

New statutory guidance on school suspensions and exclusions now published

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15 July 2022

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Thankfully, some of the more controversial proposals in the draft guidance put out for consultation earlier this year have been watered down or removed entirely. Schools should be aware of the key changes to the 2017 guidance, which we have summarised below.

- Headteachers will be pleased to note that they will still be able to 'cancel' a decision to suspend or exclude prior to it being reviewed by the governing board. There is a new section in the guidance on this, which states that the pupil must be allowed back into school, that the number of cancelled exclusions are reported to governors each term, and that parents are offered the opportunity to meet with the headteacher to discuss the circumstances of the cancelled suspension or exclusion.
- Headteachers are now expected to ensure that there is a process in place for the governing board when reviewing a suspension or exclusion. The guidance requires headteachers to consider whether any training is needed for governors and to ensure the school has template letters to notify parents of decisions. You can find our training packages and order our new exclusion support pack [here](#).
- The DfE's narrow interpretation of a managed move has now been widened to better reflect the sector's current understanding. For the first time, there is guidance on managed moves that sets out broad expectations on how the process should work. Similarly, there is a section on directing a pupil off-site and the guidance seeks to supplement the existing [alternative provision guidance](#) on the expectations on the use of a direction.
- There will now be a role for the virtual school head and social worker for relevant pupils through the suspension/exclusion process. That will mean they will need to be informed of decisions by headteachers to suspend or exclude, and be invited to governing board review meetings and independent review panels.
- Governing boards will be able to unilaterally consider suspensions even where a parent has not requested them to do so and will be able to direct reinstatement of pupils on any suspension. This is likely to make little difference to existing practice, given it was only short suspensions of less than six days where a governing board didn't have power to reinstate the pupil, and generally these suspensions will have already taken place before a committee has chance to review it.
- The DfE had proposed a quite restrictive interpretation of 'without delay' to mean three days in the statutory guidance. During the consultation, concerns were raised about the inflexibility of the proposal and so no change has been made.
- While the overwhelming majority of respondents to the consultation were in favour of allowing virtual meetings, some respondents raised concerns with proposals to allow remote meetings and therefore the DfE is not going to change the Regulations to explicitly allow remote meetings at this stage.
- Proposals to exclude for safeguarding reasons (due to a strange interpretation of the [Newick case](#)) have been scrapped, given that the responses to the consultation highlighted unintended consequences to the DfE of its approach.
- Although there was a question in the consultation on whether the maximum 45 days that a pupil can be suspended in an academic year should be changed, the DfE has decided not to make any change at the moment, with this being looked at as part of a wider

review on pupil movement.

All in all, schools can breathe a small sigh of relief at the final version. It's a vast improvement on the draft version put out to consultation and brings broadly sensible additional guidance to areas that have historically lacked it. Of note is that the process of exclusion has not changed, nor have the legal tests that must be applied at each stage. However, it's disappointing that virtual meetings haven't been explicitly permitted, given that similar proposed changes have been introduced for admission appeals.

For further exclusions advice and guidance, including a support pack of resources to help you manage the entire exclusions process effectively visit: www.brownejacobson.com/exclusions

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