

IMPROVING BEHAVIOUR AND ATTENDANCE: GUIDANCE ON EXCLUSION FROM SCHOOLS AND PUPIL REFERRAL UNITS

Introduction

Head teachers, teachers in charge of a Pupil Referral Unit (PRU), Governing Bodies, LEAs and Independent Appeal Panels must by law have regard to the following guidance when making decisions on exclusion and administering the exclusion procedure. This means that, whilst the guidance does not have the force of statute, there is an expectation that it will be followed unless there is good reason to depart from it. The guidance is not exhaustive and judgements will need to take account of the circumstances of individual cases.

These procedures apply to all maintained schools and Pupil Referral Units and all pupils in them, including any who are below or above compulsory school age. They do not apply to independent schools, city technology colleges, academies, or sixth form colleges, which have separate exclusion procedures. They will apply to maintained nursery schools from September 2003.

Where the parents of an excluded pupil do not speak or have a good understanding of English, correspondence and documentation relating to the exclusion should be translated into their mother tongue. In such cases the school and/or LEA should arrange for an interpreter to be present at any meetings with the parent about the exclusion.

This guidance replaces Chapter 6 and Annex D of DfES Circular 10/99.

The guidance is in five parts:

Part 1 – general guidance on deciding whether or not a pupil should be excluded and on arrangements for their education during and after exclusions. This is relevant to the work of head teachers, Discipline Committees and Independent Appeal Panels.

Part 2 – guidance for head teachers and teachers in charge of PRUs on procedures to be followed when they decide to exclude a pupil.

Part 3 – guidance on the work of the Discipline Committees of Governing Bodies which must review all permanent and more serious fixed term exclusions.

Part 4 – guidance on the establishment of and support for Independent Appeal Panels which consider appeals against permanent exclusions that have been endorsed by the Discipline Committee.

Part 5 – guidance on exclusion decisions and appeals in cases of police involvement and possible parallel criminal proceedings.

In this guidance, 'parent' means anyone who has parental responsibility for, or care of, a child. In cases of exclusion where the pupil is 18 or over, 'pupil' should be read for 'parent'. Where a child is the subject of a care order, the local authority that has parental responsibility for the child is entitled to determine to what extent the parents exercise their parental responsibility. Throughout this guidance, references to a school should be read as referring equally to a PRU; where guidance applies differently to PRUs then this will be indicated clearly.

PART 1: THE DECISION TO EXCLUDE

1. Introduction

- 1.1 A decision to exclude a pupil should be taken only:
- a) in response to serious breaches of the school's behaviour policy; and
 - b) if allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.
- 1.2 Only the head teacher or teacher in charge of a PRU (or, in the absence of the head teacher or teacher in charge, the most senior teacher who is acting in that role) can exclude a pupil.
- 1.3 A decision to exclude a child **permanently** is a serious one. It will usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies, which 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.
- 1.4 There will however be exceptional circumstances where, in the head teacher's judgment, it is appropriate to permanently exclude a child for a first or 'one off' offence. These might include:
- a) serious actual or threatened violence against another pupil or a member of staff
 - b) sexual abuse or assault
 - c) supplying an illegal drug
 - d) carrying an offensive weapon

Schools should also consider whether or not to inform the police where such a criminal offence has taken place. They should also consider whether or not to inform other agencies, e.g. Youth Offending Team, Social Workers, etc.

- 1.5 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.
- 1.6 In cases where a head teacher has permanently excluded a pupil for:
- a) one of the above offences, or
 - b) persistent and defiant misbehaviour including bullying (which would include 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 governors' Discipline Committee or an Independent Appeal Panel to reinstate the pupil.

2. Drug-related exclusions

- 2.1 In making a decision on whether or not to exclude for a drug-related offence the head teacher should have regard to the school's published policy on drugs and should consult the school's drugs co-ordinator. But the decision will also depend on the precise circumstances

of the case and the evidence available. In some cases fixed period exclusion will be more appropriate than permanent exclusion. In more serious cases, an assessment of the incident should be made against criteria set out in the school's policy. This should be a key factor in determining whether permanent exclusion is an appropriate course of action.

2.2 Schools should develop a policy that covers not only illegal drugs but also legal drugs - volatile substances (those giving off a gas or vapour which can be inhaled), and over the counter and prescription medicines - which may be being misused by pupils. This might say for example that no drug should be brought in to school without the school's knowledge and approval. Where legal drugs are concerned, again an assessment of the seriousness of the incident is necessary before deciding what action to take.

3. Factors to consider before making a decision to exclude

3.1 Exclusion should not be imposed in the heat of the moment, unless there is an immediate threat to the safety of others in the school or the pupil concerned. Before deciding whether to exclude a pupil, either permanently or for a fixed period, the head teacher should:

- a) ensure that an appropriate investigation has been carried out
- b) consider all the evidence available to support the allegations, taking account of the school's behaviour and equal opportunities policies, and, where applicable, the Race Relations Act 1976 as amended and the Disability Discrimination Act 1995 as amended
- c) allow the pupil to give his or her version of events
- d) check whether the incident may have been provoked, for example by bullying or by racial or sexual harassment
- e) if necessary consult others, but not anyone who may later have a role in reviewing the head teacher's decision, for example a member of the governors' Discipline Committee

3.2 If satisfied that, **on the balance of probabilities**, the pupil did what he or she is alleged to have done, the head teacher may exclude the pupil.

3.3 Where a police investigation leading to possible criminal proceedings has been initiated, the evidence available may be very limited. However, it should still be possible for the head teacher to make a judgement on whether to exclude the pupil. Part 5 of the guidance deals with these circumstances in more detail.

4. Alternatives to exclusion

4.1 Exclusion should not be used if there are possible alternative solutions available. Examples of alternatives to exclusion schools may want to try include:

- a) using a restorative justice process, which enables an offender to redress the harm that has been done to a 'victim', and enables all parties with a stake in the outcome to participate fully in the process. This has been used successfully to resolve situations that could otherwise lead to exclusion.
- b) internal exclusion (also known as internal seclusion), which can be used to diffuse situations that occur in school that require a pupil to be removed from class but may not require exclusion from the school premises. The exclusion could be to a designated area within the school, with appropriate support, or to another class on a temporary basis, and may continue during break periods.

- c) a managed move. If a school feels that it can no longer manage the behaviour of a particular pupil, the school may ask another school to take over his or her education. This should only be done with the full knowledge and co-operation of all parties involved, including the parents and the LEA, and in circumstances where it is in the best interests of the pupil concerned. Parents should never be pressured into removing their child from school under threat of a permanent exclusion, nor should pupils be deleted from the school roll to encourage them to find another school place. Section 9 of the Education (Pupil Registration) Regulations 1995 details the only lawful grounds for deleting a pupil's name from the school roll.

5. When exclusion is not appropriate

5.1 Exclusion should not be used for:

- a) minor incidents such as failure to do homework or to bring dinner money
- b) poor academic performance
- c) lateness or truancy
- d) pregnancy
- e) breaches of school uniform rules or rules on appearance (including jewellery and hairstyle), except where these are persistent and in open defiance of such rules
- f) punishing pupils for the behaviour of their parents, for example where parents refuse or are unable to attend a meeting¹

6. Length of fixed period exclusions

6.1 The regulations allow head teachers to exclude a pupil for one or more fixed periods not exceeding **45 school days in any one school year**. However, individual 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. Ofsted inspection evidence suggests that 1-3 days is often long enough to secure the benefits of exclusion without adverse educational consequences. Exclusions may not be given for an unspecified period, for example until a meeting can be arranged. Such a practice amounts to an indefinite exclusion, for which no legal arrangements exist.

6.2 The school's obligation to provide education continues while the pupil is on the roll, and must be met during a fixed term exclusion. In all cases of more than a day's exclusion, work should be set and marked. A head teacher considering whether to exclude a pupil for a longer period, for example for more than 15 school days, should plan:

- a) how the pupil's education will continue during the period of exclusion
- b) how the time might be used to address the pupil's problems
- c) together with the LEA, what educational arrangements will best help with the pupil's reintegration into the school at the end of the exclusion. The school will usually be expected to meet some of the costs for this but the exact arrangements will need to be agreed with the maintaining LEA.

¹ Guidance on dealing with difficult parents is contained in the Legal Toolkit for Schools (See related documents)

7. Lunchtime exclusion

- 7.1 Pupils whose behaviour at lunchtime is disruptive may be excluded from the school premises for the duration of the lunchtime period. A lunchtime exclusion is a fixed period exclusion (equivalent to one half school day) and should be treated as such, and parents have the same right to be given information and to appeal. A lunchtime exclusion for an indefinite period, like any other indefinite exclusion, would not be lawful. Arrangements should be made for pupils who are entitled to free school meals. This may mean providing a packed lunch
- 7.2 The Secretary of State does not expect to see lunchtime exclusion used for a prolonged period. In the long run another strategy for dealing with the problem should be worked out.

8. Parental co-operation

- 8.1 If a parent refuses to co-operate with a formal exclusion by sending the excluded child to school, or refusing to collect or arrange collection of him or her at lunchtime, the school must have due regard for the pupil's safety in deciding what action to take. An exclusion should not be enforced if doing so may put the safety of the pupil at risk. If efforts to resolve the issue with the parents are unsuccessful the school should consider whether to contact the Education Welfare Service and seek the advice of the LEA about available legal remedies.

9. Procedures for review and appeal

- 9.1 Governing Bodies must establish arrangements to review promptly all permanent exclusions from their school, and all fixed term exclusions that would lead to a pupil being excluded for over 15 days in a school term, or missing a public examination. Governing Bodies must also establish arrangements to review fixed term exclusions which would lead to a pupil being excluded for over 5 days but not over 15 days in a school term where the parent has expressed a wish to make representations. They must decide whether or not to reinstate the pupil if appropriate or whether the head teacher's decision to exclude the pupil was justified. This role must currently be discharged by a Discipline Committee. Procedures (including those for PRUs) are set out in Part 3 of this guidance.
- 9.2 The LEA must make arrangements for Independent Appeal Panels to hear appeals against permanent exclusions where the Discipline Committee does not direct reinstatement. Procedures are set out in Part 4 of this guidance.

10. Procedures following permanent exclusion

- 10.1 In the case of a permanent exclusion the pupil remains on the roll of the school until any appeal is determined, the time limit for an appeal has expired without an appeal being brought, or the parent has told the LEA that no appeal is to be brought. Again, while the pupil is on the roll of the school it is the responsibility of the school that his or her education continues but, as in the case of longer fixed term exclusions, it may be necessary for the school to seek the help of the LEA which maintains the school. The maintaining LEA must currently withdraw the unit of funding for the pupil when the permanent exclusion is endorsed by the Discipline Committee of the school, although it will be returned if the exclusion is overturned on appeal.
- 10.2 Once a permanent exclusion has been endorsed by the Discipline Committee, the LEA should arrange to assess the pupil's needs and how to meet them, including any special educational needs the pupil may have. Once the pupil is removed from roll, the LEA is responsible for ensuring that suitable education is made available. This will be the home

LEA in cases where the school is maintained by a different LEA. Since September 2002, all LEAs are committed to ensuring that all permanently excluded pupils receive full time education, either at another school or, where necessary, making use of a Pupil Referral Unit or other alternative provision.

11. Reintegration meetings

- 11.1 A reintegration meeting with parents following the expiry of a fixed period exclusion is good practice. However, a fixed period exclusion should not be extended if such a meeting cannot be arranged in time or the parents do not attend.

12. Behaviour outside school

- 12.1 Pupils' behaviour outside school on school business – for example, on school trips, away school sports fixtures, or work experience placements - is subject to the school's behaviour policy. Bad behaviour in these circumstances should be dealt with as if it had taken place in school. For behaviour outside school, but not on school business, a head teacher may exclude a pupil if there is a clear link between that behaviour and maintaining good behaviour and discipline among the pupil body as a whole. This will be a matter of judgment for the head teacher. Pupils' behaviour in the immediate vicinity of the school or on a journey to or from school can, for example, be grounds for exclusion.
- 12.2 School staff who intervene to control the behaviour of pupils on public transport or in public places should be mindful of the fact that they are not empowered to use measures beyond their normal common law powers as citizens.

13. Pupils with special educational needs (SEN)

- 13.1 Statutory guidance on identifying, assessing and making provision for pupils with SEN, including those with behavioural, social and emotional needs, is given in the Special Educational Needs Code of Practice. Schools must have regard to this guidance. School Governing Bodies have a statutory duty to do their best to ensure that the necessary provision is made for any pupil who has SEN.
- 13.2 Other than in the most exceptional circumstances, schools should avoid permanently excluding pupils with statements. They should also make every effort to avoid excluding pupils who are being supported at *School Action* or *School Action Plus* under the Special Educational Needs Code of Practice, including those at *School Action Plus* who are being assessed for a statement. In most cases, the teacher will be aware that the school is having difficulty managing a pupil's behaviour well before the situation has escalated. Schools should try every practicable means to maintain the pupil in school, including seeking LEA and other professional advice and support at *School Action Plus* or, where appropriate, asking the LEA to consider carrying out a statutory assessment. For a pupil with a statement, where this process has been exhausted, the school should liaise with their LEA about initiating an interim annual review of the pupil's statement.
- 13.3 Where a child is permanently excluded, the head teacher should use the period between his or her initial decision and the meeting of the Discipline Committee to work with the LEA to see whether more support can be made available or whether the statement can be changed to name a new school. If either of these options is possible, the head teacher should normally withdraw the exclusion.
- 13.4 It is extremely important that parents of children with SEN who are excluded from school receive advice on the options available for their child's future education. Schools might usefully advise parents that advice and information on SEN is available through their local

SEN Parent Partnership. The Parent Partnership should also be able to provide details of voluntary agencies that offer support to parents, including those that can offer advice concerning exclusions.

14. Disabled pupils

14.1 Schools have a legal duty under the Disability Discrimination Act 1995 not to discriminate against disabled pupils by excluding them from school because of their disability. This applies to permanent and fixed term exclusions. The definition of disability under the Act covers pupils with physical, sensory, intellectual or mental impairments. Discrimination means treating disabled pupils less favourably than other pupils without justification. It also means failing to take reasonable steps to ensure that disabled pupils are not placed at a substantial disadvantage compared to their non-disabled peers. What constitutes a reasonable step will depend on the circumstances of each case. The Disability Rights Commission has published a Code of Practice which explains and illustrates the schools' duties to disabled pupils, including in relation to exclusions. Schools and those involved in exclusion decisions or appeals are strongly recommended to read the Code of Practice, which is available at www.drc-gb.org.

14.2 Appeals against permanent exclusion, where discrimination is alleged to have taken place, or the disabled pupil has been placed at a substantial disadvantage by the exclusion procedures, will be heard by the Independent Appeal Panel. Claims alleging discrimination in respect of fixed period exclusions will be heard by the SEN and Disability Tribunal. Schools will be required, in disability discrimination claims, to demonstrate that their actions are justified and that there are no reasonable adjustments to their policies and practice they might have made to prevent the incident which led to the exclusion. Since many disabled pupils will also have special educational needs, schools may wish to consider the action they have taken to address those needs in this context.

15. Race Relations

15.1 The amended Race Relations Act 1976 places a general duty on all maintained schools to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between people of different racial groups. The Race Relations (Statutory Duties) Order 2001 also places a number of specific duties on schools, including duties to assess the impact of policies and to monitor the operation of those policies on pupils, parents and staff from different racial groups.

15.2 This legislation requires schools to take steps to ensure that they will not discriminate against pupils on racial grounds when making a decision about whether to exclude a pupil. For example, schools should monitor by ethnicity to ensure that 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 adverse impact is identified and this cannot be justified, then the policy should be revised.

15.3 The Commission for Racial Equality has prepared a *Code of Practice on the Duty to Promote Race Equality* and a non-statutory guide *The Duty to Promote Race Equality: A Guide for Schools*. It is strongly recommended that schools and all those involved in exclusion decisions or appeals read the Code of Practice or non-statutory guide. These can be obtained from the Stationery Office. See the CRE's web-site for further information: www.cre.gov.uk.

16. Children in Public Care

- 16.1 Children in public care are especially at risk of low attainment in school. Schools should be especially sensitive to exclusion issues where children in public care are concerned. Schools should try every practicable means to maintain the child in school and should seek LEA and other professional advice as appropriate. Social Services should in all cases be involved at the earliest opportunity in working with the school to avoid the need to exclude the pupil.
- 16.2 In cases where a child in public care is excluded, anyone who is seen as a parent will have the right to make representations and to appeal. The definition of a parent for the purposes of the Education Acts is broadly drawn and includes a person who has parental responsibility (which includes the Local Authority where they have a care order in respect of the child) and any person (for example, a foster parent) with whom the child lives. These are in addition to the child's birth parent(s). This means that there could be more than two people whom the school has to notify about exclusions and who will have the right to make representations and appeal.
- 16.3 Even where the Local Authority does not have parental responsibility, the child's social worker should be informed about any exclusion. The designated teacher for looked after children will be able to advise on the legal status of pupils in public care in the school.

17. Role of the Secretary of State

- 17.1 The Secretary of State provides guidance on exclusion to which head teachers, teachers in charge of a Pupil Referral Unit, Governing Bodies, LEAs and Independent Appeal Panels must have regard. He can consider complaints about Discipline Committees' operation of the exclusion procedure. He has no power to consider complaints about the decision of an Independent Appeal Panel.

18. Related documents

Education Act 2002

The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 (S.I. 2002/3178)

The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 (S.I. 2002/3179)

Exclusion Appeal Panels Training Pack – Getting it Right – available from ISCG tel no 020 7229 0200 email: iscg@governors.fsnet.co.uk

Legal Toolkit for Schools – available from Prolog tel no 0845 602 2260 or at www.teachernet.gov.uk/safeschools

Disability Discrimination Act 1995 as amended by Special Educational Needs and Disability Act 2001

Race Relations Act 1976 as amended by Race Relations (Amendment) Act 2000

The Race Relations (Statutory Duties) Order 2001 (S.I. 2001/3458)

The Education (Pupil Registration) Regulations 1995 (S.I. 1995/2089)

PART 2: PROCEDURE FOR EXCLUDING A PUPIL: ROLE OF HEAD TEACHER

1. Informing parents about the exclusion

1.1 Head teachers should carefully follow the procedures set out in law and statutory guidance, which are designed to ensure fairness and openness in the handling of exclusions. Following this guidance will also reduce the chance of any successful legal challenge to the exclusion at a later stage.

1.2 Whenever a head teacher excludes a pupil, the parent should be notified immediately, ideally by telephone followed up by a letter within one school day. Letters of notification of exclusion must state:

- a) for a fixed period exclusion, the precise period of the exclusion
- b) for a permanent exclusion, the fact that it is a permanent exclusion
- c) the reasons for the exclusion
- d) the parent's right to make representations about the exclusion to the Discipline Committee
- e) the person whom the parent should contact if they wish to make such representations (this will usually be the Clerk to the Discipline Committee)

1.3 Letters should also mention:

- a) the latest date by which the Discipline Committee must meet to consider the circumstances in which the pupil was excluded (except where the exclusion is for fewer than 6 school days in any one term, and would not result in the pupil missing a public examination)
- b) the parent's right to see and have a copy of his or her child's school record upon written request to the school
- c) in the case of a **fixed period** exclusion, the date and time when the pupil should return to school (in the case of a **lunchtime** exclusion, the number of lunchtimes for which the pupil is being excluded, and if applicable the arrangements for the child to receive free school meals)
- d) if the exclusion is **permanent**, the date it takes effect and any relevant previous history
- e) the arrangements made for enabling the pupil to continue his or her education, including the setting and marking of work. It is the parent's responsibility to ensure that work sent home is completed and returned to school
- f) the name and telephone number of an officer of the LEA who can provide advice
- g) the telephone number for the Advisory Centre for Education (ACE) exclusions helpline – 020 7704 9822. ACE are a long established independent national charity providing advice to parents

1.4 Whenever a teacher in charge of a PRU excludes a pupil, the parent should be notified immediately, ideally by telephone followed up by a letter within one school day.

1.5 Letters of notification of a fixed period exclusion from a PRU must state:

- a) the precise period of the exclusion
- b) the reasons for the exclusion
- c) the parent's right to make representations about the exclusion to the LEA
- d) the person whom the parent should contact if they wish to make such representations

1.6 Letters of notification of a permanent exclusion from a PRU must state:

- a) the fact that it is a permanent exclusion
- b) the reasons for the exclusion
- c) the right to appeal to an Independent Appeal Panel, together with the name and address of the person to whom any notice of appeal should be sent (normally the clerk to the appeal panel)
- d) the date by which any notice of appeal should be lodged (15 school days after the day on which notice in writing was given of the teacher in charge's decision). Where the notice is sent by first class post it is treated as having been given on the second working day after it was posted

1.7 Letters should also mention the matters set out in paragraph 1.3 as appropriate. Model letters (1-4) for notifying parents of fixed period and permanent exclusions are provided at the end of this part of the guidance. Model letter 1 should be used for fixed term exclusions of fewer than 6 days and where a public examination is not missed. Model letter 2 should be used for fixed term exclusions of between 6 and 15 days (single or cumulative) or where a public examination is missed. For fixed term exclusions (single or cumulative) of 16 days or more model letter 3 should be used, and model letter 4 should be used for permanent exclusions.

1.8 All exclusion cases should be treated in the strictest confidence.

1.9 In exceptional cases - usually where further evidence has come to light – a fixed period exclusion may be extended or converted to a permanent exclusion. In such cases the head teacher must write again to the parents explaining the reasons for the change. The head teacher may choose to withdraw an exclusion that has not yet been reviewed by the Discipline Committee.

2. Informing the Discipline Committee and the LEA

2.1 Within one school day the head teacher must inform the Governing Body's Discipline Committee and the LEA of:

- a) permanent exclusions
- b) exclusions which will result in the pupil being excluded for more than five school days or 10 lunchtimes in any one term
- c) exclusions which will result in the pupil missing a public examination

2.2 Fixed period exclusions totalling five or fewer school days, or 10 or fewer lunchtimes or half days, in any one term must be reported to the Discipline Committee and LEA once a term.

2.3 Exclusion reports should include:

- a) the pupil's name
- b) the length of the exclusion
- c) the reason for the exclusion
- d) the pupil's age, gender and ethnicity
- e) whether the pupil has a statement of SEN, is being assessed for such a statement, or is on *School Action* or *School Action Plus*
- f) whether the pupil is in Local Authority care

2.4 The teacher in charge of a PRU must give similar information to the LEA.

**MODEL LETTER 1 - FROM HEAD TEACHER (OR TEACHER IN CHARGE OF A PRU)
NOTIFYING PARENT OF A FIXED PERIOD EXCLUSION OF LESS THAN 6 DAYS, AND
WHERE A PUBLIC EXAMINATION IS NOT MISSED**

Dear **[Parent's Name]**

I am writing to inform you of my decision to exclude **[Child's Name]** for a fixed period of **[Period of Exclusion]**. This means that **[Child's Name]** will not be allowed in school for this period.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded for this fixed period because **[Reason for Exclusion]**.

[School other than PRU] You have the right to make representations to the School Governors Discipline Committee. If you wish to make representations please contact **[Name of Contact]** on/at **[Contact Details – Address, Phone Number, email]**, as soon as possible.

[PRU] You have the right to make representations to **[name of LEA]**. These representations will be considered by **[here set out arrangements which the LEA have made for considering representations]**. If you wish to make representations please contact **[Name of contact]** on/at **[Contact Details-Address, Phone Number, email]** as soon as possible.

You also have the right to see a copy of **[Name of Child]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of **[Name of Child]**'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

The school will continue to set work for **[Name of Child]** during the period of **his/her** exclusion **[Please insert what arrangements are in place for this]**. Please ensure that any work set by the school is completed and returned to us for marking.

You may want to contact **[Name]** at **[LEA Name]** LEA on/at **[Contact Details – Address, Phone Number, email]**, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE), which is an independent national advice centre for parents of children in state maintained schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at www.ace-ed.org.uk.

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in school on **[Date]** at **[Time]**. I am sure it would be helpful for us to meet to discuss **[Name of Child]**'s return to school before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]
Head teacher

**MODEL LETTER 2 - FROM HEAD TEACHER (OR TEACHER IN CHARGE OF A PRU)
NOTIFYING PARENT OF A FIXED PERIOD EXCLUSION OF 6 TO 15 DAYS, OR WHERE
CUMULATIVE EXCLUSIONS IN THE SAME TERM FALL WITHIN THIS RANGE, OR WHERE
A PUBLIC EXAMINATION IS MISSED**

Dear **[Parent's Name]**

I am writing to inform you of my decision to exclude **[Child's Name]** for a fixed period of **[Period of Exclusion]**. This means that **[Child's Name]** will not be allowed in school for this period.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded for this fixed period because **[Reason for Exclusion]**.

[School other than PRU] You have the right to request a meeting of the School Governors Discipline Committee at which you may make representations and the decision to exclude can be reviewed. As the length of the exclusion is more than 5 school days (or equivalent) the Committee must meet if you request it to do so. The latest date the Committee can meet is **[Date Here – no later than 50 school days from the date the Committee is notified]**. If you wish to make representations to the Committee and wish to be accompanied by a friend or representative please contact **[Name of Contact]** on/at **[Contact Details – Address, Phone Number, email]**, as soon as possible.

[PRU] You have the right to make representations to **[name of LEA]**. These representations will be considered by **[here set out arrangements which the LEA have made for considering representations]**. If you wish to make representations please contact **[Name of contact]** on/at **[Contact Details-Address, Phone Number, email]** as soon as possible. **[Note –this wording is not suitable where the child would lose the opportunity to take a public examination]**

You also have the right to see a copy of **[Name of Child]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of **[Name of Child]**'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

The school will continue to set work for **[Name of Child]** during the period of **his/her** exclusion **[Please insert what arrangements are in place for this]**. Please ensure that any work set by the school is completed and returned to us for marking.

You may want to contact **[Name]** at **[LEA Name]** LEA on/at **[Contact Details – Address, Phone Number, email]**, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE), which is an independent national advice centre for parents of children in state maintained schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at www.ace-ed.org.uk.

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in school on **[Date]** at **[Time]**. I am sure it would be helpful for us to meet to discuss **[Name of Child]**'s return to school before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]
Head teacher

**MODEL LETTER 3 - FROM HEAD TEACHER (OR TEACHER IN CHARGE OF A PRU)
NOTIFYING PARENT OF A FIXED PERIOD EXCLUSION OF 16 DAYS OR MORE, OR
WHERE CUMULATIVE EXCLUSIONS IN THE SAME TERM ARE 16 DAYS OR MORE**

Dear **[Parent's Name]**

I am writing to inform you of my decision to exclude **[Child's Name]** for a fixed period of **[Period of Exclusion]**. This means that **[Child's Name]** will not be allowed in school for this period.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded for this fixed period because **[Reason for Exclusion]**.

[School other than PRU] As the length of the exclusion is more than 15 school days (or equivalent) the School Governors Discipline Committee must automatically meet to consider the exclusion. At the review meeting you may make representations to the Committee if you wish to do so. The latest date the Committee can meet is **[Date Here – no later than 15 school days from the date the Discipline Committee is notified]**. If you wish to make representations to the Committee and wish to be accompanied by a friend or representative please contact **[Name of Contact] on/at [Contact Details – Address, Phone Number, email]**, as soon as possible. You will, whether you choose to make representations or not, be notified by the Clerk to the Committee of the time, date and location of the meeting.

[PRU] As the length of the exclusion is more than 15 days **[Name of LEA]** must consider the exclusion. **[Here set out the arrangements which the LEA have made to review fixed period exclusions]**. A review meeting will be held and at the review meeting you may make representations if you wish. The latest date for a review meeting is **[Date here-no later than 15 school days from the date LEA is notified]**. If you wish to make representations and wish to be accompanied by a representative please contact **[Name of contact] on/at [contact Details-Address, Phone Number, email]**

You also have the right to see a copy of **[Name of Child]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of **[Name of Child]**'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

The school will continue to set work for **[Name of Child]** during the period of **his/her** exclusion **[Please insert what arrangements are in place for this]**. Please ensure that any work set by the school is completed and returned to us for marking.

You may want to contact **[Name]** at **[LEA Name]** LEA on/at **[Contact Details – Address, Phone Number, email]**, who can provide advice. You may also find it useful to contact the Advisory Centre for Education (ACE), which is an independent national advice centre for parents of children in state maintained schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at www.ace-ed.org.uk.

[Name of Child]'s exclusion expires on **[Date]** and we expect **[Name of Child]** to be back in school on **[Date]** at **[Time]**. I am sure it would be helpful for us to meet to discuss **[Name of Child]**'s return to school before they are due back. Please could you contact **[Name]** to arrange a convenient time and date.

Yours sincerely

[Name]
Head teacher

MODEL LETTER 4 - FROM HEAD TEACHER (OR TEACHER IN CHARGE OF A PRU) NOTIFYING PARENT OF A PERMANENT EXCLUSION

Dear **[Parent's Name]**

I regret to inform you of my decision to exclude **[Child's Name]** permanently from **[Date]**. This means that **[Child's Name]** will not be allowed back to this school pending a meeting of the School Governors Discipline Committee. Alternative arrangements for **[Child's Name]**'s education will need to be made, in the first instance we will set work for **[Child's Name]** and would ask you to ensure this work is completed and returned to school for marking.

I realise that this exclusion may well be upsetting for you and your family, but the decision to exclude **[Child's Name]** has not been taken lightly. **[Child's Name]** has been excluded permanently because **[Reason for Exclusion – also include any other relevant previous history here]**.

[School other than PRU] As this is a permanent exclusion the School Governors Discipline Committee will meet to consider the exclusion. At the review meeting you may make representations to the Committee if you wish to do so. The latest date the Committee can meet is **[Date Here – no later than 15 school days from the date the Committee is notified]**. If you wish to make representations to the Committee and wish to be accompanied by a friend or representative please contact **[Name of Contact] on/at [Contact Details – Address, Phone Number, email]**, as soon as possible. You will, whether you choose to make representations or not, be notified by the Clerk to the Committee of the time, date and location of the meeting.

[PRU] You have the right to appeal to an independent appeal panel against this decision. If you wish to appeal please notify **[name of clerk to appeal panel]** of your wish to appeal including your grounds of appeal in writing to **[address]** by no later than **[specify the latest date-the 15th school day after the second working day after the letter is posted if sent by first class post, or, if delivered by hand, the fifteenth school day after delivery]**. If you have not lodged an appeal by this date your right to appeal will lapse.

You also have the right to see a copy of **[Name of Child]**'s school record. Due to confidentiality restrictions, you will need to notify me in writing if you wish to be supplied with a copy of **[Name of Child]**'s school record. I will be happy to supply you with a copy if you request it. There may be a charge for photocopying.

Alternative education other than setting work will be provided for **[Name of Child]** if the exclusion has not been overturned within 15 days. A **[Schools Maintaining LEA Name]** LEA representative will contact you to discuss this.

You may also want to contact **[Name]** at **[LEA Name]** LEA on/at **[Contact Details – Address, Phone Number, email]**, who can provide advice on what options are available to you. Additionally, you may find it useful to contact the Advisory Centre for Education (ACE), which is an independent national advice centre for parents of children in state maintained schools. They offer information and support on state education in England and Wales, including on exclusion from school. They can be contacted on 020 7704 9822 or at www.ace-ed.org.uk.

Yours sincerely

[Name]
Head teacher

PART 3: RESPONSIBILITIES OF THE DISCIPLINE COMMITTEE

1. The Discipline Committee

- 1.1 Currently, the Governing Body must establish a Discipline Committee² to review exclusions and consider any representations made by parents. Where reinstatement is a practical option the Discipline Committee must consider whether to reinstate an excluded pupil.
- 1.2 The Governing Body may nominate a pool of governors from which to select three or five governors to serve as the Discipline Committee as the need arises and should appoint a clerk to the Committee. The quorum for a Discipline Committee meeting is three members. If a governor has a connection with the pupil, or knowledge of the incident that led to the exclusion that could affect his or her ability to act impartially, he or she should step down. If four members consider an exclusion, the Chair has the casting vote.
- 1.3 At one meeting the Discipline Committee may consider more than one exclusion as long as they comply with the statutory time limits relating to each one.
- 1.4 If an exclusion would result in the pupil missing a public examination, the Discipline Committee should try to meet before the date of the examination. If, exceptionally, in the case of a fixed period exclusion, the Chair of the Committee does not consider it practical for the Committee to meet before the time when the pupil is due to take the public examination, he or she alone may consider the exclusion and decide whether or not to reinstate the pupil (these are the only circumstances in which a Chair can sit alone to review an exclusion). In such cases the parent has the right to make oral representations to the Committee or, as the case may be, the Chair. If possible, the Chair should have the advice of the Clerk and an LEA Officer.

2. Discipline Committee meetings to consider exclusions

- 2.1 On receiving notice of an exclusion from the head teacher, the Clerk or Chair:
- a) must, in the case of one or more fixed period exclusions totalling 5 school days or less in any one term, consider any representations from the parent. If representations from the parent are received they must convene a meeting to consider the representations, although they cannot direct reinstatement (model letter 1)
 - b) must in the case of one or more fixed period exclusions totalling more than 5 but not more than 15 school days in any one term, convene a meeting between the 6th and the 50th school day after receiving the notice of exclusion, to consider the exclusion, if the parent requests a meeting (model letter 2)
 - c) must in the case of a permanent exclusion, or one or more fixed period exclusions (including lunchtimes) totalling more than 15 school days in any one term, convene a meeting between the 6th and the 15th school day after the date of receipt to consider the exclusion (model letters 3 & 4 respectively)
 - d) must invite the parent, head teacher and an LEA officer to the meeting at a time and place convenient to all parties (within the statutory time limit)
 - e) should ask for any written statements (including witness statements) in advance of the meeting

² Education (School Government) (England) Regulations 1999 (S.I. 1999/2163) (Expected to be replaced on 1 September 2003 – further guidance will be issued then)

- f) should circulate in advance any written statements (including witness statements) and a list of those who will be present at the meeting to all parties

2.2 The Discipline Committee should conduct the meeting along the lines of the principles laid out in paragraphs 7.3 and 7.4 in Part 4. They should normally allow the excluded pupil to attend the meeting and speak, if the parent requests this. They should allow the parent to be accompanied by a friend or legal representative at their request. A pupil aged 18 or over has the right to attend and to make representations.

2.3 The Committee must comply with the statutory time-limits but are not relieved of their legal obligation to carry out the relevant duty if they fail to comply. Accordingly their decision will not be invalid simply on the grounds that it was made out of time.

3. Procedure at the Discipline Committee meeting

3.1 The LEA is not required (and it may not be practical) to send a representative to all Discipline Committee meetings in its area. The LEA should send a representative to all permanent exclusion meetings and to longer fixed period exclusion meetings if possible. The LEA's role at the Discipline Committee meeting is to give their view on the appropriateness of the exclusion. The LEA can make a statement to the Discipline Committee, for example about how other schools in the area have dealt with similar incidents and to advise on alternative arrangements for the pupil to continue his or her education if the exclusion is confirmed.

3.2 The Discipline Committee may ask the LEA officer for specific technical advice. However, they should make their decision alone, asking the other parties to withdraw. The clerk may stay with the Committee to help them with reference to his notes of evidence and in wording their decision.

3.3 Where reinstatement is practical, the Discipline Committee should decide whether to direct reinstatement. In reaching their decision the Committee should consider:

- a) any representations made by the parent, the pupil and the LEA officer
- b) whether the head teacher has complied with the exclusion procedure and has had regard to the Secretary of State's guidance before deciding to exclude the pupil

3.4 In considering whether to direct reinstatement, the Discipline Committee should seek the LEA officer's views as to what support could be made available to assist with reintegrating the pupil.

3.5 Where reinstatement is not practical because the pupil has returned to school following the expiry of a fixed period exclusion or because the parent makes clear he does not want his child reinstated, the Discipline Committee must consider whether the head teacher's decision to exclude the child was justified based on the evidence. The outcome of their review should be added to the pupil's school record for future reference.

3.6 The Discipline Committee should inform the parent (or, if aged over 18, the pupil), the head teacher and the LEA of their decision in writing within one school day of the hearing, stating their reasons. The Committee may not attach conditions to any direction they may give to the head teacher to reinstate the pupil; however, this does not prevent a school from following good practice in reintegrating the pupil.

3.7 Where the Discipline Committee decide not to direct a head teacher to reinstate a permanently excluded pupil, their letter to the parent (or, as the case may be, the pupil)

should also include the following information:

- a) the reason for the decision
- b) their right to appeal to an Independent Appeal Panel, together with the name and address of the person to whom any notice of appeal should be sent (normally the clerk to the appeal panel)
- c) the date by which any notice of appeal should be lodged (15 school days after the day on which notice in writing was given of the Discipline Committee's decision. Where the notice is sent by first class post it is treated as having been given on the second working day after it was posted)
- d) that any notice of appeal must set out the grounds on which the appeal is made

3.8 A model letter (model letter 5) for notifying parents of a decision to uphold a permanent exclusion is provided at the end of this part of the guidance.

4. After the meeting

4.1 A note of the Discipline Committee's views on the exclusion should normally be placed on the pupil's school record with copies of relevant papers.

5. Pupil Referral Units

5.1 The LEA must review fixed period exclusions from PRUs and consider any representations made by parents. In the case of one or more fixed period exclusions (including lunchtimes) totalling more than 15 school days in any one term, where reinstatement is a practical option, the LEA must consider whether to reinstate the pupil. In the case of such exclusions the LEA must allow oral representations to be made by the parent and teacher and the representations must be heard within the same timescales as apply to Discipline Committees, set out in paragraph 2.

MODEL LETTER 5 - FROM THE CLERK TO THE DISCIPLINE COMMITTEE TO THE PARENT OF A PERMANENTLY EXCLUDED PUPIL UPHOLDING A PERMANENT EXCLUSION

Dear **[Parent's name]**

The meeting of the [school governors'] Discipline Committee at the **[school/pupil referral unit]** on **[date]** considered the decision by **[head teacher/teacher in charge]** to permanently exclude your son/daughter **[name of pupil]**. The Committee, after carefully considering the representations made and all the available evidence, have decided to uphold **[name of pupil]'s** exclusion.

The reasons for the Committee's decision are as follows: **[give the reasons in as much detail as possible, explaining how the committee arrived at their decision]**

You have the right to appeal against this decision. If you wish to appeal, please notify **[name of the clerk to the appeal panel]** of your wish to appeal. You must set out the reasons for your appeal in writing and send them to **[address]** by no later than **[specify the latest date – the 15th school day after the date of this letter]**. If you have not lodged an appeal by **[repeat latest date]**, your right to appeal will lapse.

Your appeal would be heard by an Independent Appeal Panel. A three member panel will comprise one serving or recently retired (within the last 5 years) head teacher, one serving or recently serving experienced governor and one lay member who will be the Chairman.**[Use the following if there is a possibility that a five member panel may sit: A five member panel will comprise two serving or recently retired (within the last 5 years) head teacher, two serving or recently serving experienced governors and one lay member who will be the Chairman.]** The appeal panel will rehear all the facts of the case – if you have fresh evidence to present to the panel you may do so. The panel must meet no later than the 15th school day after the date on which your appeal is lodged. In exceptional circumstances panels may adjourn a hearing until a later date.

I would like to remind you of the following sources of advice and assistance: **[repeat details from the original exclusion letter, i.e. a named LEA officer and the Advisory Centre for Education and any other local source of advice or assistance if known]**

The arrangements currently being made for **[pupil's name]'s** education will continue for the time being. However, new arrangements to provide full-time education for **[pupil's name]** are being made and **[name of LEA officer]** will liaise with you shortly about these new arrangements. If you have any questions about this please contact **[name]**.

Yours sincerely

[name]

Clerk to the Discipline Committee

PART 4: INDEPENDENT APPEAL PANELS

1. Notifying parents

- 1.1 When a permanent exclusion is upheld by the Discipline Committee, the Committee's decision letter (model letter 5) to the parent (or the pupil, if aged over 18) must state the reasons for the decision, give the last day for lodging an appeal and explain that the grounds for the appeal should be set out in writing. In the case of a permanent exclusion from a PRU the letter from the teacher in charge should give this information. The LEA should also write to the parent (or pupil) within 3 working days indicating the latest date by which an appeal may be lodged, the name and contact details for the clerk to the appeal panel, and explain that the notice of appeal must be in writing setting out the grounds on which it is made.
- 1.2 Any appeal made after the latest date for lodging an appeal will be out of time and should be rejected by the LEA.

2. The timing of the hearing

- 2.1 An appeal panel must meet to consider an appeal no later than the 15th school day after the day on which the appeal was lodged. However, if necessary, the panel may then decide to adjourn the hearing if, having regard to the particular circumstances of the case, they consider that it would not be appropriate for them to proceed to determine the appeal. They may adjourn on more than one occasion if necessary.

3. Combined appeals

- 3.1 If the issues raised by two or more appeals are the same or connected, the panel may decide to combine the hearings. In such cases the panel should check that no-one objects to this approach.

4. Composition of appeal panels

- 4.1 The LEA must constitute the appeal panel and appoint a clerk. The panel must have three or five members (as decided by the LEA) made up of three categories:
- a) the chair must be a lay member, defined as someone who has not worked in school in a paid capacity, although they may have been a school governor or worked as a volunteer
 - b) one (or, on a five member panel, two) must be, or have been, a governor of a maintained school provided they have served in this capacity for a least 12 consecutive months in the last 6 years (but must not be or have been a teacher or head teacher)
 - c) one (or, on a five member panel, two) must be, or have been within the last 5 years, a head teacher of a maintained school. If the exclusion is from a PRU then this representative can be either a head teacher of a maintained school, or a teacher in charge of a PRU
- 4.2 Whenever possible governor and head teacher panel members considering a primary school exclusion should have experience of that phase of education, those considering a secondary school exclusion should have experience of secondary education, and those considering an exclusion from a special school should have experience of that area of education. The lay member should have the necessary skills and qualities to chair the panel effectively.

4.3 A person may not serve as a member of an appeal panel if they:

- a) are a member of the Local Education Authority or of the Governing Body of the excluding school
- b) are an employee of the Local Education Authority or of the Governing Body, unless they are employed as a head teacher in another school in the same LEA or as a teacher in charge of a PRU in the same LEA where the exclusion is from a PRU
- c) have, or at any time have had, any connection with an interested party which might reasonably be taken to raise doubts about their ability to act impartially
- d) are the head teacher of the school or have been the head teacher of the school in the last five years

4.4 Doubts about impartiality may arise from the panel member having worked closely with the head teacher or Governing Body of the excluding school, or from being the head teacher or governor of a school to which the pupil might be admitted if the exclusion is confirmed. Small LEAs may have difficulty finding serving head teachers and governors who feel they are able to act impartially and may need to recruit panel members from a neighbouring LEA if they cannot find retired head teachers and governors to take on the role.

4.5 LEAs should ensure that all panel members and clerks receive suitable training and that the chair is trained in the specific chairing skills the panel requires. The DfES has issued a training pack for exclusion appeal panel members (for details of how to obtain a copy see the related documents section at the end of Part 1). LEAs will wish to identify and train sufficient chairs, members and clerks to ensure they can arrange hearings within the necessary timescale.

5. Role of the clerk

5.1 The clerk provides an independent source of advice on procedure for all parties. The clerk should not have served as clerk to the Discipline Committee hearing.

5.2 Following training, clerks should be allowed to develop experience in the conduct of appeals. If the clerk has not received legal training and no member of the panel is legally qualified the LEA should consider whether the panel will require an independent source of legal advice.

6. In advance of the hearing

6.1 The LEA must take reasonable steps to find out when the parent and others entitled to attend the hearing would be available in order to ensure that all parties are able to attend. They must also arrange a suitable venue for hearing the appeal in private. Appeal hearings should never be held at the excluding school.

6.2 The following are entitled to attend a hearing and present their case:

- a) the parent (or, if aged over 18, the pupil), who may be represented by a legal or other representative
- b) the head teacher, who may make oral representations
- c) a nominated governor, who may make oral representations

- d) a nominated LEA officer, who may make oral representations
 - e) a legal or other representative of the governing body
- 6.3 An excluded pupil under the age of 18 should normally be allowed to attend the hearing and to speak on his or her own behalf, if he or she wishes to do so and the parent agrees. The panel cannot compel witnesses to attend the hearing.
- 6.4 The clerk should advise the parent of his or her right to be accompanied by a friend or representative, including a legal representative or advocate. If the parent wishes to bring more than one friend or representative, the clerk should seek the panel's agreement in advance, having regard to a reasonable limit on numbers attending the hearing.
- 6.5 The clerk should also ascertain whether an alleged victim wishes to be given a voice at the hearing either in person, through a representative or by submitting a written statement.
- 6.6 When the position is clear the clerk must give all parties details of those attending and their role, and notify them of the order of hearing.
- 6.7 The clerk should circulate all written evidence to all parties 5 working days before the hearing. This must include the statement of decision by the Discipline Committee and the notice of appeal from the parent which gives the grounds for the appeal. The head teacher, Governing Body and LEA may also make written representations. If any of the parties intend to raise matters or produce documents at the hearing that are not covered by the statement of decision or the notice of appeal, they should be asked to submit these to the clerk in good time before the hearing.

7. Conduct of the appeal hearing

- 7.1 It is for the appeal panel to decide how to conduct the proceedings which should be reasonably informal so that all parties can present their case effectively. Tape-recording of the hearing should be avoided unless there is good reason and all parties agree.
- 7.2 In opening the appeal hearing it is helpful for the chair to outline the procedure to be followed and to explain to all parties that the panel is independent from both the school and the LEA. The panel needs to have regard to legislation and DfES guidance in its conduct and in reaching its decision.
- 7.3 Following introductions, the clerk should explain the order in which the parties entitled to be heard will state their case (as previously notified to them) and that there will be an opportunity for questioning by the other parties after each presentation. The chair should then lead the panel in establishing the relevant facts. Panel members may wish to ask questions to clarify an issue or to elicit more information. Questions from the panel should generally be taken at the end of each party's statement and following questioning by the other parties.
- 7.4 Sufficient time must be allowed for each party to put their case. The panel should ensure that the parent (or, if aged over 18, the pupil) is given the opportunity to comment on relevant information obtained from the LEA or Governing Body. Care must be taken to ensure that no party attending the hearing is present alone with the appeal panel in the absence of any other party.
- 7.5 An appeal cannot continue if the number of panel members drops below three at any stage. In this event, the panel may need to adjourn until its quorum is restored. Once an appeal has begun, no panel member may be substituted by a new member for any reason.

Accordingly, where a member cannot continue as a result of illness or death a new panel will have to be constituted. In the case of a five member panel, however, the panel may continue in the event of the death or illness of one (or even two) of its members, provided all three categories of member are still represented. In the case of a panel being reduced to four members and them being deadlocked, the chair has the casting vote.

8. Reaching a decision

8.1 In considering an appeal, the panel should decide, on the balance of probabilities, whether the pupil did what he or she is alleged to have done. If more than one incident of misconduct is alleged, the panel should decide in relation to each one.

8.2 The panel should consider the basis of the head teacher's decision and the procedures followed having regard to the following:

- a) whether the head teacher and Discipline Committee complied with the law and had regard to the Secretary of State's guidance on exclusion in deciding, respectively, to exclude the pupil and not to direct that he or she should be reinstated. While the law states that the panel must not decide to reinstate a pupil solely on the basis of technical defects in procedure prior to the appeal, procedural issues would be relevant if there were evidence that the process was so flawed that important factors were not considered or justice was clearly not done
- b) the school's published behaviour policy, equal opportunities policy and, if appropriate, anti-bullying policy, Special Educational Needs policy, and race equality policy
- c) the fairness of the exclusion in relation to the treatment of any other pupils involved in the same incident

8.3 Having satisfied themselves as to these issues, the panel should consider whether in their opinion permanent exclusion was a reasonable response. If they conclude it was not, they should then go on to consider whether this is an exceptional case where reinstatement is not a practical way forward (see section 10.4).

8.4 In deciding on whether or not to endorse the exclusion decision and whether or not to direct reinstatement, the panel must balance the interests of the excluded pupil against the interests of all the other members of the school community.

8.5 Where a parent appeals against permanent exclusion and makes a claim alleging racial discrimination, the appeal panel must consider whether there has been discrimination in relation to the *Race Relations Act*.

8.6 Where a parent appeals against permanent exclusion and makes a claim alleging disability discrimination, the appeal panel must consider whether the pupil is disabled and whether there has been discrimination within the meaning of the *Disability Discrimination Act*. Appeal panels must consider the Disability Rights Commission's Schools Code of Practice which provides guidance on the *Disability Discrimination Act*.

9. Evidence and witnesses

9.1 Where the school's case rests largely or solely on physical evidence, and where the facts are in dispute, then the physical evidence, if practicable, should be retained and be available to the panel. Where there are difficulties in retaining physical evidence, photographs or signed witness statements are acceptable.

- 9.2 All parties may put forward new evidence about the event that led to the exclusion, including evidence that that was not available to the head teacher or the Discipline Committee. However the school may not introduce new reasons for the exclusion.
- 9.3 To reach a decision, the panel will generally need to hear from those directly or indirectly involved. The Governing Body may wish to call witnesses who saw the incident that gave rise to the exclusion. These may include any alleged victim or any teacher other than the head teacher who investigated the incident and interviewed pupils.
- 9.4 In the case of witnesses who are pupils of the school, it will normally be more appropriate for the panel to rely on written statements. Pupils may appear as witnesses if they do so voluntarily and with their parent's consent. Panels should be sensitive to the needs of child witnesses to ensure that the child's view is properly heard.
- 9.5 All written witness statements must be attributed and signed, unless the school has good reason to wish to protect the anonymity of pupils. The general principle remains that an accused person is entitled to know the substance and the source of the accusation. The panel must consider what weight to attach to written statements, whether made by adults or pupils, as against oral evidence. They should bear in mind that a written statement may not encompass all the relevant issues nor can the author be interrogated.
- 9.6 The calling of character witnesses is at the discretion of the panel, but should be allowed unless there is good reason to refuse.
- 9.7 It is for the panel to decide whether any witnesses should stay for the rest of the hearing.

10. The decision

- 10.1 An appeal panel may uphold the decision to exclude; direct immediate reinstatement or reinstatement at some future date; or they may decide that because of exceptional circumstances or other reasons it is not practical to give a direction requiring reinstatement, but that it would otherwise have been appropriate to give such a direction.
- 10.2 If the panel direct reinstatement the date specified must be reasonable in the circumstances. The panel may not attach conditions to the reinstatement of a pupil.
- 10.3 In some cases it will not be practical for the panel to direct reinstatement because the parent has made clear he does not want it, or because the child has become too old to return to the school.
- 10.4 There may also be exceptional cases where the panel consider that the permanent exclusion should not have taken place, but that reinstatement in the excluding school is not a practical way forward in the best interests of all concerned. This could include situations where there has been an irretrievable breakdown in relations between pupil and teachers; between the parents and the school; or between the pupil and other pupils involved in the exclusion or appeal process. Balancing the interests of the pupil and the whole school community may suggest that reinstatement would not be the most sensible outcome in such cases. In considering whether such exceptional circumstances exist the panel should consider representations from the governors, the head teacher and from the parent (or pupil if 18 or over).
- 10.5 In any case where the panel decide that reinstatement would have been justified but is not practical, they should indicate this in their decision letter and give details of the circumstances that made them decide not to direct reinstatement. Such a letter should be added to the pupil's school record for future reference.

11. Record of the proceedings of an appeal panel

11.1 The clerk to an appeal panel should take minutes of the proceedings, the attendance, the voting and the decision in a format approved by the LEA. The minutes are not public documents but should be retained by the LEA for a period of at least five years, as they may need to be seen by a court or by the Local Government Ombudsman.

12. After the hearing

12.1 The panel is independent. Its decision is binding on the parent, the Governing Body, the head teacher and the LEA. The panel cannot revisit its decision once made.

12.2 The panel must let all parties know its decision by the end of the second working day after the hearing. Model letter 6, provided at the end of this part of the guidance, is for notifying the parent of the decision of the panel. The decision letter should give the panel's reasons for its decision in sufficient detail for the parties to understand why the decision was made.

12.3 If the appeal panel upholds the permanent exclusion, the clerk should immediately report this to the LEA. If the pupil is of compulsory school age, it is for the LEA in whose area the pupil lives to make arrangements as quickly as possible for the pupil to continue in suitable full-time education. If the pupil lives outside the area of the LEA arranging the appeal, the clerk should make sure that the home LEA is also informed immediately of the position.

12.4 Where the exclusion is upheld the clerk should also advise the parent to contact the appropriate person at the home LEA about arrangements for their child's continuing education. The head teacher should remove the pupil's name from the school roll the day after the conclusion of the appeal.

12.5 Where the panel direct reinstatement they should immediately inform the head teacher of their decision and specify the date on which the pupil must be readmitted.

12.6 Details of an exclusion may not be deleted from the pupil's record, even where reinstatement is directed. The Governing Body must, however, comply with any parental request to append their appeal statement to the pupil's record. It will be for the governing body to decide what details of the exclusion are included in the pupil's school record: copies of the principal correspondence might be included and possibly the minutes of the Discipline Committee and appeal panel hearings, if the Discipline Committee and appeal panel respectively agree to this.

13. Remedies after the appeal hearing

Complaint to the Commissioner for Local Administration (the Local Government Ombudsman)

13.1 A parent can complain to the Local Government Ombudsman about maladministration by the appeal panel. The Ombudsman can make recommendations if he or she finds that there has been maladministration. He or she might recommend a fresh hearing, if this were practical, and the LEA would normally be expected to comply.

Judicial review

13.2 If either the parent or the Governing Body consider that the panel's decision is perverse, they may apply for a judicial review. This must be done promptly and no later than three

months from the date of the decision. If a judicial review were granted, the Court would consider the lawfulness of the panel's decision. If it found the panel's decision to be unlawful or unreasonable (in the narrow legal sense of 'unreasonable', i.e. irrational or perverse), it could quash the decision and direct the LEA to hold a fresh appeal hearing before a newly constituted panel.

**MODEL LETTER 6 - FROM THE CLERK TO THE INDEPENDENT APPEAL PANEL
NOTIFYING THE PARENT (OR THE PUPIL IF AGED 18 OR OVER) OF THE OUTCOME OF
HIS OR HER APPEAL**

Dear **[parent's name]**

Following the hearing of your appeal by the Independent Appeal Panel constituted by **[name]** Authority on **[date]** at **[location]** against the decision of **[the governing body of [name] School/the discipline committee for [name] Pupil Referral Unit]** not to reinstate **[child's name]**, I am writing to advise you of the panel's decision.

After careful consideration of your representations both oral and written and those of the **[School/PRU]** and **[name]** LEA **[and of others if applicable, for example any victim]** and in the light of the available evidence, the panel has decided:

Either

(i) to uphold the exclusion.

or

(ii) to direct **[pupil's name]**'s reinstatement in **[name of school/PRU]** with effect from **[date and time]**. **[Pupil's name]** should report to **[name of school staff member]** at that time.

or

(iii) that it is not practical to direct **[pupil's name]**'s reinstatement **[here give reasons, for example because this is an exceptional case where reinstatement would not be in the pupil's best interests or those of the whole school/PRU community]** although otherwise reinstatement would have been appropriate. Your child's school record will show that the permanent exclusion was overturned on appeal even though reinstatement was not directed.

[Give reasons in as much detail as possible for the panel's decision: the decision may be challenged by judicial review; or be the subject of a complaint of maladministration by the appeal panel to the Local Government Ombudsman]

The panel's decision is binding on you, the **[Governing Body of [name of school] School/[name] PRU]** and **[name of LEA]** Local Education Authority.

For decisions (i) and (iii) above: The alternative arrangements put in place for **[pupil's name]**'s full-time education will continue for the time being; but **[LEA officer's name]** will be in touch with you to discuss future provision.

A copy of this letter will be added to **[pupil's name]**'s school record for future reference.

Yours sincerely

[name]

Clerk to the Independent Appeal Panel

PART 5: POLICE INVOLVEMENT AND PARALLEL CRIMINAL PROCEEDINGS

1. Introduction

1.1 A school-related incident may sometimes also be the subject of a police investigation which may subsequently result in criminal proceedings. This can mean that the evidence available to head teachers, Discipline Committees and Independent Appeal Panels is very limited. They may not, for example, be able to hear relevant witnesses or to consider relevant material; it may not be known whether a criminal charge is to be brought; if a charge has been brought, the eventual outcome of any court proceedings may be uncertain. It should be remembered that the police and the courts will be applying the criminal standard of proof – beyond a reasonable doubt – whereas the head teacher, Discipline Committee and Independent Appeal Panel will apply the civil standard of proof (balance of probabilities). The Department does not consider that the case law imposes a higher standard of proof on schools than the simple balance of probabilities.

2. Head teacher's decision to exclude and consideration of the circumstances by the Discipline Committee

2.1 A head teacher should not postpone his or her decision to permanently exclude a pupil simply because of the possibility that criminal proceedings might be brought in respect of the same incident. In these circumstances, a judgement must be made on the basis of the evidence available. Relevant considerations include the fact that:

- a) a serious allegation has been made against the pupil by another pupil or member of staff at the school which is the subject of a police investigation which may result in criminal proceedings being brought
- b) pending the conclusion of any such criminal proceedings, the pupil's continued presence in the school may have an adverse effect on the complainant and other potential witnesses, and on the promotion of good order and discipline at the school generally

2.2 Where a head teacher permanently excludes a pupil in circumstances such as those outlined in the preceding paragraph, the school's Discipline Committee also has no power to postpone their meeting to consider the pupil's exclusion. In deciding whether to direct the head teacher to reinstate the pupil, therefore, they too may be subject to the same constraints as regards the availability of witnesses and other relevant information and will have to consider the case on the same basis.

3. Arrangements for appeal hearing in parallel criminal proceedings cases

3.1 Where a Discipline Committee decide not to direct a head teacher to reinstate a permanently excluded pupil in the circumstances described in the preceding paragraph, the parent (or, if aged over 18, the pupil) should be notified of their decision and of their right to appeal in accordance with Part 3 of this guidance. Any appeal must be lodged no later than 15 school days after the day on which notification of the Discipline Committee's decision was received and the appeal panel must meet to consider the appeal no later than 15 school days after the day on which the appeal was lodged.

3.2 Upon first meeting, the appeal panel must consider, taking into consideration any representations made by the parties and on the advice of their clerk, whether they can proceed to determine the appeal or adjourn the hearing pending the outcome of any police investigation and/or any criminal proceedings that may be brought. The mere fact that parallel criminal proceedings are in progress will not of itself determine whether the hearing

should be adjourned. Relevant factors for the panel to consider will include:

- a) whether it would be helpful to know what charge, if any, is to be brought against the pupil (bearing in mind that if there is to be no charge it may help the pupil's case or, if a charge is brought, the pupil may be inhibited in presenting his or her case)
- b) whether relevant witnesses and documents are available
- c) the likelihood of delay if the hearing were adjourned and the effect it may have on any complainant, the excluded pupil or the school itself
- d) whether an adjournment or, as the case may be, declining to adjourn, might result in injustice

3.3 If the panel do decide to adjourn, the LEA should take steps to ensure the pupil's continuing education pending the hearing. The clerk will be responsible for monitoring the progress of any police investigation and/or criminal proceedings and for re-convening the panel at the earliest opportunity when the hearing can proceed to final determination.

3.4 If necessary the panel may adjourn more than once. The same panel members should reconvene on each occasion (subject to the considerations referred to in part 4, paragraph 7.5). Where the panel reconvene following the disposal of any criminal proceedings they should have regard to any information about them relevant to the issues they have to determine (bearing in mind that even if the pupil has been acquitted of any charge relating to the conduct for which he or she was excluded, such acquittal might be attributable to a legal technicality or the stricter standard of proof in a criminal court and will not necessarily mean that the pupil did not do what he or she is alleged to have done).