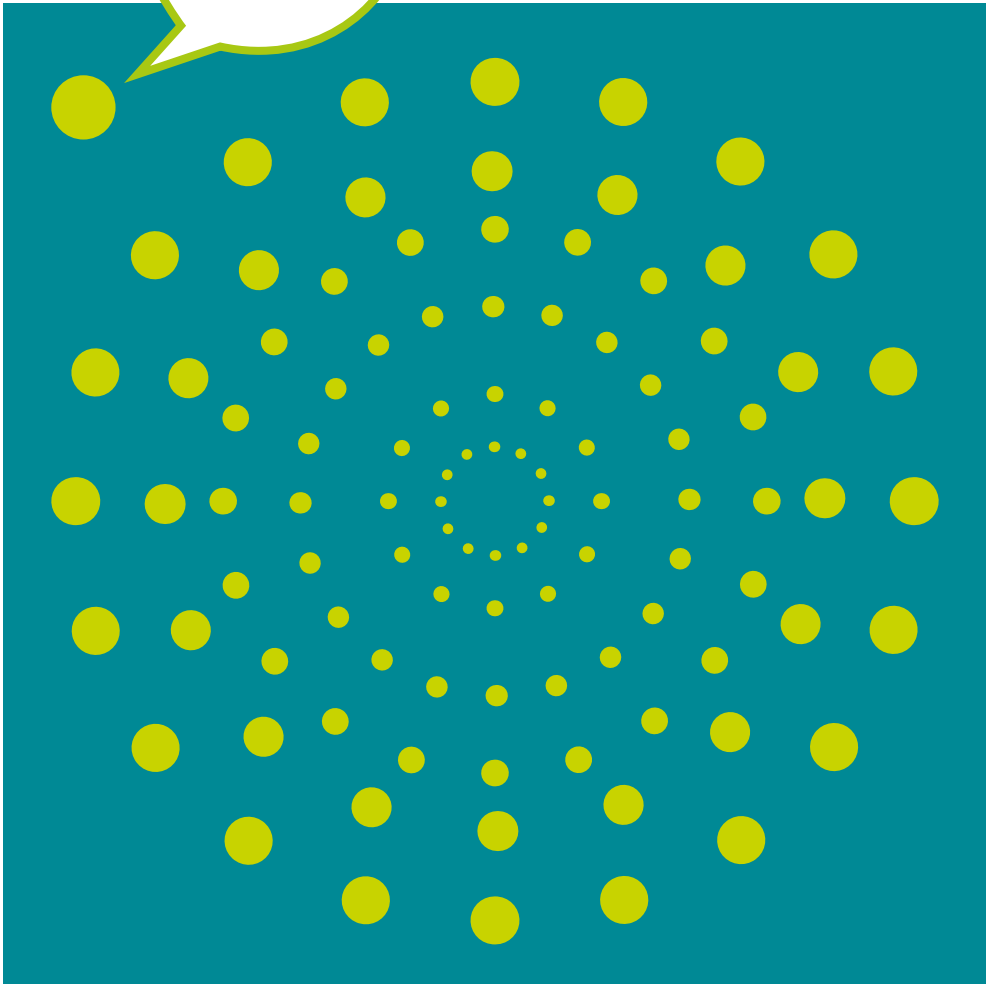


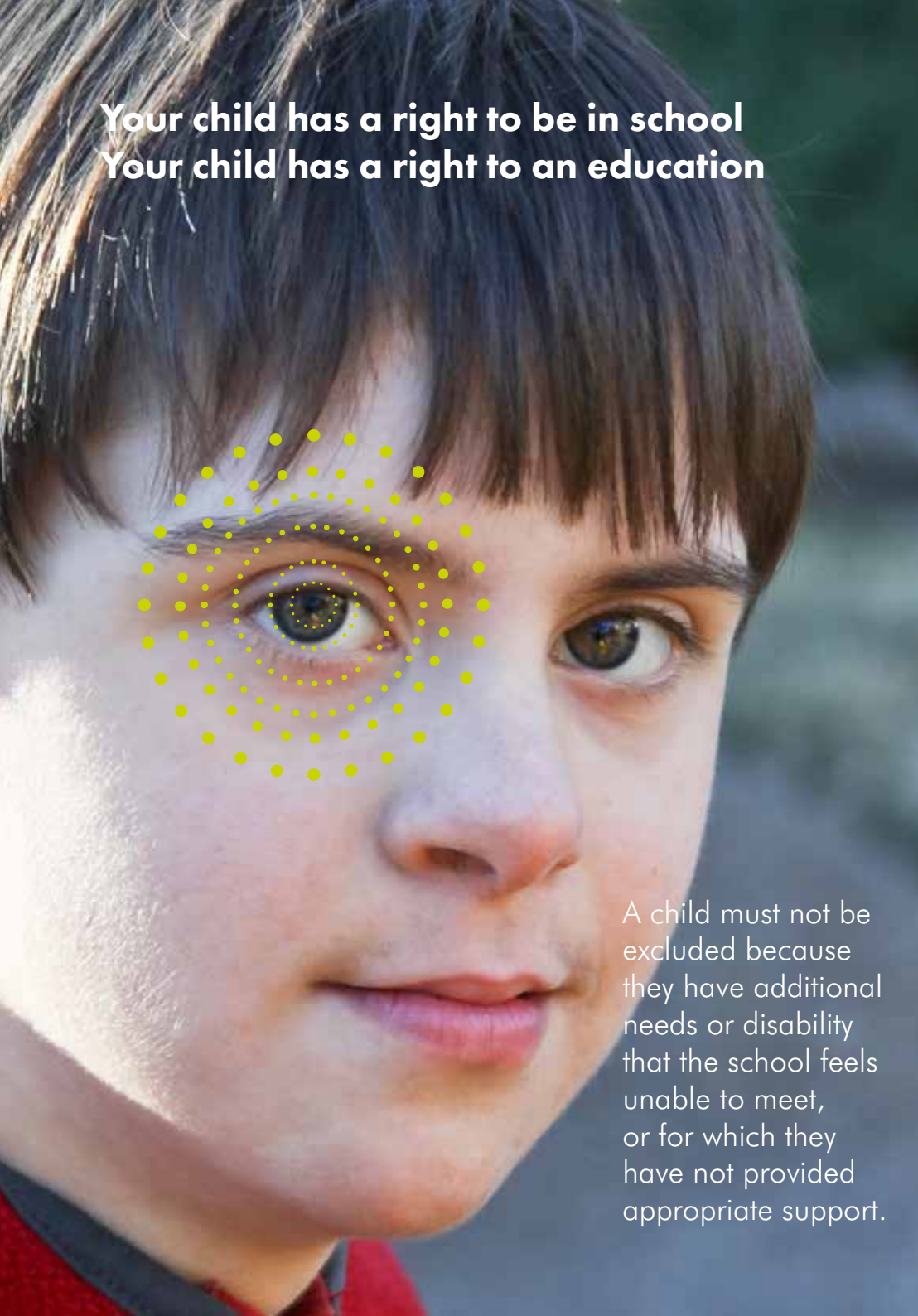
SCHOOL EXCLUSIONS AND SEND

Young people's rights and the laws that protect them.



Why me?





Your child has a right to be in school
Your child has a right to an education

A child must not be excluded because they have additional needs or disability that the school feels unable to meet, or for which they have not provided appropriate support.

SCHOOL EXCLUSIONS AND SEND

Young people's rights and the laws that protect them.

Recent reports and statistics indicate that children with SEND are much more likely to be excluded than children without SEND.

The law around exclusions can seem complicated and the implications of going along with informal (unlawful) exclusions affect your children's and young people's rights.

We hope this booklet will give you some clear advice on your children's rights, the law and some good questions that parents, carers and young people can ask.

Some key points:

There are only two types of exclusion which are lawful: **permanent and fixed-term**. Only the head teacher of a school (or acting head teacher) can exclude a pupil.

This means that legally a child should be in school full-time or they are excluded from school.

Legally a child can be excluded for a **fixed term** (for a specific number of school days) or **permanently excluded** (unable to return to that school unless the parent or young person successfully appeals the decision).

In order to meet legal requirements any exclusion, regardless of its duration, **must** be formally recorded and notified to the parent. Page 5 talks about what is a lawful and unlawful exclusion.

A child may not be excluded for a reason relating to their special educational needs or disabilities (SEND). If you think your child has SEND, you can ask for a SEND expert to attend an independent review panel hearing where a permanent exclusion is under consideration (see page 11).

We have included an **Exclusions Checklist**¹ on page 20. The law is complicated, and this checklist may help you to organise your thoughts.

The threat of exclusion must never be used to influence parents to remove their child from a school.

¹ Adaptation of a checklist by IPSEA (Independent Parental Special Education Advice)

Terms used in this booklet

Must = statutory. It is the law and it is required.

Should = best practice. It is strongly advised that schools and academies follow this advice

SEND = Special Educational Needs and/or Disabilities

SENCo = Special Educational Needs Coordinator; is responsible for the day-to-day operation of the school's SEN and D policy.

LSA/TA = Learning Support Assistant (LSA), often referred to as a Teaching Assistant (TA), is provided to support teachers and pupils in the classroom.

SEN Support = Additional support given in school to a child or young person who has been identified as having special educational needs. This support is offered by the school as soon as needs are identified. The response of the child to this additional support will be monitored by the school and changed as needed.

EHC Plan = An Education, Health and Care (EHC) Plan is for children and young people aged up to 25 who need more support than is available through a school's normal funding.

Governors pupil disciplinary committee = a meeting where the headteacher's decision to exclude is considered.

You can find the full current Central Government policy on exclusions:

<https://www.gov.uk/government/publications/school-exclusion>

You can find more on the Local Offer, including a short video:

<https://www.afcinfo.org.uk/pages/local-offer/information-and-advice/education/school-exclusion>

What is an unlawful exclusion and why does it matter?

'Informal' or 'unofficial' exclusions, such as sending a pupil home 'to cool off' are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, **must** be formally recorded. It's not legal to 'informally' exclude children.

Isn't an informal exclusion better than a formal exclusion?

No. Whilst it may seem better to do this informally as there may not be a mark on the child's record... it comes with pitfalls. Informal exclusions are unlawful for a reason.

Schools unlawfully excluding children are not fulfilling their obligation to provide a full-time education for your child. In addition, you lose your right to make representations against the headteacher's decision, and you will be unable to use exclusions as evidence that your child needs more or different support in school.

An unlawful, illegal or informal exclusion will not trigger the right for the child to receive alternative education which **must** be provided by the school from the sixth day of a fixed term exclusion in excess of five school days.

Your child has a right to an education

The best way to protect your child's rights is to work with the school within the law.

What is a lawful exclusion?

Headteachers can exclude your child if they misbehave in or outside school (only headteachers or the acting headteacher can exclude a child).

Your child's school should let you know about an exclusion as soon as possible. The school **must** follow up with a letter telling you how long your child is excluded for, and why.

You should also be told how to challenge the exclusion if you want to.

Exclusions can start on the same day, but the school cannot insist that you collect your child straight away.

For the first five school days of an exclusion, it is your responsibility to make sure your child isn't in a public place during normal school hours unless there is a good reason.

What is a public place?

There are no formal guidelines for this. Taking the child to the doctors would be considered a reasonable reason to be 'out in public', but going to the cinema would not. You might receive a penalty notice if your child is found in a public place when they're not supposed to be.

Types of exclusion

Fixed term exclusion

A fixed term exclusion is where your child is temporarily removed from school. A pupil can be excluded for one or more fixed periods which, when accumulated, do not exceed 45 school days in any one school year, even if they've changed school during the school year.

If a child has been excluded for a fixed term, schools should set and mark work for the first five school days.

Permanent exclusion

Permanent exclusion means your child cannot return to the school unless the decision is overturned by the Governing Body or an Independent Review Panel. Your local council **must** arrange full-time education from the sixth school day.

Alternative education and exclusion

The school or local council **must** tell you about any alternative education they arrange. It's your responsibility to make sure your child attends.

Illegal exclusions

Sadly, there is nationally a high incidence of children and young people with special educational needs being excluded. The purpose of this booklet is to help families be aware of what is an illegal exclusion.

Common examples of illegal exclusions

- The teaching assistant that supports the pupil is not available and the school says that they cannot support the child
- The pupil is sent home to 'cool off' or because they are distressed
- The pupil is sent home for lunchtime or part of a school day or particular lesson as they 'cannot manage'.
- The pupil is asked to stay at home on the day/part of day of a school trip or other school event.
- Refusal to take a pupil on a school trip is an exclusion

These all count as exclusions. It's illegal to do any of the above without following the law on formal processes (see 'what is a legal exclusion').

And did you know...

Lunchtimes

A child can be excluded for the lunchtime period and this counts as a half day exclusion; the school **must** therefore still follow the exclusions procedure.

Part-time attendance

Sometimes a school will suggest that a pupil has a part-time timetable because of their difficulties in school. This can be legal if it is a short-term measure with a clear plan for returning to or starting full-time education. It **must** be an arrangement that has a clear purpose and benefits the child, rather than because the school is struggling to manage their responsibility to support the child.

Exclusion by admissions

This is a hard one to define, essentially it is not admitting your child to a school in the absence of an EHC Plan (= by failing to admit).

If your child wants to start school and the school says, 'Not until we have employed an LSA', that is illegal.

The same applies for a pre-school child who is denied a place because the school have not found an LSA. This is not legally an exclusion so cannot be challenged in the same way, however it can be challenged through the school admissions code and the local admissions authority.

The school admissions code of practice requires children and young people to be treated fairly. Admissions authorities:

- **Must** consider applications from parents of children who have SEN but do not have an EHC Plan on the basis of the school's published admissions criteria as part of normal admissions procedures
- **Must** not refuse to admit a child who has SEN but does not have an EHC Plan because they do not feel able to cater for those needs
- **Must** not refuse to admit a child because they do not have an EHC

Home / School Agreements

Many schools ask parents and children to sign a behaviour policy/home school agreement. This in no way removes a school's duty to make Reasonable Adjustments; that is enshrined in statutory guidance. (see page 17)

The big question

Sometimes schools make decisions that can be puzzling. They ask you or your child to do something that you feel isn't quite right, but yet seems reasonable.

Here are some examples to get you thinking

- 1 Ofsted are due to inspect a school. All the SEND children are taken on a community trip that day (eg the library).
- 2 Parents are asked to attend a school trip, to support their own child.
- 3 Parents are asked not to send their physically disabled child in to school on sports day, as they will not be able to participate.
- 4 The entire class receives a treat (often called Golden Time), but the child with SEND is asked to do something different, perhaps watch a dvd on their own.
- 5 The child with SEND is expected to spend their lunchtimes in the school hall, because there is no-one to support them in the playground.
- 6 The school explain to you (the parent) that it's not fair for other children to have to play with your child.
- 7 The school asks that you take your child out of school at lunchtimes because there is no-one to support them.



Exclusion or... Bad Practice?

- 1 This is bad practice. Children and young people with SEND should be part of the inspections.
- 2 This is both unlawful and bad practice.
- 3 This is both unlawful and bad practice. What reasonable adjustments have been made to the activities to include the child with physical disabilities? Could be a ramped egg & spoon race - although the electric wheelchair may have the advantage!
- 4 This depends on the child. Has the child been asked? Does the child prefer this? Or would they rather be with the rest of the class?
- 5 This is bad practice – and the school should have made reasonable adjustments to ensure the child has similar social opportunities as their peers. Perhaps a Lego Club (primary school) or a Debating Society (secondary school), or gardening in the school garden (if they have one)
- 6 Ouch! That is clearly appalling and discriminatory!! We suggest you write to the SEN Governor at the school.
- 7 This is an illegal exclusion. A request like this **must** be covered by the appropriate paperwork and will count as a half-day exclusion. Remember, a child **must** not receive more than 45 exclusions in any school year – so 90 lunchtimes, out of 120 school days is unlawful as well. There may be agreed exceptions to this. For instance, taking the child out of school for short periods has been agreed with the parents as part of a fixed term re-integration programme.



Does your child have needs that are not being met?

Behaviour policies and SEND

A permanent exclusion can only be for reason of a serious breach or persistent breaches of the school's behaviour policy and when allowing the pupil to remain in school would both seriously harm the education or welfare of the pupil or others in school. Both these conditions **must** be met.

Who can exclude a child?

Only the head teacher (or the acting headteacher) has the power to exclude a child and it **must** be on disciplinary grounds.

For an exclusion to be legal the parents of the child **must** be notified in writing of the decision and the reasons for it.

If it's a permanent exclusion, if a public examination or national curriculum test will be missed, or an exclusion which lasts more than five days, then the local authority and school governing body **must** also be notified immediately.

Questions to ask

- Do you understand clearly which part of the school's behaviour policy has been breached? The letter or email you get from the school should explain this.
- Is the reason for your child's exclusion in the school's behaviour policy?
- Is the behaviour policy clear about how the school manages exclusions?
- Has the school followed its own exclusion policy?

Sometimes a pupil will behave in challenging ways because they have needs that are not being met. Schools **must** not exclude a child because they have additional needs or a disability that the school feels unable to meet or for which they have not provided appropriate support.

- Does your child have needs that are not being met in school which might be the underlying cause of their challenging behaviour? (for example; your child failed to follow instructions and has speech and language difficulties).
- Prior to the exclusion, has the school sought advice from the other professionals, e.g the educational psychologist (EP), speech and language therapist (SaLT) or child and adolescent mental health services (CAMHS)?
- Has the school followed the advice these professionals offered?

The school should try and identify unmet needs and provide appropriate support. Schools should consider whether multi-agency assessment that goes beyond educational needs is needed.



So... your child has an exclusion. What is Good Practice?

It is considered good practice for the school SENCo to attend the governor's pupil disciplinary committee where the headteacher's decision to exclude is reviewed - particularly if the pupil in question has or may have SEND (only the headteacher by rights can attend such a hearing. The Governors would have to agree to a request for an additional member of staff to attend).

Questions to ask

- Did the SENCo attend or advise at the pupil disciplinary committee for your child?
- Is the SENCo qualified as required by law; are they a qualified teacher with the national qualification for SEN Coordination?

If your child has SEND, particularly if they have an EHC Plan, the school should - as far as possible - try to avoid permanently excluding them.

If a child has an EHC Plan the school should hold an early or interim Annual Review to discuss intervention/provision and whether there is a need for a new placement.

If your child has a SEN Support Plan, the same good practice should apply.

Alternatives and policies

What alternatives to exclusion did the school consider?

This could include additional or alternative support, a managed move or, for a child who has an EHCP an alternative placement.

The school should have the following policies that should be considered as part of decision making around exclusion:

- Behaviour and discipline
- SEN information report/policy
- Accessibility action plan, which may be part of the equalities plan
- Does the school have these required policies in place and are they easily available (ie on their website)?
- Has the school followed its own policies in the case of your child?
- What are my duties as a parent when my child has been excluded?

For the first five school days of any exclusion, parents **must** ensure that their child of compulsory school age is not in a public place during school hours without very good reason.

Did the school consider alternatives?



Children and young people should be enabled and encouraged to participate in the appeals process

Parents **must** also ensure that their child attends any new full-time education provided from the sixth day of exclusion (unless they have arranged suitable alternative education themselves).

What are the legal obligations on a school when excluding a pupil? What must a school do?

When a headteacher excludes a pupil, they **must** - without delay - let parents know the type of exclusion and the reason(s) for it.

They **must** also immediately provide parents with the following in writing:

- The reason(s) for the exclusion.
- The length of the exclusion.
- The parents' right to put forward their case about the exclusion to the governing board, how they should go about doing this and how the pupil can be involved.
- When relevant, make clear what alternative provision will be provided from the sixth day of a fixed-period exclusion.

What else should a school do?

Schools should ensure that children who are subject to exclusion are enabled and encouraged to participate in the appeal process; taking into account their age and ability to understand.

For example, a recorded (written down) conversation with the child about the incident, what happened and the child's understanding of the incident.

Headteachers should always interview the child and write down what they say – even if the accusation could be subject to criminal proceeding. (Police should not advise that a school does not interview the child; best practice is always that the Headteacher should interview the child before exclusion.)

Questions to ask

- Are you and your child satisfied that their views and account of events have been fully explored and considered in the process?

For more general complaints (eg if you don't want to challenge the exclusion but you're not happy with the way the school handled it), follow the normal school complaints process.

Schools **must** put their complaints policy on their website.

- Is the school's complaints policy on their website?

Had Reasonable Adjustments been made?

Worst case scenario

The law says that if the exclusion is permanent and the decision has been upheld by the Governing Body you should be informed of your rights:

Your rights include:

- To ask for an independent review by the local council or academy trust.
- Your right to ask for an SEN Expert to advise the review? (this does not cost you anything, costs **must** be covered by the school).
- You can ask for this, whether or not, the school thinks your child has SEN.
- The SEN expert's role is to provide the panel with advice, they are not permitted to assess the child.

The role of a SEND Expert

Should parents believe their child has SEND, parents have a right to request the attendance of an SEND expert at the independent review; regardless of whether the school recognises that their child has SEND.

If requested by parents with their application for an independent review panel, the local authority/academy trust **must** appoint a SEND expert to attend the panel and **must** cover the associated costs of this appointment.

The role of Reasonable Adjustments

If your child has a disability, are there any reasonable adjustments that the school should have made that may have prevented the incident(s) that led to the exclusion?

Reasonable adjustments can and **must** include reviewing how school policies are applied where there is SEND. For instance:

- A routine sanction (punishment) for some children is hell on earth for others. Sending a young person with sensory difficulties or limited mobility to the chillout zone, or Headteacher's office or similar holding space, is often not appropriate.
- Is the sanction appropriate? Missing games is a punishment for some and a reward for others.
- School trips – not going on school trip is an exclusion. Reasonable adjustments **must** be made to ensure that all children and young people have an equal experience. (For example travel arrangements, venue, risk assessment)



Not going on a school trip is an exclusion

Discrimination

What can I do if I feel my child is being discriminated against?

Schools have a duty under the Equality Act 2010 not to discriminate against pupils on the basis of protected characteristics, such as disability or race, including this in all stages of the exclusion process.

Parents can raise this issue during the exclusion consideration meeting with the governing board.

If the governing board decides not to reinstate the pupil who has been permanently excluded, parents can request an independent review panel to review the governing board's decision.

When making their request parents can ask for a SEND expert to attend the hearing to advise the panel on how SEND might be relevant to the exclusion. Parents can request this even if their child has not been officially recognised as having SEND. (ie they don't have a SEN Support or EHC Plan).

If a parent believes that their child has been discriminated against in the exclusion process because of a disability, then they may also make a claim to the First-tier Tribunal (Special Educational Needs and Disability) within six months of the exclusion: www.tribunals.gov.uk/Tribunals/Firsttier/firsttier.htm

The Tribunal can consider claims about permanent and fixed-period exclusions. For permanent exclusions, this can be done instead of, or in addition to, an independent review panel.

I was asked to take my Year 2 child out of school every lunchtime. In many ways it was a privilege as we had such fun. But... in Year 3 we had to take him out of this school. They didn't want him. The effects of losing his early friendships are still with him, over ten years later.

Exclusion Checklist for parents

The law is complicated and exclusions are horrid experiences. This checklist may help you to organise your thoughts.

The exclusion	
What type of exclusion is involved?	<input type="checkbox"/> Permanent <input type="checkbox"/> Fixed term <input type="checkbox"/> Illegal / informal
Has there been a previous history of exclusions?	
When did it start?	
When does it finish?	
Where are you in the process – what is the next deadline?	
What do you want to achieve?	<input type="checkbox"/> Stay at school <input type="checkbox"/> Move school
The child/young person	
What is the child's SEN?	
How is this SEN supported?	<input type="checkbox"/> SEN Support <input type="checkbox"/> EHC Plan
What additional provision is the child entitled to receive?	
Is the plan made by the school being put into action? When was it last reviewed?	

Exclusion procedure	
Has the proper procedure been followed?	
Is the paperwork in order?	
Is the reason for the exclusion directly related to the child's SEN and/ or disability?	
Is the exclusion the direct result of the child not being correctly supported within school?	
What SEN action needs to be taken to achieve what you want to happen?	

Review the options

Fixed term exclusion – make a claim to SEND if the exclusion was related to the child's disability.

Permanent exclusion – make a claim to SEND (if the exclusion was related to the child's disability) which has the power to reinstate and a fast track procedure in place – whether you ask for Independent Review Panel (IRP) or not (35 days)

For permanent exclusion – you can ask for Independent Review Panel with SEN expert – this will not preclude a claim to SEND – IRP cannot reinstate but can quash the exclusion

If your child does not have an EHC Plan consider asking for a EHC needs assessment

If your child has an EHC plan and the Annual Review is not due - ask for an early review.

Information and advice about discrimination and human rights issues.

ACE education

A limited advice line service on Monday to Wednesday from 10am to 1pm during term time.

T: 0300 0115 142

W: <http://www.ace-ed.org.uk>

Achieving for Children

You can find further information on the SEND Local Offer, just type 'Exclusions' into the search bar (top right).

W: www.afcinfo.org.uk

Central Government

School discipline and exclusions – advice from central government.

W: <https://www.gov.uk/school-discipline-exclusions>

Child Law Advice

Web based information about when a child can be excluded and the obligations of the school to review an exclusion and the right to appeal an exclusion.

W: <https://childlawadvice.org.uk/information-pages/school-exclusion/>

Communities Empowerment Network

Free advocacy regarding exclusions.

T: 020 7733 0297 (24 hour)

W: <http://cenlive.org/>

Coram Children's Legal Centre

T: 0345 345 4345

W: <http://www.childrenslegalcentre.com>

EASS

The Equality Advice Support Service (EASS) provides information about discrimination and your rights.

T: 0808 800 0082

W: <http://www.equalityadvisoryservice.com>

IPSEA Independent Parental Special Education Advice

This organisation has a similar checklist for parents and a selection of example letters that parents can use.

W: <http://www.ipsea.org.uk/>

W: <https://www.ipsea.org.uk/what-you-need-to-know/exclusion-from-school>

National Autistic Society (Schools Exclusion Service (England))

T: 0808 800 4002

W: <http://www.autism.org.uk/services/helplines/school-exclusions.aspx>

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We would like to thank IPSEA for allowing us to reproduce their Checklist for Parents; and also Achieving for Children for their help in writing this booklet.

