration interviews as fixed term exclusions are very disruptive to a child’s education and can impact on them socially leading to alienation from peers and friends.

If the behaviour of the child was serious and important enough to warrant the child being excluded from school then ensuring that their reintegration is successful should be equally important. We believe it is extremely important for the child and parents to meet with the school to give the child or young person the opportunity to reflect on the behaviour which led to exclusion. It also provides an opportunity to develop an action plan to ensure that the child’s reintegration is as smooth as possible and to avoid future fixed or even permanent exclusion. Moreover, these interviews can be used to explore and tackle the underlying causes of the child’s behaviour.

Recommendation: The Children’s Society believes it is essential that the legal requirement for a reintegration interview for any fixed period exclusion of a primary-aged pupil or for a fixed period exclusion of six or more school days of a secondary-aged pupil should remain.

The financial readjustment / payment

Where a governing body is directed to reconsider an exclusion decision by an independent review panel but chooses not to reinstate the pupil, the school will be expected to provide a fair contribution towards the potentially significant extra costs of alternative provision. This would be in addition to the funding that would normally follow an excluded pupil. The system of financial readjustment needs to be clearly understood and consistently applied. It is, therefore, proposed that a flat rate sum of £4,000 would be payable by all schools where the governing body has been directed to reconsider an exclusion but does not offer to reinstate the pupil, so long as that school has its own budget from which to make the payment (paragraphs 131 and 143 to 145 of the guidance).

13. Is a flat rate sum of £4,000 right? If your answer is no, please go to question 13b.

☐ Yes  ☐ No  ☐ Not sure

13b. If you answered ‘No’ to question 13, please indicate whether you consider the amount should be higher, lower or varied. If you think it
should be varied, please explain how you think the amount should be calculated so that it is clearly understood and consistently applied.

☐ Higher  ☐ Lower  ☐ Varied

Comments:

The First-tier Tribunal

Parents can currently apply for the First-tier Tribunal (Special Educational Needs and Disability) to review fixed period exclusions where they believe that disability discrimination has taken place. Under the new system this right will be extended to allow parents to ask the Tribunal to review permanent exclusions. The Tribunal Procedure Committee is reviewing the Tribunal Procedure Rules to ensure they are suitable for hearing permanent exclusion cases.

Q14 and Q15 are asked on behalf of the Tribunal Procedure Committee

The Tribunal Procedure Committee considers that, where a case alleging disability discrimination in an exclusion is brought before the First-tier Tribunal (Special Educational Needs and Disability), the respondent (for example, the governing body of the school) should have 15 working days in which to provide a response.

14. Do you regard this 15 day requirement for responses as reasonable?

☐ Yes  ☐ No  ☐ Not sure
15. Do you think the Tribunal Procedure Rules need amending in any other respect in order to be suitable for permanent exclusion cases? If so please explain. (They can be seen at: http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/general/consolidated_TPFtT_HESCRules2008asat010411.pdf).

- [ ] Yes
- [ ] No
- [ ] Not sure

Comments:

Any other comments

16. Please let us have any other comments on the revised guidance or regulations, including any further suggestions for how they might be improved without significantly increasing their length.
For head teachers/teachers in charge/Principals

17. Overall, do you think that the explanation of the legislation and statutory guidance is sufficiently clear to enable head teachers to fulfil their statutory duties? If not, how might it be improved?

Comments:

For school governors/management committee members

18. Overall, do you think the explanation of the legislation and statutory guidance is sufficiently clear for governing bodies to fulfil their statutory duties? If not, how might it be improved?

Comments:
Local authority officials / Academy Trust members

If a governing body is directed to reconsider an exclusion decision by an independent review panel and reinstatement is not the outcome, the school will be expected to make a payment to the local authority towards the additional costs of alternative provision. This payment would be in addition to the funding that would normally follow an excluded pupil (question 9 relates to the size of this payment). Paragraphs 160 to 168 of the guidance set out the local authority’s role in ensuring that this payment is made. In the case of maintained schools, it is intended that the School Finance (England) Regulations will be amended to set out that, where directed, a local authority should include this additional sum when readjusting a school’s budget following a permanent exclusion. It is intended that separate regulations will place duty on Academies to make an equivalent payment directly to the local authority.

19. **Do you think the statutory guidance is sufficiently clear to enable local authorities to carry out this financial adjustment? If not, how might it be improved?**

- [ ] Yes
- [ ] No
- [ ] Not sure

Comments:
20. Overall, do you think the explanation of the legislation and statutory guidance is sufficiently clear for a local authority to fulfil their statutory duties? If not, how might it be improved?

[ ] Yes  [ ] No  [ ] Not sure

Comments:
Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

**Please acknowledge this reply X**

The Department for Education carries out research on many different topics and consultations. As your views are valuable to us, are you content to be contacted again from time to time, either for research or for the Department to send through consultation documents?

| X | Yes | No |

All DfE public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

**Criterion 1:** Formal consultation should take place at a stage when there is scope to influence the policy outcome.

**Criterion 2:** Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

**Criterion 3:** Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

**Criterion 4:** Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

**Criterion 5:** Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

**Criterion 6:** Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

**Criterion 7:** Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Co-ordinator (Tel: 01928 738060 / email: carole.edge@education.gsi.gov.uk)

**Thank you for taking time to respond to this consultation.**
Completed questionnaires and other responses should be sent to the address shown below by 10 February 2012

Send by post to: Exclusion Consultation, Exclusion Team, Department for Education, Sanctuary Buildings, Great Smith Street, Westminster SW1P 3BT

Send by e-mail to: exclusion.consultation@education.gsi.gov.uk