

# Surrey exclusions guidance

## Part 1, general guidance and essential information

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#### **Internet access**

This document and further guidance for schools can be found at:

[www.surreycc.gov.uk/exclusionguidanceforschools](http://www.surreycc.gov.uk/exclusionguidanceforschools). The Department for Education (DfE) guidance can be accessed via

[www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/a0076478/exclusion-guidance](http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusion/a0076478/exclusion-guidance).

## Introduction

In most cases fixed or permanent exclusion will be the last resort after a range of measures have been tried to improve the pupil's behaviour. In schools and the local authority (LA) a range of strategies should be in place to address the types of behaviour that may lead to exclusion. Head teachers should be able to refer pupils identified as at risk of permanent or fixed period exclusion to alternative or additional provision to meet their individual needs, which could include using the Common Assessment Framework to engage the support of other agencies. If a pupil is excluded, the school continues to be responsible for these pupils unless they are permanently excluded. (DfE §1)

**Note, figures in brackets relate to the relevant paragraphs in Department for Education (DfE) guidance.**

## Who this guidance applies to

This guidance applies to all maintained schools, including sixth forms which are part of a maintained school, and Short Stay Schools and all pupils in them, including pupils who may be below or above compulsory school age (except for the requirements related to the arrangement of provision for pupils from the sixth day of their exclusion which applies only to pupils of compulsory school age). For these purposes 'maintained schools' includes nursery classes in maintained schools and maintained nursery schools. (DfE §Introduction)

## Who this guidance does not apply to

This guidance does not apply to independent schools, or sixth form colleges, which have separate exclusion procedures. (DfE §Introduction)

## Who can exclude?

Only the head teacher, or teacher in charge of a Short Stay School (or, in the absence of the head teacher or teacher in charge, the acting head teacher or teacher in charge) can exclude a pupil. Other exclusion-related activities do not have to be undertaken by the head teacher personally, but may be delegated. (DfE §15)

## Managing behaviour in Surrey schools

Schools must have policies, procedures and staff training in place that promote good behaviour and prevent poor behaviour. These behaviour policies must be widely publicised so that pupils, all school staff and parents are aware of the standards of behaviour expected of pupils and the range of sanctions that can be imposed. Schools must apply their behaviour policies in a consistent, rigorous

and non-discriminatory way and all areas of their application must be monitored routinely to satisfy legal requirements under race, disability and gender discrimination law. The DfE has issued new guidance on school discipline and pupil behaviour policies, which is available at [www.education.gov.uk/](http://www.education.gov.uk/). The DfE issued updated guidance on school discipline in September 2008. (DfE §2-4)

For more information on secondary behaviour management strategies see the National Strategy for School Improvement: Behaviour and Attendance Strand publications on school self improvement and staff development or contact your School Improvement Partner (SIP) or Liz Griffiths at VT Four S. (DfE §2-4)

A decision to exclude a pupil permanently should be taken only:

- in response to serious breaches of the school's behaviour policy; and
- if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school. (DfE §13)

A decision to exclude a pupil for a fixed period should be taken, on a balance of probabilities, only in response to breaches of the school's behaviour policy, including persistent disruptive behaviour, where these are not serious enough to warrant permanent exclusion and lesser sanctions such as detention are considered inappropriate. Individual fixed-period exclusions should be for the shortest time necessary, bearing in mind that exclusions of more than a day or two make it more difficult for the pupil to reintegrate into the school afterwards. Ofsted inspection evidence suggests that 1-3 days are often long enough to secure the benefits of exclusion without adverse educational consequences. Where it is clear that fixed-period exclusions are not being effective in deterring poor behaviour, for example if they are being repeatedly imposed on a pupil in response to the same behaviour, head teachers and teachers in charge should consider alternative strategies for addressing that behaviour. (DfE §14)

A decision to exclude a child **permanently** is a serious one and should only be taken where the basic facts have been clearly established on the balance of probabilities. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies that have been tried without success. It is an acknowledgement by the school that it has exhausted all available strategies for dealing with the child and should normally be used as a last resort. (DfE §16)

## Types of exclusion

Exclusion can either be a fixed term exclusion, for a set number of days, or a permanent exclusion. Fixed term exclusions cannot exceed 45 school days in any one academic year. The limit of 45 days applies to the pupil and not the institution. (DfE §35-36)

## When is exclusion not appropriate?

Exclusion should not be used for:

- truancy or lateness
- pregnancy
- minor incidents such as failing to do homework
- poor academic performance
- breaches of school rules on uniform and appearance, except where such breaches are so persistent they constitute open defiance of school rules
- punishing pupils for the behaviour of their parents, for example where parents refuse or are unable to attend a meeting
- protecting victims of bullying by sending them home. (DfE §26)

Even if there is parental agreement with the exclusion, exclusion for these reasons remains unlawful.

## In what circumstances can exclusion be considered?

Guidance is clear that a decision to exclude a pupil permanently should be taken only:

- in response to serious breaches of the school's behaviour policy; and
- if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or of others in the school. (DfE §13)

A decision to exclude a pupil for a **fixed term** should be taken for breaches of the school's behaviour policy, including persistent disruptive behaviour, where these are not serious enough to warrant permanent exclusion and lesser sanction such as detention are considered inappropriate. (DfE §14)

In the case of **permanent exclusion**, the school will need to show that a wide range of strategies have been tried without success. It is an acknowledgement by the school that it has exhausted all available strategies and should normally be used as a last resort.

Guidance suggests certain circumstances where permanent exclusion can be justified on the basis of a sufficiently serious first or 'one off' offence. For example:

- serious actual or threatened violence against another pupil or a member of staff
- sexual abuse or assault
- supplying an illegal drug
- carrying an offensive weapon.

Where a pupil has been excluded for any of the above offences or persistent and defiant misbehaviour including bullying (which includes racist or homophobic bullying) or repeated possession and/or use of an illegal drug on school premises, the Secretary of State would not normally expect the Discipline Committee to reinstate. (DfE §17)

These instances are not exhaustive, but indicate the severity of such offences and the fact that such behaviour can affect the discipline and well being of the school community. (DfE §18)

In cases where a head teacher and teacher in charge has permanently excluded a pupil for:

- one of the above offences; or
- persistent and defiant misbehaviour including bullying or repeated possession and/or use of an illegal drug on school premises (see further guidance on bullying at [www.education.gov.uk/schools/pupilsupport/behaviour/bullying](http://www.education.gov.uk/schools/pupilsupport/behaviour/bullying) and drug-related incidents in paragraph 21 below) and where the basic facts of the case have been clearly established on the balance of probabilities, the Secretary of State would not normally expect the governing body or management committee of a Short Stay School or an Independent Appeal Panel (IAP) to reinstate the pupil. (DfE §19)

## Vulnerable learners – students for whom guidance gives particular protection

- **Pupils with special educational needs.** Guidance is that schools should avoid permanently excluding statemented students, other than in the most exceptional circumstances. Schools should also make every effort to support students at School Action Plus of the SEN Code of Practice, including those undergoing assessment for a statement. (DfE §63)
- **Disabled pupils.** Schools have a duty under the Disability Discrimination Act 1995 not to discriminate against pupils by excluding them from school because of behaviour caused by their disability. Discrimination is seen as occurring where a disabled pupil is treated less favourably than other pupils for a reason relating to their disability, without justification. Discrimination can also occur where a school fails to take reasonable steps to ensure that disabled pupils are not placed at a substantial disadvantage compared to their non-disabled peers. (DfE §68)
- **Students from racial minorities.** The law places specific duties on schools to ensure they do not discriminate against pupils on racial grounds. Schools should monitor and analyse exclusions by ethnicity to ensure they do not treat some groups of pupils more harshly than others. Schools are required to assess whether policies that lead to sanctions, including exclusion, have a disproportionately adverse impact on pupils from particular racial groups. If an adverse impact is identified that cannot be justified, then the policy and practice should be reviewed. (DfE §73-76)
- **Children in care.** Exclusion of children in care should be an absolute last resort. Before exclusion schools, in conjunction with the LA, should first consider alternative options for supporting the child. No child in care should be excluded without discussion with the LA. (DfE §77-83)

Surrey specific guidance is currently being developed in consultation and collaboration with Surrey schools and services.

## Drug and alcohol related exclusions

In deciding whether or not to exclude for a drug related offence the head teacher should have regard for the school's drug policy. Factors to consider in determining an appropriate response to a drug related incident are set out in DfE guidance 'Drugs: Guidance for Schools,' which can be found at [www.education.gov.uk/childrenandyoungpeople/healthandwellbeing/substancemisuse/a0070053/drugs](http://www.education.gov.uk/childrenandyoungpeople/healthandwellbeing/substancemisuse/a0070053/drugs). In determining the seriousness of an incident factors the guidance suggests could be taken into account include 'where does the incident appear on a scale from 'possession of a small quantity' to

'persistent supply for profit'; 'is this a one-off incident or longer-term situation'; and 'if supply of drugs is suspected, how much was supplied, and was the pupil coerced into the supply role, were they 'the one whose turn it was' to buy for others, or is there evidence of organised or habitual supply? (DfE §22)

## Apart from exclusion, in what circumstances can a pupil be required to leave the school site? (DfE §31-34)

In the vast majority of cases a pupil will only be asked to leave the school when excluded. There are however three special sets of circumstances when a school can legally ask a pupil to leave the school site without imposing an exclusion:

- **A pupil is accused of a serious criminal offence, but the offence took place outside the school's jurisdiction.** In these circumstances the head teacher may decide that it is in the interests both of the pupil and the school for the pupil to be educated off site for a certain period, subject to review at regular intervals. This would not constitute an exclusion. It would be the school's responsibility to ensure the pupil's full time education continues while off site, and arrangements would have to be in place before the absence began. The arrangements should be kept under periodic review involving the parents.
- **For medical reasons a pupil's presence on the school site represents a serious risk to the health or safety of other pupils or school staff.** Head teachers and teachers in charge may send a pupil home, after consultation with that pupil's parents and a health professional (for example, a school nurse) as appropriate, where because of a diagnosed illness such as a notifiable disease he or she poses an immediate and serious risk to the health and safety of other pupils and staff. This is not an exclusion, but it is an authorised absence and should be recorded as such in the attendance register. It should be for the shortest possible time. If difficulties persist, the head teacher should seek medical advice. Health and safety considerations, including a risk assessment, can contribute to a school's case for exclusion, but cannot in themselves be grounds for exclusion, which can only lawfully be for disciplinary reasons. Similarly, pupils cannot be sent home on health and safety grounds for their own protection because they are being bullied. It is not appropriate to send home children with special educational needs (SEN), with conditions such as attention deficit hyperactivity disorder (ADHD) and autism, purely for that reason and schools should arrange a statutory annual or interim/emergency review if they feel they are no longer able to meet a child's needs. The child should not be sent home in anticipation of such a review. (DfE §34)
- **The pupil is given permission to leave the school premises briefly to remedy breaches of the school's rules on behaviour or uniform.** This is not an exclusion but an authorised absence. If the pupil continues to breach uniform rules as a way to be sent home to avoid school, the pupil's absence can be recorded as an unauthorised absence.

## What strategies might schools and the local authority have tried already to avoid exclusion? (DfE §5)

- the school engaging with parents
- a change of teaching set or class
- curriculum alternatives at Key Stage 4, including attendance at a further education college or another form of alternative provision
- temporary placement in an in-school Learning Support Unit as part of a planned positive programme for pupils
- temporary or part-time placement in a Short Stay School or with a voluntary / private sector alternative provider, where the pupil can receive educational provision intended to improve their behaviour (DfE §33)
- a managed move to another school, with the consent of all parties involved; this can be successful for pupils at risk of exclusion and as an alternative to permanent exclusion (DfE §11d)
- consideration by the Special Educational Needs Co-ordinator (SENCO), with colleagues, of possible interventions within the school
- assessment of special educational needs, including possible placement in a special school
- allocation of a key worker such as a Learning Mentor, Connexions Personal Adviser, Education Welfare Officer or member of a Behaviour and Education Support Team
- referral to a specific support service, such as the Education Welfare Service, Children's Services or the Child and Adolescent Mental Health Service.

A minority of permanent exclusions result from a sufficiently serious first or one-off offence. However the majority are imposed after a number of fixed term exclusions reflecting a pattern of poor or deteriorating behaviour over a lengthy period. In such cases the school needs to demonstrate that exclusion is only taking place after a number of strategies have been tried without success, and that permanent exclusion does indeed represent the 'last resort'.

Surrey specific guidance is currently being developed in consultation and collaboration with Surrey schools and services.

## Who is responsible for an excluded pupil's continued education? (DfE §51-57)

- **Exclusions of five days or under where a public examination is not missed.** It is the responsibility of the school to set and mark work for exclusions of five days or under. It is the responsibility of the parent to ensure work sent home is completed and returned to school. The parent has particular responsibility to ensure that the student is not present in a public place during school hours without justification, and may be prosecuted or given a fixed penalty notice if they fail to do so.
- **Exclusions of six days or over.** When a school or Short Stay School imposes a fixed term exclusion of over six days it is the responsibility of the school to ensure that the appropriate full time provision is made off site for the excluded student. (DfE §38a)
- **Permanent exclusion.** When a student is permanently excluded, it is the responsibility of the school to set and mark work for the first five days. From the 6<sup>th</sup> day onward it is the responsibility of the local authority to make a full time provision.