


Changes to Exclusions Guidance for September 2023

01 June 2023  Philip Wood

Last week, the Department for Education (DfE) published new Statutory Guidance on Exclusions as well as new Regulations. The changes come into effect from 1 September, but are relatively minor in scope, being about remote meetings and cancelling exclusions.

Remote meetings

When the DfE consulted on the 2022 Statutory Guidance, one of the elements that formed part of that consultation was continuing to allow remote meetings beyond the COVID-19 changes, which had permitted remote meetings for both governing board meetings and Independent Review Panels (IRPs).

At that point, the DfE decided not to proceed, given some of the consultation responses had raised concerns about unintended consequences. The new Regulations and Statutory Guidance to provide a process for remote meetings to be requested and used from 1 September. This will be either where:

- The parent has requested the meeting be remote; or
 - There is an 'extraordinary event or unforeseen circumstance' that means it's not reasonably practicable to hold the meeting in person.
- The Statutory Guidance doesn't go into huge detail on this, but it does give the example of an outbreak of an infectious illness/disease.

The new Statutory Guidance sets out a clear presumption in favour of physical hearings except where one or both of the above exceptions apply. More often than not, it will be the wishes of the parent that determine the options open to the school in respect of the format for the hearing.

Transitional arrangements

There are transitional arrangements in place for exclusions that are issued before 1 September, but where a meeting takes place after the 1 September, there is an additional right for the Virtual School Head (VSH) or social worker to request to join a meeting remotely (even if everyone else is attending in person). It is down to the governing board or the arranging authority to decide whether to accept the request.

Key points to consider

The new Statutory Guidance at Annex A includes some sensible points to consider if the meeting is going to be held remotely, including:

- Providing instructions on how to join the remote meeting
- Considering conducting a test to ensure with any participant to ensure their technology is suitable
- Making clear who can be contacted if they have any questions or issues
- Practical arrangements in the remote meeting itself being set out in the meeting - for example, how someone can indicate that they want to speak.

Undue pressure should not be applied to parents to request a remote meeting, even if it will be easier for the school or mean it can be arranged earlier.

Cancelling exclusions

Changes have also been made to the arrangements for cancelling exclusions and suspensions with new Regulations putting this on a legal footing.

Firstly, formal notification of a cancellation must be sent to the parents, governing board, LA and any social worker and VSH as appropriate. Secondly, any days the pupil was excluded before it was cancelled count towards the maximum 45 days of suspension in any school year.

If the pupil was permanently excluded and would go over the 45-day limit after counting the period they have been excluded before it would be cancelled, then the exclusion cannot be cancelled. The likely rationale of this is that it would otherwise undermine the 45-day limit.

As before, a suspension or exclusion can only be cancelled if the governing board review meeting has not commenced, and the pupil must be allowed back into the school.

We will be updating our popular [Exclusion Support Pack](#) to take account of the changes ready for 1 September and will host a webinar to run you through the changes before the summer holidays.

Key contact

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Related expertise

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