

Independent Exclusion Appeals

Report of the Director of Children, Schools and Families

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1. Purpose of the Report

- 1.1 To provide to the Admission Forum an update and further information concerning the exclusions appeals data for the authority, together with background information.

2. Summary

- 2.1 The Admission Forum considered at its meeting on 12 March 2007 the Annual Statistical Report for School Admission and Exclusion Appeals for the period September 2005 to August 2006.
- 2.2 This report provides an overview of independent exclusions appeals, the contextual framework, and an update on the exclusions appeals data for Hertfordshire.

3. Conclusion

- 3.1 The Admission Forum is asked to consider the report and provide feedback.

4. Introduction

- 4.1 When the governors of a maintained school uphold a headteacher's recommendation that a pupil should be permanently excluded, parents have the right of appeal to an independent panel.
- 4.2 The local authority is responsible for setting up each panel in accordance with guidance issued by DfES. The decisions of the appeal panel are binding on all parties

5. Constitution of the appeal panel

- 5.1 The panel has three members made up of three categories:

- the chair must be a lay member, defined as someone who has not worked in a school in any paid capacity, although they may be (or have been) a governor or work (or have worked) in a school as a volunteer;
 - one member must be, or have been, a governor of a maintained school, provided they have served in this capacity for at least 12 consecutive months in the last 6 years. However, they must not be, or have been in the last five years, a teacher or headteacher;
 - one member must be, or have been in the last five years, a headteacher of a maintained school. If the exclusion is from a PRU this member can be either a headteacher of a maintained school or a teacher in charge of a PRU.
- 5.2 In all cases the governor and headteacher members must be from the same phase of education as the school from which the pupil is excluded, and where possible should be from the same type of school. For example, governor and headteacher panel members considering an exclusion from a primary school should have experience of that phase of education and those considering an exclusion from a special school should have experience of that area of education.
- 5.3 The lay member chairing the panel should have the necessary skills, qualities and training to do this effectively.
- 5.4 Some people are not allowed to serve as a member of an appeal panel. A person may not be on an appeal panel if:
- they are a member of the local authority or of the governing body of the excluding school;
 - they are an employee of the local authority or the governing body, unless they are employed as a headteacher in another school in the authority or as a teacher in charge of a PRU where the exclusion is from a PRU;
 - have, or at any time have had, any connection with an interested party, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially;
 - are the headteacher of the school or have been the headteacher of the school in the last five years.
- 5.5 It can be seen from the above that appeal panels will always have a majority of members with experience either as a governor or headteacher.

6. Training

- 6.1 All new panel members are required to have suitable training before they can sit on a panel. Existing panel members appointed before 1 September 2006 can sit for a further two years from that date before training becomes mandatory.
- 6.2 In the two years prior to an appeal hearing, panel members must have received suitable training to enable them to know:

- the requirements of the regulations governing exclusions and statutory guidance;
 - the role of the chair of an appeal panel;
 - the role of the clerk to an appeal panel;
 - the duties of the appeal panel under the Race Relations Act 1976;
 - the duties of the appeal panel under the Disability Discrimination Act 1995 as amended;
 - the duties the appeal panel may have under Part 4 of the Equality Act 2006;
 - the effect of section 6 of the Human Rights Act 1998 and the need to act compatibly with human rights protected by that Act;
 - the need for the appeal panel to observe procedural fairness and the rules of natural justice.
- 6.3 Once panel members have undergone training, they are required to undergo refresher training at least once every two years.

7. Clerk to the appeal panel

- 7.1 Each appeal panel has the services of a clerk. The role of the clerk is to provide an *independent* source of advice to all parties, as well as to take notes of the hearing, record the panel's decision and their reasons, and notify parents of that decision. The clerk should not have served as clerk to the governing body of the excluding school. The training requirements are as for panel members.

8. Decisions of appeal panels

- 8.1 The appeal panel must decide *on the balance of probabilities* whether or not the pupil committed the alleged offence leading to exclusion.
- 8.2 The panel must also consider the following:
- whether the headteacher and governing body complied with the law and guidance on exclusions in deciding to exclude. The panel must not reinstate a pupil solely on the basis of procedural defects prior to the appeal. However, procedural issues may be relevant if the process was so flawed that important factors were not considered or justice was clearly not done;
 - the school's published behaviour policy, equal opportunities policy, and, if appropriate, anti-bullying policy, SEN policy, and race equality policy;
 - the fairness of the exclusion in relation to the treatment of any other pupils involved in the same incident.
- 8.3 Where the members of the appeal panel judge that the pupil did commit the alleged offence, they must consider whether the response is proportionate and be satisfied that the disciplinary process has been carried out without any

procedural irregularities affecting the fairness of the procedure or the governors' findings.

8.4 In deciding whether to reinstate a pupil the panel must balance the interests of the excluded pupil against those of the rest of the school community.

8.5 There are only three options open to an appeal panel:

- they may uphold the decision to exclude;
- they may direct that the pupil is reinstated, either immediately or at a future date, which must be specified;
- they may decide that although permanent exclusion was not justified, the circumstances of the case make it inappropriate to direct that the pupil is reinstated.

9. Exclusion appeals in Hertfordshire

9.1 The table below shows the number of exclusion appeals to date in the current academic year and the total numbers for each of the three preceding years.

Year	No of appeals lodged	No withdrawn	No heard by appeal panels	No upheld (% of those heard)	No rejected (% of those heard)
2006/07	23*	1	21	5 (23.8%)	16 (76.2%)
2005/06	32	3	29	12 (41.4%)	17 (58.6%)
2004/05	20	3	17	7 (41.2%)	10 (58.8%)
2003/04	16	2	14	4 (28.6%)	10 (71.4%)

* One appeal has been lodged but has not yet been heard.

9.2 The most common reasons for pupils being reinstated are that permanent exclusion was considered to be a disproportionate response to the offence or that the school had not exhausted all other strategies to deal with the pupil's behaviour.

9.3 It is almost unheard of for an appeal panel to conclude that the pupil did not commit the alleged offence or for a pupil to be reinstated because of a procedural irregularity.

9.4 There is anecdotal evidence to suggest that governors' disciplinary committees have not always subjected headteachers' recommendations to the rigorous scrutiny required.

10. Conclusion

10.1 The Admission Forum is asked to consider the report and provide feedback.