# In the Independent Review Panel

[Insert parent / caregiver name(s)]

on behalf of

[Insert pupil name]

- and -

Governing body of [Insert school name]

Written representations on behalf of

[Insert pupil name]

For independent review panel hearing of

[Insert date]

Please refer to the relevant guide as you complete this template. There are notes highlighted throughout to advise you while you complete this form. These notes should be deleted before finalising your written submission.

## Introduction

1. These written representations are made on behalf of [insert pupil name] for the Independent Review Panel hearing of [insert date]. [Insert parent / caregiver name] has applied for a review of the decision of the Governing Body dated [insert date] not to reinstate [insert pupil name] following their exclusion from [insert school name] on [insert date].
2. The question for the Governing Body was whether [insert pupil name] should be reinstated as a pupil at the School: Education Act 2002, section 51A(3)(b). The Governing Body was required to make this decision in accordance with:
	1. the Equality Act 2010 (EA 2010)
	2. the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 (the ‘Exclusion Regulations’), and
	3. the Department for Education’s guidance entitled ‘Exclusion from maintained schools, academies and pupil referral units in England: A guide for those with legal responsibilities in relation to exclusion’ (the ‘Guidance’).
3. In reviewing the Governing Body’s decision, the Panel must consider whether it was ‘flawed when considered in light of the principles applicable on an application for judicial review’, as defined in the Guidance, p. 7 and para 141. A decision will be flawed in this way where it is tainted by illegality, irrationality, or procedural impropriety (Guidance, para 159).
4. In summary, [insert parent / caregiver name] submits that:

[List here the grounds you have used in section III: Submission. Below is an example of how this should look:]

* 1. Ground 1: The Governing Body’s conclusion that the incident leading to [insert pupil name’s] exclusion was a ‘serious’ breach of the School’s behaviour policy was not reasonably open to it.
	2. Ground 2: The Governing Body failed to treat permanent exclusion as a last resort.
	3. Ground 3: The Governing Body failed to recognise that the decision to permanently exclude [insert pupil name] involved an unlawful failure to make reasonable adjustments under the Equality Act 2010.
	4. Ground 4: The Governing Body failed to give adequate reasons for its decision.

## Summary of the facts

### General background

1. [Insert a short profile of the pupil, including any relevant diagnoses, etc.]

### Events leading to permanent exclusion

1. [Insert timeline of relevant events leading up to the permanent exclusion.]

### The Governing Body’s decision

1. [Insert any relevant events that happened before the Governing Body meeting.]
2. At the Governing Body meeting held on[insert date] [insert parent / caregiver name] argued that: [insert summary of arguments as a numbered list]
3. In a letter dated [insert date], the Governing Body declined to reinstate [insert pupil name]. The Governing Body’s reasons were as follows: [insert reasons, taken from the letter].
4. [If there has been a FTT judgement, add details here. Remove this paragraph if it is not applicable.]

‘[insert parent / caregiver name] notes that an appeal to the FTT (Special Educational Needs and Disability) against [insert pupil name]’s permanent exclusion was heard on [insert pupil name]’s. The Tribunal’s judgment is dated [insert date]. The Tribunal held that [insert summary]. This application for an IRP was made on [insert date]. This was within 15 school days of the Tribunal’s judgment and therefore the present application is brought within the legal timeframe (Guidance, para 88)’

## Submissions

[Below we have listed the most commonly used grounds. Only keep the sections that are relevant to your case, and reorder them to present your strongest grounds first. Don't forget to renumber them. Delete those sections that aren't relevant.]

### Ground [1] – Illegality: Unlawful discrimination in breach of the Equality Act 2010

1. [Insert relevant breaches of the Equality Act 2010, as for a case in the First-Tier Tribunal. For help with this, including suggested structure, see our First-Tier Tribunal guidance and template documents.].

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### Ground [2] – Illegality: Failure to apply the correct test

1. The test for permanent exclusion is set out in the Guidance. A decision to permanently exclude a child should only be taken in response to a ‘serious breach or persistent breaches of the school’s behaviour policy’ and where allowing the pupil to remain in school ‘would seriously harm the education or welfare of the pupil or others in the school’ (Guidance, p. 6 and para 16). These conclusions must be reached on the balance of probabilities (Guidance, para 65). Failure to apply the correct test will render the Governing Body’s decision unlawful.
2. In this case, the Governing Body does not appear to have applied this test in deciding to uphold [insert pupil name].’s exclusion. [Insert details.]

### Ground [3] – Illegality: Failure to treat permanent exclusion as ‘last resort’ – Pupil with SEN / EHCP

1. Permanent exclusion should be used only as a ‘last resort’ (Guidance, p. 6). This means that all other reasonably available options must have been exhausted.
2. In particular, head teachers are required to:
	1. give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion or its impacts, including pupils with SEN (Guidance, p. 6 and para 23)
	2. consider what extra support might be needed to reduce their risk of exclusion (Guidance, para 22)
	3. consider a ‘managed move’ and discuss this possibility with the pupil’s parents to see if they consent (see Guidance, para 15).
3. The Guidance also provides that disruptive behaviour ‘can be an indication of unmet needs’, meaning that interventions should ‘include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil might have’ (Guidance, para 19). Where there are concerns about persistent disruptive behaviour, schools should consider a multi-agency assessment of the pupil’s needs (Guidance, p 6 and para 19).
4. In this case, the School does not appear to have taken any of the following steps, which – individually or collectively – could have mitigated the concerns which resulted in the decision to exclude [insert pupil name]:
	1. [Insert steps not taken. See EHRC IRP guide for examples].
5. Without having attempted these steps, it cannot be said that permanent exclusion was a ‘last resort’.

### Ground [4] – Illegality: Exclusion for non-disciplinary reasons

1. The power to exclude a pupil permanently may be used only on disciplinary grounds (Guidance, para 13). This means it is unlawful to exclude a pupil for non-disciplinary reasons, including (for example) because they have additional needs the school feels it is unable to meet, or because they failed to meet specific conditions of reinstatement (Guidance, para 13).
2. In this case,[insert evidence that exclusion was not for disciplinary reasons].

### Ground [5]– Illegality: Exclusion not by the head teacher

1. Only the head teacher of a school can decide to exclude a pupil (Guidance, para 1), although they may delegate the investigation.
2. In this case, [insert explanation of who took decision, that is, someone other than the head teacher].

### Ground [6] – Illegality: Improperly ‘converting’ a fixed-term to a permanent exclusion

1. As [insert pupil name] was initially subjected to a fixed-term exclusion, this could be converted to a permanent exclusion only if the case was ‘exceptional’ – for example, where further evidence had come to light (Guidance, para 3).
2. This case was not an exceptional one. [Insert explanation.]
3. The result was that [insert pupil name] could not lawfully be permanently excluded on this occasion.

### Ground [7] – Illegality: Reliance on misbehaviour outside the School with no connection to the School

1. The behaviour of a pupil outside school can be considered grounds for an exclusion (Guidance, para 4). However, not all behaviour outside school can be considered. Section 90(2) of the Education and Inspections Act 2006 states that teachers can discipline pupils for conduct outside of school ‘only to the extent that it is reasonable for the school imposing the penalty to regulate the pupil's conduct at such a time’.
2. The DfE guidance, ‘Behaviour and discipline in schools’ (January 2016), provides advice on when it is likely to be reasonable to discipline pupils for behaviour outside of school. This explains that, subject to the behaviour policy, teachers may discipline pupils for:
	1. misbehaviour when the pupil is (i) taking part in any school-organised or school-related activity, (ii) travelling to or from school, (iii) wearing school uniform, or (iv) in some other way identifiable as a pupil at the school. [Guidance, para 25]

27.2 misbehaviour at any time, whether or not the conditions above apply, that (i) could have repercussions for the orderly running of the school, (ii) poses a threat to another pupil or member of the public, or (iii) could adversely affect the reputation of the school. [Guidance, para 25]

1. [insert parent / caregiver name] submits that none of the above criteria are met because [insert reasons].

### Ground [8]– Illegality: Fettering of discretion

1. All decisions of a governing board must be made in accordance with public law (Guidance, para 158).
2. It is unlawful for a decision-maker to ‘fetter’ the exercise of a discretion – such as the discretion to permanently exclude a pupil – by adopting and applying a rigid policy which allows for no exceptions based on individual circumstances. In other words, each case must be judged solely on its own merits. See, for example, British Oxygen Co Ltd v. Minister of Technology [1971] AC 610.
3. In this case, [insert relevant provisions of policy].
4. The Governing Body applied this policy to [insert pupil name] as part of its decision to permanently exclude. In doing so, it took no account of relevant personal circumstances, including [insert]. [Insert explanation of whether / to what extent these circumstances were known to the School / Governing Body.]
5. Had the Governing Body not fettered its discretion by applying [insert policy name], but instead considered the particular circumstances of [insert pupil name], its decision may well have been different. Its decision was therefore unlawful.

### Ground [9] – Irrationality: Failure to take account of all relevant points

1. The Panel is required to consider whether the Governing Body ‘failed to take account of all relevant points’ (Guidance, para 159), and should quash the decision if the answer is ‘yes’.
2. In [insert parent / caregiver name]’s submission, the Governing Body was obliged to consider the following but failed to do so (adequately or at all):

[Select the most relevant point:]

1. [Insert evidence that each relevant consideration was not addressed]. Had the Governing Body turned its mind to [this issue / these issues], it may have made a significant difference to its reasoning and conclusions. [Insert any further explanation].

### Ground [10] – Irrationality: Fact-finding

1. The Governing Body was required to make any findings of fact on which it relied on the balance of probabilities (Guidance, para 65). Accordingly, the Panel will be required to quash the decision if it is based on findings which no reasonable Governing Body could have made on the balance of probabilities (Guidance, para 159).
2. [insert parent / caregiver name] submits that this is the case here.
3. [Identify factual finding you are referring to; describe the evidence before Governing Body and explain why no reasonable decision-maker could have been persuaded by this evidence.]
4. Had the Governing Body made reasonable findings of fact, it may well have concluded that the test for permanent exclusion was not met.

### Ground [11] – Irrationality: Unreasonable conclusion about the ‘serious breach’ of the School’s behaviour policy

1. A decision to permanently exclude a child should only be taken in response to a ‘serious breach or persistent breaches of the school’s behaviour policy’ and where allowing the pupil to remain in school ‘would seriously harm the education or welfare of the pupil or others in the school’ (Guidance, p. 6 and para 16). In considering whether this test is met, the Governing Body must consider the interests and circumstances of the pupil (Guidance, para 63).
2. [insert parent / caregiver name] submits that the Governing Body’s conclusion that there had been a ‘serious breach’ was so unreasonable that no governing board acting reasonably in such circumstances could have made it (Guidance, para 159).
3. [Insert the relevant provisions of policy to this situation.]
4. [Insert your assessment of why there was no serious breach of the behaviour policy, and responding to the reasoning given by the Governing Body.]

### Ground [12] – Irrationality: Unreasonable conclusion about ‘serious harm’ to education or welfare

1. A decision to permanently exclude a child should only be taken in response to a ‘serious breach or persistent breaches of the school’s behaviour policy’ and where allowing the pupil to remain in school ‘would seriously harm the education or welfare of the pupil or others in the school’ (Guidance, p. 6 and para 16). The relevant standard is the balance of probabilities (Guidance, para 65). In considering whether the test is met, the Governing Body must consider the interests and circumstances of the pupil (Guidance, para 63). [If also using grounds of ‘Irrationality – unreasonable conclusion about the serious breach of behaviour policy’, you may wish to refer to the test in that relevant paragraph rather than repeating again here, or simply delete this paragraph and proceed directly to the paragraph below]
2. [insert parent / caregiver name] submits that the Governing Body’s conclusion that allowing [insert pupil name] to remain in the school would, on the balance of probabilities, ‘seriously harm the education or welfare of the pupil or others in the school’ was so unreasonable that no governing board acting reasonably in such circumstances could have made it (Guidance, para 159).
3. [Insert your assessment, dealing directly with any reasons given by the Governing Body.]

### Ground [13]– Procedural impropriety: Apparent bias

1. Bias is a type of procedural impropriety that has a significant impact on the quality of the decision-making process and makes it appropriate to quash the decision to exclude (Guidance, para 160). The test for apparent bias is whether a ‘fair-minded and informed observer’ would conclude that there was a ‘real possibility’ that the decision-making body was biased (see Porter v. Magill [2002] 2 WLR 37 at para 103). For example, members of the Governing Body should not discuss the exclusion with any party outside the meeting (Guidance, para 61). There is no need to show that there was actual bias.
2. In this case, the following features of the Governing Body’s decision-making process would have led a fair-minded and informed observer to conclude that there was a real possibility of bias: [insert your reasoning on this point.]

### Ground [14] – Procedural impropriety: Scheduling of Governing Body hearing

1. The Governing Body is required to invite parents to the hearing, and to make reasonable endeavours to arrange it for a date and time convenient to all parties (Guidance, paras 58-59).
2. In this case, [insert relevant facts about scheduling and resulting difficulties with attendance.]

### Ground [15]– Procedural impropriety: Failure to notify parents of their right to make representations

1. Parents have a right to make representations at a meeting of the governing board (Guidance, para 58) and must be informed of this right. A failure to notify parents of their right to make representations is an example of procedural impropriety that has a significant impact on the quality of the decision-making process and makes it appropriate to quash the decision to exclude (Guidance, para 160).
2. This is what occurred in the present case. [Insert relevant facts.]

### Ground [16] – Procedural impropriety: Failure to afford opportunity to make representations

1. Parents have a right to make representations at a meeting of the governing board (Guidance, para 58). They are also entitled to bring a representative or friend to the hearing if they ask to do so (Guidance, paras 58 and 61). If the Governing Body makes a decision without giving parents an opportunity to make representations (or to have representations made on their behalf), this is an example of procedural impropriety that makes it appropriate to quash the decision to exclude (Guidance, para 160). All decisions must be made in accordance with public law (Guidance, para 158) and therefore any opportunity to make representations must be a reasonable opportunity.
2. [insert parent / caregiver name] submits that the Governing Body did not give any opportunity, or any reasonable opportunity, to make representations before making its decision. [Insert reasons.]

### Ground [17] – Procedural Impropriety: Failure to take steps to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf

1. In preparing to consider the exclusion, the Governing Body should identify the steps it will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil’s age and understanding; or how the excluded pupil may feed in their views by other means if attending the exclusion meeting is not possible (Guidance, para 61).
2. [insert steps that the Governing Body took, if any; explain what evidence the pupil would have given and why this may have had a significant impact on the quality of decision-making.].

### Ground [18]– Procedural impropriety: Failure to give adequate reasons for a decision

1. The Governing Body was required to ‘set out the reasons for their decision in sufficient detail to unable all parties to understand why the decision was made’ (Guidance, para 79). A failure to give reasons (which must be sufficient reasons) is given in the Guidance as a substantive example of procedural impropriety that has a significant impact on the quality of the decision-making process and makes it appropriate to quash the decision to exclude (Guidance, para 160). A failure to give sufficient reasons hinders a parent’s ability to challenge the decision of the governing board at a review by an IRP, to prepare for the IRP hearing and to make representations at the hearing.
2. The reasons given by the Governing Body on [insert date] did not provide sufficient detail to enable [insert parent / caregiver name] to understand why it reached the following conclusions: [insert].

### Ground [19] – Procedural Impropriety: Failure to attribute witness statements

1. The Guidance states that ‘[a]ll written witness statements should be attributed, signed and dated, unless the school has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements. The general principle remains that excluded pupils are entitled to know the substance behind the reason for their exclusion’ (Guidance, para 118). Although this is expressly stated in relation to proceedings before the Panel, it is equally applicable to the Governing Body’s decision: the Guidance provides that ‘[a]ll decisions of a governing board must be made in accordance with public law’ (Guidance, para 158) and it is a fundamental requirement of the public law principle of natural justice that ‘excluded pupils are entitled to know the substance behind the reason for their exclusion’  and are able to challenge it meaningfully.
2. In [insert pupil name]’s case, the witness statements are not [attributed / signed / dated] and there is no good reason to wish to preserve the anonymity of the witnesses. Even if there were, the School was required to date and label each witness statement in a way that allows it to be distinguished from other statements and has not done so. [Insert detail about how the witness statements are presented, and, if possible, why the lack of attribution mattered on the facts of this particular case.]

**Relevance of new evidence**

1. In determining whether to quash the decision of the Governing Body, the Panel is required to consider only the evidence which was available to it at the time, or which should have been available had the Governing Body acted reasonably (Guidance, para 143). The submissions above are made on this basis. However, in deciding whether to recommend that the Governing Body reconsider reinstatement, the Panel may consider other new evidence (Guidance, para 144).
2. In this case, the following evidence is now available which could not reasonably have been considered by the Governing Body at the time: [insert]..
3. This evidence suggests that reconsideration is appropriate because [insert].

## Conclusion

1. For all the reasons given above, [insert parent / caregiver name] submits that the decision of the Governing Body is [unlawful / irrational / procedurally improper] and falls to be quashed.
2. In the alternative, if the Panel is not satisfied that the flaws identified meet the criteria for quashing the decision [and / or in light of the new evidence identified above], it would be appropriate in all the circumstances to recommend that the Governing Body reconsider its decision (Guidance, para 161). [Insert any specific reasons or parameters for reconsideration. This might happen where the Panel believes reconsideration is justified, for example, where new evidence is presented that was not available at the time of the Governing Board’s decision]

[Insert representative name]

[Insert date]