

KENT SCHOOL/ACADEMY
PERMANENT EXCLUSION REVIEWS

**A PARENT'S GUIDE TO APPLYING FOR
A REVIEW BY INDEPENDENT REVIEW
PANEL (IRP)**

This Guidance only applies to permanent exclusions from Maintained schools, Academy schools and Free schools; Alternative provision Academies/Free schools which occur on or after 1 September 2017.

For further information

Please contact

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Email: appeals@kent.gov.uk

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Introduction

The Education Act 2002 (as amended by the Education Act 2011), requires all Local Authorities (LAs) and Academies to make arrangements for enabling parents to apply for a review of the decision of a Governing board of an Academy not to reinstate a pupil who has been permanently excluded from a school maintained by a LA or Academy.

Who can apply for a review?

The relevant person:

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

IMPORTANT

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

Why apply for a review?

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

- **You may have the decision reviewed by an Independent Review Panel (IRP) even if you do not want your son/daughter to return the school.**
- You can apply for a review even if you did not make a case to, or attend, the meeting at which the Governors considered your child’s permanent exclusion.
- An IRP Panel must be constituted of three people who have **no connections with the school / Academy** that the review is being heard for.
- The IRP carefully considers your case and that of school/Academy.
- Whether or not a school recognises that a pupil has special educational needs (SEN), all parents (or pupils if aged 18 or over) have the right to request the presence of an SEN expert at all independent Review Panels. The SEN expert’s role is to provide impartial advice to the Panel about

how SEN could be relevant to the exclusion; for example, whether the school acted reasonably in relation to its legal duties when excluding the pupil.

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

Yes. There are 2:

- 1 You lose your right to a review Panel hearing if your application is received after the 15th school day after the day on which you were informed, in writing, of the Governors decision not to reinstate your child. (Please note notice is deemed to be given on the same day if it is delivered directly or on the second working day after posting if it is sent by first class mail)
- 2 If you withdraw your application for a review, you also lose your right to a hearing.

IMPORTANT

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

How do I apply for a review?

There are 5 steps to follow:

- 1 You must either **write a letter or email**.
- 2 In either case you must **set out your reasons for applying for a review** and, if relevant, state how you consider your child's SEN are relevant to the exclusion.

IMPORTANT: Whether or not your child has recognised special educational needs, you have a right to require that the Local Authority / Academy appoint a SEN expert to attend the review.
- 3 Should you wish for a SEN expert to attend the review hearing, you **must** clearly state this at the time you apply for a review of the Governors' decision.
- 4 **Sign and date the letter**, then:
- 5 **Send it to:**
Clerk to Independent Review Panel
Governance & Law
Room 1.99
Sessions House
County Hall, Maidstone
ME14 1XQ

Email: appeals@kent.gov.uk

What should I do if I think that my child has been excluded for a reason related to their disability?

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

IMPORTANT

If your claim is successful, the First-tier Tribunal can direct the school/ Academy to reinstate your child.

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

If you make a claim to the IRP, you should put the reasons for claiming disability discrimination in writing on the application form (or letter). You may also wish to contact the Equality & Human Rights Commission (EHRC) for further help and advice (see Appendix 1).

You can make a claim of discrimination to the First-tier Tribunal (& County Court - see Question 6) before deciding to apply for a review hearing. Where this is the case you must apply for a review hearing within 15 school days of the date the discrimination claim is finally determined.

Whether or not you make such claims, the IRP hearing will be held within 15 school days of receipt of your application for an independent review

When will my review be heard?

The IRP must meet to consider your application for review no later than the 15th school day after the day on which your application was received. Although, the review must begin within 15 school days of the day on which the parent's application for a review was made, a Panel has the power to adjourn a hearing if required.

PLEASE NOTE

Where the issues raised by two or more applications for review are the same, or connected, the Panel may combine the reviews after consultation with all parties, if there are no objections.

Who will be at the Review Hearing?

- You and your partner; where requested, a friend; representative or legal adviser; and, if you wish, your child. (NB If you have any special requirements e.g. interpreter, please contact 03000 414222).
- The Independent Review Panel (3 members).
- The Clerk to the Review Panel.
- If attending, the legal or other representative of the Governors.
- The Head Teacher / Principal of your child's school/ academy.
- Any witnesses called by either the school / Academy or by you.

- If the school is maintained by the Local Authority (LA), an LA representative may attend.
- If the school / alternative provision has Academy status, an LA representative may attend at your request but may only make representations with the consent of the arranging authority
- An SEN expert, but only when you have requested one attends at the time you lodged your application for review.
- If attending, and where relevant, the alleged victim or his/her representative may be present for part of the review hearing.

Sometimes there is also an observer. This may be someone who is training to be an IRP Member or Clerk to Panel.

Who is the SEN expert?

The SEN expert must be someone who has expertise and experience of special educational needs considered by the Local Authority /Academy Trust as appropriate to perform the function specified in the legislation.

He or she will not have, or at any time have had, any connection with the arranging Authority, School / Academy, or the incident leading to the exclusion, or you or your child (or his/her sibling), which might raise doubts about their ability to act impartially.

IMPORTANT

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

Who are the Independent Review Panel members?

The IRP will have three members and:

- One member must be, or have been within the last five years, a Head Teacher / Principal;
- One member must be, or have been a governor who has served for at least twelve consecutive months within the last five years (provided they have not been teachers or head teachers during this time).
- One member must be a lay person (to act as Chairman), that is, someone who has not worked in a school in a paid capacity (disregarding any experience as a school governor or volunteer).

What powers does the Independent Review Panel have?

The IRP can decide to:

- Uphold the exclusion i.e. refuse your application; or
- Recommend that the Governing board reconsiders reinstatement; or
- Quash the decision and direct that the Governing board reconsiders reinstatement.

IMPORTANT

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

- **Illegality** – did the Governing board act outside the scope of its legal powers in deciding that the pupil should not be reinstated?
- **Irrationality** – did the Governing board rely on irrelevant points, fail to take account of all relevant points, or make a decision so unreasonable that no Governing board acting reasonably in such circumstances could have made?
- **Procedural Impropriety** - was the Governing board's consideration so procedurally unfair or flawed that justice was clearly not done?

NOTE

Procedural impropriety means not simply a breach of minor points of procedure but something more substantive, that has a significant impact on the quality of the decision making process. The Department for Education's Guidance (paragraph 160) gives the following examples:

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

Where the IRP Quash a review it may also:

Order that a readjustment be made to the school's budget or, in the case of an Academy, order that the Academy must make a payment directly to the Local Authority in which the Academy is located, in the sum of £4,000 if the Governing board:

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

When will I hear the outcome of my review?

The Clerk will write to you, the Head Teacher / Principal, Governors / responsible body/LA within five working days of your review detailing the IRP's decision and reasons for making that decision.

Is the Review Panel's decision binding?

Yes. The parent, child, the Governors, the Head Teacher / Principal and the LA are bound by the IRP's decision.

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

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

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

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

In the first instance, please contact the Clerk to the Independent Review Panel who can help you with any queries or concerns you may have.

Clerk to Independent Review Panel
Governance & Law
Room 1.99
Sessions House
County Hall, Maidstone
ME14 1XQ

Tel: 03000 414222
E-mail: appeals@kent.gov.uk
www.kcc.gov.uk

Appendix 1: Useful Addresses

- ACE education runs a limited advice line service on 0300 0115 142 on Monday to Wednesday from 10 am to 1 pm during term time. Information can be found on the website: <http://www.ace-ed.org.uk/>.
- Coram Children's Legal Centre can be contacted on 0345 345 4345 or through http://www.childrenslegalcentre.com/index.php?page=education_legal_practice
- The National Autistic Society (Schools Exclusion Service (England) can be contacted on 0808 800 4002 or through: <http://www.autism.org.uk/services/helplines/school-exclusions.aspx>
- Independent Parental Special Education Advice <http://www.ipsea.org.uk>

You may also wish to access the following sources of advice from the Department of Education:

- Head Teachers, Governing Bodies and Review Panels guidance: <https://www.gov.uk/government/publications/school-exclusion>
- Department advice on setting the behaviour policy: <https://www.gov.uk/government/publications/behaviour-and-discipline-in-schools>
- 'School discipline and exclusions' and 'Complaint about a school or childminder' <https://www.gov.uk/school-discipline-exclusions/exclusions> and <https://www.gov.uk/complain-about-school>.
- If your child has Special Educational Needs (SEN) and is on any stage of the SEN Code of Practice i.e. either School Action, School Action Plus or has a Statement of Special Educational Needs, you may wish to contact the IASK Telephone: **03000 413000**, email iask@kent.gov.uk
- **Contact a Family:** Tel: 0808 808 3555 Website: www.cafamily.org.uk
- **Citizens' Advice Bureau:** Tel; 03444 111 444 Website: www.citizensadvice.org.uk
- **The Equality + Human Rights Commission (EHRC) (Disability/Race + other discrimination matters) can be contacted at:**

EHRC
FREEPOST
EASS HELPLINE
FPN6521
Telephone: 0808 800 0082
Textphone: 0808 800 0084

Email: englandhelpline@equalityhumanrights.com
Website: www.equalityhumanrights.com

- **The Secretary of State for Education can be contacted at:**

Education Skills Funding Agency
Earlsdon Park
53-55 Butts Road
Earlsdon Park
Coventry
CV1 3BH
Website: www.education.gov.uk/help/contactus/dfc

- **Local Government & Social Care Ombudsman**

Advise on Lo-call 0300 061 0614
http://www.lgo.org.uk/forms/ShowForm.asp?fm_fid=62
www.lgo.org.uk

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

Special Educational Needs & Disability
Mowden Hall
Staindrop Rd
Darlington
DL3 9BG

Tel: 01325 392760 Fax: 01325 391080

Email: sendistdisability@hmcts.gsi.gov.uk

<https://www.lbbd.gov.uk/wp-content/uploads/2014/10/How-to-claim-against-disability-discrimination-in-schools.pdf>

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

Website: www.legislation.gov.uk

If you do not have access to a computer, please contact Andy Ballard, 03000 414222 for further help.