

WOKINGHAM BOROUGH COUNCIL

A PARENTS GUIDE TO EXCLUSION REVIEWS

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Introduction

This guidance explains how the reviews process works and will help you to prepare for the review hearing.

Below are the most frequently asked questions that will help you to:

- understand the process;
- know what will happen at an review hearing;
- understand how Independent Review Panels make their decisions.

1 Who will be at the review hearing?

- You and your partner; friend; supporter; representative or legal adviser; and, if you wish, your son / daughter
- The Independent Review Panel (3 members)
- The Clerk to the Review Panel
- If attending, the legal or other representative of the Governing Body
- The Headteacher of your son's/daughter's school
- Any witnesses called by either the school or by you
- If attending, the Education Representative from the Local Authority
- If attending, and where relevant, the alleged victim or his / her representative may be present for part of the review hearing

Sometimes there is also an observer. This may be someone who is training to be a Review Panel Member, a Review Clerk or a Solicitor.

You will be asked if you object to an observer being present for any part of your review hearing.

2 Who are the independent review panel members?

The IRP will have 3 members and:

- One member must be, or have been within the previous five years, a Headteacher of a school;
- One member must be, or have been, a governor of a maintained school, provided that they have served as a governor for at least twelve consecutive months within the last five years, *and they are not teachers or Headteachers*;
- One member must be a lay person, that is, someone without personal experience in the management of any school or the provision of education in any school (disregarding any such experience as a school governor or in any other voluntary capacity).

Note The Lay member must be the Chairperson of the Panel

3 Is anyone disqualified from sitting on the review panel?

Yes. The following people **cannot** sit on the Review Panel:

- any member of the authority or of the governing body of the school in question;
- the current or a former Headteacher of the excluding school;
- any person employed by the authority other than as a Headteacher;
- any person who has, or at any time has had, any connection with –
 - the authority or the school, or with any person within the above point,
 - or the pupil in question or the incident leading to his / her exclusion,
 - of a kind which might reasonably be taken to raise doubts about his / her ability to act impartially

No member of the IRP will have any connection with the excluding school or any school which your son / daughter might attend if he/she is not reinstated.

4 What powers does the review panel have?

The IRP does not have the power to reinstate your child but can decide to:

- uphold the exclusion, i.e. refuse your application; or
- recommend that the governing body reconsiders their decision; or
- quash the decision and direct that the governing body / proprietor considers the exclusion again.

The IRP may only quash the decision on the principles applicable to judicial review. Therefore, the IRP should apply the following tests:

- **Illegality** – did the Head Teacher / Principal and/or Governing Body act outside the scope of their legal powers in taking the decision to exclude?
- **Irrationality** – was the decision of the Governing Body not to reinstate your child so unreasonable that it was not one a sensible person could have made?
- **Procedural Impropriety** - was the process of exclusion and the Governors' consideration so unfair or flawed that justice was clearly not done?

NOTE

Procedural impropriety means not simply a breach of minor points of procedure but something that has a significant impact on the quality of the decision making process. The Department for Education's Guidance (DfE) (paragraph 149) gives the following examples:

- Bias;
- Failing to notify parents of their right to make representations;
- Governing Body making a decision without having given parents an opportunity to make representations;
- Failing to give reasons for a decision; or
- Being a judge in your own cause e.g. if the Head Teacher who took the decision to exclude were also to vote on whether to uphold the exclusion.

The IRP may also:

- a) direct the governing body to place a note on your child's educational record;

- b) in the case of a local authority school/PRU, order that a readjustment **must** be made to the school's budget **or**, in the case of an Academy, order that the Academy **must** make a payment directly to the local authority in which the Academy is located, in the **sum of £4,000** if, following a decision by the IRP to quash the original decision, the governing body:
- i) reconsiders the exclusion and decides not to reinstate your child (where you want your child to be reinstated), or
 - ii) fails to reconsider the exclusion within 10 school days after notification of the IRP's decision.

5 What is the role of the clerk to the review panel?

The Clerk is there to ensure that the hearing is fair and that both sides are able to put their case and will help you if you have any difficulty.

The Clerk does **not** have any say at all in the Review Panel's decision but is there to:

- explain the basic procedure and deal with any questions about the process
- ensure the relevant facts are established
- make sure each party is heard in turn
- be an independent source of advice on the law and procedure
- record the proceedings, decisions and reasons
- after the review, notify all concerned of the Review Panel's decision

6 What is the role of the representative of the school's governing body at the review hearing?

The GB representative is responsible for presenting the case for the school stating why your son / daughter was permanently excluded and answering any questions raised by you and the IRP members.

The Governing Body's (GB) representative is **not** involved with the decision making process of the IRP review hearing in any way.

Also, in the same way that you can ask the GB representative questions about the GB's case, to ensure a fair hearing, (s)he may ask you questions about your case.

7 What is the role of the local authority officer at the review hearing?

The Local Authority Officer's role is not to give the LA's view on the merits of the particular exclusion but (s)he can make a statement in general terms about e.g. how other schools in the area have dealt with similar incidents.

The Local Authority officer is **not** involved with the decision making process of the IRP review hearing in any way.

8 What is the role of the SEN expert at the hearing?

The Special Educational Needs (SEN) expert acts like an expert witness, provides impartial advice to the Independent Review Panel (IRP) on how special educational needs might be relevant to the exclusion, which should be based on the evidence given to the IRP.

The focus of the advice should be on whether the school's SEN policies, or the application of these policies in relation to your child, were legal, reasonable and procedurally fair.

If the SEN expert considers this was not the case s/he should, where possible, advise the IRP on the possible contribution this could have made to the circumstances of your child's exclusion.

The SEN expert should not criticise the school's policies or actions simply because s/he considers a different approach should have been followed or because another school might have taken a different approach.

Where the school has not recognised your child has SEN, the SEN expert should advise the IRP on whether s/he considers the school acted in a legal, reasonable and procedurally fair way with respect to identifying any SEN your child may potentially have, and any contribution that this could have made to the circumstances of your child's exclusion.

Important

The SEN expert's role does **not** include making an assessment of your child's special educational needs.

9 Should I attend the review hearing?

Yes, if at all possible! You are the best person to tell the Review Panel why you think your son / daughter should not have been permanently excluded and you will be able to provide information to help the IRP make an informed decision.

10 Can I bring someone with me to help me present my case?

Yes. You may bring a member of your family, a friend, a neighbour, or a representative along with you, either to help you say what you want or to speak for you or to simply give you support.

You may be represented by a legal or other representative but as this is not a court of law the IRP aim to keep the review hearing as informal as possible.

Please note that any legal costs incurred by you are not recoverable in any event.

11 Can I bring my son / daughter to the review hearing?

Yes. Your son / daughter should normally be allowed to attend the hearing and to speak on his / her own behalf if he/she wishes to do so and you agree.

12 What happens if I do not attend the hearing?

If at all possible, you should attend and the review date is normally arranged so that you are able to attend.

However, if at the last moment you cannot attend the hearing for a genuine reason, the IRP will meet and try to adjourn to another date wherever possible.

It is important that you contact the Clerk to the Review Panel as soon as possible to let the Clerk know if you have any problems.

Important

If you, or someone who can put your case, cannot attend and another date cannot be arranged, your case will be heard in your absence and your review will be decided on the information that is available at the hearing.

13 What information will be available for the Review Hearing?

Where possible in the given time scales, you will normally be sent a set of papers five working days before the review hearing, which will include:

- The statement of decision of the GB;
- Your review form or letter;
- Any papers you have supplied to support your grounds for review;
- Relevant correspondence between yourself and the school;
- Any witness statements;
- Any documentation to support the school's case;
- Any relevant school policy e.g. the school discipline/behaviour policy, race equality policy, bullying policy, drug policy, SEN policy; If submitted, a written representation from the Headteacher, and/or the Governing Body, and/or the Local Authority and
- Any other relevant documentation

Please note

- that it may also include a written statement from the alleged victim or their representative – see also Question 24.
- The set of documents you receive will also be sent to the Review Panel and its Clerk, the Governing Body representative, the Local Authority representative, and the Headteacher.

14 How can I prepare for the review hearing?

You are responsible for presenting your case, for deciding what you would like to say at the review hearing.

So **before the review hearing** you are advised to:

- Contact Coram Childrens Legal Centre &/or others for help (see Appendix 2 for full list of sources of help and information to assist you)
- Send any additional evidence to the Clerk to the Panel as soon as possible
- Familiarise yourself with the order of the hearing (see Appendix 3)
- Make a note of any questions you may have about your review
- Make sure you have looked at the Governing Body's (GB) case papers before the review hearing
- Make a note of any questions you would like to ask the GB representative about the exclusion
- Spend some time deciding what you would like to say when the IRP invites you to explain your reasons for reviewing – it might be helpful to make a note of the main points e.g. any special educational needs and/or medical factors, any extenuating or mitigating circumstances, any claims of disability or racial discrimination; any factors which you believe the Headteacher or Governing Body did not consider properly; and
- On the day of the review hearing, **bring with you to the review:** the review papers sent to you (normally) five working days before the review; any additional documents which you have not been able to submit earlier; any notes of questions you may have; and this guidance.

15 How long does a review hearing take?

It is difficult to say exactly but it can normally be at least the morning and often continues in the afternoon because it is a new hearing and the IRP will look at all the evidence and the circumstances of your son's/daughter's case.

Note

You are advised to **arrive at least 15 minutes before the time shown** on your letter as the Clerk will speak to you before your review starts in case you have any last minute queries about anything at all.

16 What will happen at the review hearing?

We try to make review hearings as informal as possible and, to ensure that both sides have the same opportunity to speak, the IRP will normally follow the order of hearing shown on Appendix 3.

Important

No party attending the hearing will be present alone with the Review Panel in the absence of the other party.

17 Does the Review Panel ever adjourn the review hearing?

Yes. The IRP may adjourn the review hearing to later in the same day or another day in the following circumstances:

- If substantial new issues are raised for the first time at the hearing it may be necessary to adjourn to allow any party taken by surprise to consider the issues; or
- If a lot of additional information is submitted on the day of the hearing and it is in the best interests of both parties that the IRP ensures it gives full consideration to the new information before it; or
- If the IRP requires further information to be obtained; or
- If it takes longer than anticipated to deal with the case, the Review Panel may have to adjourn the review to another day; or
- If an IRP member is ill or absent; or
- Where there are parallel criminal proceedings, the IRP may adjourn the hearing – for more information see next question; or
- For any other appropriate reason.

Note

If necessary, the IRP may adjourn more than once.

18 Why would the Review Panel adjourn the review hearing if there were parallel criminal proceedings?

Where a school related incident is also the subject of a police investigation which may result in criminal proceedings, the evidence available to the IRP may be very limited. For example:

- They may not be able to hear evidence from relevant witnesses; or
- They may not be able to consider relevant material; or it may not be known whether a criminal charge is to be brought; or
- If a charge has been brought, the eventual outcome may be uncertain.

Therefore, at the hearing the IRP must consider, taking into account any representations made by you and the other parties and on the advice of the Clerk, whether or not the IRP can hear the review or whether it should adjourn the hearing pending the outcome of any police investigation and/or any criminal proceedings that may be brought.

The fact that parallel criminal proceedings are in progress will not necessarily mean that the review hearing will be adjourned, therefore the IRP will consider the relevant factors.

Relevant factors for the IRP to consider are:

- whether it would be helpful to know what charge, if any, is to be brought against your son / daughter; **Please note** - If there is no charge it may help your child's case or, if a charge is brought, your son / daughter may be inhibited in presenting his / her case.
- whether relevant witnesses and documents are available
- the likelihood of delay if the hearing were adjourned and the effect it may have on any alleged victim, your son / daughter or the school itself;
- whether an adjournment or, as the case may be, declining to adjourn, might result in an injustice.

19 What happens next if the IRP adjourns the review hearing because of parallel criminal proceedings?

- The Local Authority should take steps to ensure your son's/daughter's continuing education pending the hearing.
- The IRP's Clerk will be responsible for monitoring the progress of any police investigation and/or criminal proceedings and for reconvening the IRP at the earliest opportunity.

20. Once the criminal proceedings have been disposed of, what account does the IRP have to take of them when deciding on the review?

The IRP should have regard to any information about the criminal proceedings that are relevant to the issues the IRP has to decide upon.

Note

Even if your son / daughter has been acquitted of any charge relating to the behaviour for which he/she was excluded, the acquittal may be due to a legal technicality or the stricter standard of proof in a criminal court. It will not necessarily mean that your son / daughter did not do what he/she was alleged to have done.

21 What can I say at the review hearing?

It is very important that you, or your representative, tell the IRP everything that is relevant to your case. The review is confidential so please feel free to say whatever you need to.

The members of the IRP and the Clerk want to be certain that you do not leave your review thinking that things have been left unsaid.

The members of the IRP have to make their decision on what information they have been given; so make sure you tell them what is relevant and important about your case.

22 Can I bring any witnesses?

Yes you can, subject to the following:

- If your witness is a pupil at the school they may only attend if they do so voluntarily and with their parent's consent. It will normally be more appropriate for the IRP to rely on written statements.
- If you want character witnesses, it is at the discretion of the IRP but will normally be allowed unless there is good reason to refuse.

Note

- any witnesses who attend the review must be prepared to answer any questions; and
- it is for the IRP to decide whether any witnesses should stay for the rest of the hearing.

23 Will the Governing Body bring any witnesses?

The GB may wish to call witnesses who saw the incident that gave rise to the exclusion. They may include any alleged victim(s)*, any witness(es) to the alleged incident(s), or any teacher, other than the Headteacher, who investigated the incident and interviewed pupils. (* See next question)

Important

- In the case of witnesses who are pupils of the school, they may only attend if they do so voluntarily and with their parent's consent. It will normally be more appropriate for the IRP to rely on written statements;
- Although you or the IRP may request that witnesses attend, the IRP cannot make witnesses attend the hearing;
- Any witnesses who attend the review must be prepared to answer any questions; and
- It is for the IRP to decide whether any witnesses should stay for the rest of the hearing.

24 Can the alleged victim, or his / her representative, attend the review hearing?

If they do not attend as a GB witness, (s)he, or his / her representative, may attend to tell the IRP about the impact the incident has had on them. Only the IRP can ask questions. Alternatively, they may submit a written statement.

25 What evidence does the GB produce at the IRP hearing?

Where the GB's case rests largely or solely on physical evidence, and where you dispute the facts, then if practicable the physical evidence should have been retained by the school and be available to the IRP.

Where there have been difficulties in retaining physical evidence, photographs, or signed witness statements are acceptable.

All written witness statements must be attributed and signed, unless the school has good reason to protect the anonymity of pupils.

Important

The general principle is that an accused person is entitled to know the substance and source of the accusation.

26 What consideration must the IRP give to written statements?

The IRP must consider:

- what weight to attach to written statements, whether made by pupils or adults, as against oral evidence; and
- that a written statement may not include all the relevant issues nor can the person be questioned about what they have written.

27 Can new evidence be put forward?

All parties may put forward new evidence about the event that led to the exclusion. This may include evidence that was not previously available to the Headteacher or the GBDC.

Important

The school may **not** introduce new reasons for the exclusion.

28 What does the IRP have to take into account in coming to its decision about my review?

The law requires the IRP to have regard to any guidance given by the Secretary of State for Education (DfE). However, it should not fetter the IRP's discretion.

In reviewing the GB's decision:

- 1) The IRP must consider the interests and circumstances of your child, including the circumstances in which your child was excluded, and have regard to the interests of other pupils and persons working at the school/Academy/PRU (including persons working voluntarily).
- 2) Where relevant, the IRP must seek and have regard to the SEN Expert's view of how special educational needs might be relevant to your child's exclusion.
- 3) Where making a claim to IRP alleging **disability and/or other discrimination**, whether there has been discrimination within the meaning of the Equality Act 2010.

29 How does the IRP consider my review if I believe that my son/daughter has been discriminated against in his/her exclusion in terms of the Equality Act 2010?

In considering these reviews, the IRP must take into account the provisions of the Equality Act 2010. (See Appendix 1)

30 How does the IRP make its decision at the end of the review hearing?

The IRP will make its decision in the following way:

NOTE – Standard of Proof

The DfE Guidance states that IRPs must apply the civil law standard i.e. on the balance of probabilities it is more likely than not that something is true.

A What must IRP find in order to quash the governors' decision and direct that the Governing Body (GB) consider the exclusion again?

REMINDER

The IRP may only quash the decision on the principles applicable to judicial review. Therefore, the IRP should apply the following tests:

- **Illegality** – did the Head Teacher / Principal and/or Governing Body act outside the scope of their legal powers in taking the decision to exclude?
- **Irrationality** – was the decision of the Governing Body not to reinstate your child so unreasonable that it was not one a sensible person could have made?
- **Procedural Impropriety** - was the process of exclusion and the Governors' consideration so unfair or flawed that justice was clearly not done?

i.) What does 'illegality' mean?

This includes:

- a) where the decision-maker acted outside their authority.

Example: if a member of staff other than the [Acting] Headteacher permanently excluded your child

- b) where exclusion unlawful.

Examples (Paragraph 12 of DfE Guidance):

- if excluded child had additional needs or a disability which school considered it could not meet.
- child was excluded for a reason such as:
 - * academic attainment/ability;
 - * the action of a pupil's parents;
 - * the failure of a pupil to meet specific conditions before they are reinstated.

- c) if school unlawfully discriminated against a child under Equality Act 2010

ii.) What does irrationality mean?

- a) An irrational or unreasonable decision is one that was not reasonably open to the decision-makers. This is also known as "Wednesbury unreasonable" based on a Court case (1948).

For a decision not to be irrational:

- it must be objectively rational and based on evidence;
- the decision maker must take into account all relevant factors or considerations;
- It should not be made arbitrarily or on the basis of personal feeling; and
- It must be proportionate i.e. was the decision to exclude so much out of proportion in the circumstances of the case.

- b) The decision maker must be in possession of accurate and up to date information; and, where information is lacking, must obtain it. Also, where representations have been made, the decision maker should take account of them and should have regard to school policies and DfE guidance.

The Head Teacher / Governing Body should have had as much information as possible that was relevant to their decision to permanently exclude a child.

c) The decision maker must not take into account irrelevant considerations.

Examples of irrelevant considerations include:

- Assumptions not based on evidence
- Personal experience of a different situation
- Dislike for the person affected by the decision
- The need to get business finished quickly
- Information not in front of them in the particular case

d) The decision maker must not take a decision which is so unreasonable that no reasonable person properly directing him/herself could have taken it.

The Courts have explained this further:

“a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it” **OR**

It was “beyond the range of responses open to a reasonable decision-maker”

iii.) **What does procedural impropriety mean?**

REMINDER

Procedural impropriety means not simply a breach of minor points of procedure but something that has a significant impact on the quality of the decision making process. The DfE’s Guidance (paragraph 149) gives the following examples:

- Bias;
- Failing to notify parents of their right to make representations;
- Governing Body making a decision without having given parents an opportunity to make representations;
- Failing to give reasons for a decision; or
- Being a judge in your own cause e.g. if the Head Teacher who took the decision to exclude were also to vote on whether to uphold the exclusion.

EXAMPLES:

a) Bias

The Courts have stated an **appropriate test for bias** is:

Whether the fair-minded and informed observer, having considered the relevant facts, would conclude that there was a real possibility that the decision-maker was biased.

Simpler test: The decision maker must have no personal interest in the outcome of the case.

Examples:

- If a Governor member who upheld the Headteacher's decision to permanently exclude your child had a child in the same class as your son/daughter
- A governor knows your child personally; or has previously expressed an adverse view about your child in other circumstances, which indicates that their judgement is affected; or has dealt with your child before and had decided against your child.

b) Procedural correctness: the right to a fair hearing

The following are points the IRP will consider:

- Had the pupil been interviewed before excluded?
- Was the Governing Body quorate i.e. a minimum of 3?
- Were parents given sufficient notice of the GB meeting?
- Were parents notified of their right to make representations to the GB?
- Were parents informed of their right of (or prevented from) being represented or being accompanied by a friend?
- Did Governing Body have regard to its duty to make reasonable adjustments to enable parents to attend the GB meeting e.g. where a parent or pupil has a disability in relation to mobility or communication that impacted on their ability to attend the GB meeting or to make representations?
- Did parents have sufficient time to prepare their case?
- Were parents provided with the same evidence/documentation as the Governors?
- Were parents informed of their right to respond?
- Were parents given an opportunity to question witnesses?
- Were parents given an opportunity to present their case?

c) The duty to give reasons

- Did GB set out its reasons for upholding the exclusion in sufficient detail to enable all parties to understand why it made that decision?

d) Legitimate expectation

- Did the Head Teacher / Governing Body exclude in line with DfE Guidance, SEN Code of Practice and in line with the school's own policies?

B On what basis would an IRP recommend that the Governing Body reconsider its decision?

Where the criteria for quashing a decision have not been met, the IRP should consider whether it would be appropriate to recommend that the Governing Body reconsider their decision not to reinstate your child.

The DfE Guidance (paragraph 150) states this should not be the default option, but should be used when evidence or procedural flaws have been identified that do not meet the criteria for quashing the decision but which the IRP considers justify a reconsideration of the Governing Body's decision.

The DfE Guidance (paragraph 135) also states that if evidence is presented that the IRP considers is unreasonable to have expected the Governing Body to have been aware of at the time of their decision, the IRP can take account of the evidence when deciding whether to recommend that the Governing Body reconsider their decision.

C When would the Independent Review Panel uphold the exclusion?

Where the IRP find that the criteria for quashing the Governing Body decision have not been met; and the IRP considers there is no evidence or procedural flaws that justify recommending the GB reconsiders their decision, the IRP should uphold the decision to permanently exclude your child.

31 Why does the Chairperson or Clerk ask if we have had a fair opportunity to put our case?

The members of the IRP and the Clerk want to be sure that you and the GB representative feel that you have had the opportunity to present your case in the way you wanted to. They also want to be sure that you both feel you have been treated fairly and that the IRP has listened to you. If you do not think that this is the case, please tell the Chairperson so that it can be put right immediately. It is very important that you leave the room satisfied you have said everything and feeling that you have been treated fairly.

32 How will I find out the outcome of my review?

Then the Clerk will send you a letter that sets out the reasons for the IRP's decision, which will be sent by the end of the fifth working day after the conclusion of the hearing of the review.

33 Is the IRP's decision binding on anybody?

Yes. You, the Governing Body, the Headteacher and the LEA are bound by the IRP's decision.

34 What should I do after the Clerk informs me of the decision?

It depends on whether or not the IRP has indicated that your child be reinstated:

- **If the Panel recommends that the governing body reconsiders their decision, or if the Panel quashes the decision and directs that the governing body considers the exclusion again** you should contact the Headteacher as soon as possible.

However, if the IRP decides that, reinstatement is not a practical way forward you should contact the Local Authority officer as soon as possible so that (s)he can make other arrangements for your child's education.

- **If the Panel decides to uphold the headteacher's decision to exclude** you should contact the Local Authority officer as soon as possible so that (s)he can make other arrangements for your child's education.

35 What can I do if I am unhappy about the review process?

If you think that the proper procedures have not been followed you can ask the Local Government Ombudsman (LGO) to investigate. This is not a right of review as the LGO can only investigate written complaints about maladministration on the part of the IRP.

Maladministration means that there has been a fault in the way something has been done or not done. It has to relate to issues, such as, you believe the IRP has not been properly set up or has not followed procedures correctly. On the other hand, the LGO would not criticise the decision of an IRP, which fairly took into account all the evidence presented by both the parents and other parties to the review, just because the parents disagreed with the decision reached.

If, following investigations, the LGO finds there has been maladministration that might have caused you an injustice, one of the remedies sometimes suggested is that there should be a fresh review hearing with different Review Panel members.

36 What is the role of the Secretary of State for Children, Schools and Families (DCSF)?

The Secretary of State provides guidance on exclusions and can consider complaints about the Governing Body Discipline Committee's operation of the exclusion procedure. However, (s)he has no power to consider complaints about the decision of an Independent Review Panel.

37 What if I think that the decision of the Review Panel was wrong in law?

If you or the Governing Body, consider that the decision of the IRP is legally in error, either of you could apply for a judicial review.

If a judicial review were granted, the Court would consider the lawfulness of the IRP's decision. If it found the IRP's decision to be unlawful or unreasonable (irrational or perverse in the legal sense), it could overturn the decision, or it could order that a fresh review hearing be set up with new Review Panel members.

Important

If any party to the review wishes to consider this course of action they should take independent legal advice **as soon as possible** as normally there is a time limit.

APPENDIX 1 DISCRIMINATION CLAIMS

How does the IRP consider my review if I believe that my son/daughter has been discriminated against in his/her exclusion in terms of the Equality Act 2010?

Under the Equality Act 2010 schools have a duty not to directly or indirectly discriminate against, harass or victimise pupils because of their sex, race, disability, religion or belief, sexual orientation, because of pregnancy/maternity, or because of a gender reassignment. For disabled children this includes a duty to make reasonable adjustments to policies and practice.

These duties need to be taken into account when deciding whether to exclude a pupil. Schools must also ensure that their policies and practices do not discriminate against pupils by unfairly increasing their risk of exclusion.

The IRP will consider whether your son/daughter has been discriminated against either directly or indirectly, harassed or victimised on any of the above grounds.

In considering your claim, the IRP must take into account the provisions of the Equality Act 2010.

The following provides additional information regarding disability discrimination claims. Since 2002 schools have been under a duty not to discriminate against disabled pupils, which includes physical or mental impairments (e.g. Tourette's Syndrome), in their access to education.

Justification

There are occasions where less favourable treatment (e.g. permanent exclusion) may be justified and, if it can be, it is not unlawful discrimination. It could be justified if it is a "proportionate means of achieving a legitimate aim". However, it might not be possible to justify it if there were reasonable adjustments that could have been taken but were not.

Reasonable adjustments

In a case involving disability, if the responsible body has not complied with its duty to make relevant reasonable adjustments it will be difficult for the responsible body to show that the treatment was proportionate.

the following might be taken into account in considering what is reasonable:

- whether making an adjustment would have made any difference;
- was it practical for the school to have taken such a step?;
- the effectiveness of adjustments that had been taken;
- the financial and resource implications;
- would the child remaining in the school be compatible with the efficient education of other pupils?; would there have been a health and safety risk?

Therefore, **the IRP will consider whether:**

- your son/daughter is disabled as defined by the legislation;
- the reason for the exclusion is because of something arising from your son's/daughter's disability;
- the Responsible Body can justify the unfavourable treatment (exclusion) by showing that it was a "proportionate means of achieving a legitimate aim";
- any reasonable adjustments could have been made

It is **not** discrimination if, at the time, the Responsible Body did not know and could not reasonably have been expected to know that a pupil was disabled.

However, the Responsible Body would need to show it had been proactive in seeking out information about a pupil's disability.

APPENDIX 2: -USEFUL ADDRESSES

Enquiries about this Guidance and the reviews process in Wokingham should be addressed to:

Clerk to the Review Panel
Democratic Services
Wokingham Borough Council, Shute End
Wokingham, RG40 1BN

Tel: 0118 974 6058 or 974 6091

Fax: 0118 974 6057

Email: democratic.services@wokingham.gov.uk

OTHER USEFUL ADDRESSES AND CONTACT DETAILS:

Free advice:

The Coram Childrens Legal Centre:

Tel: 01206 714650
Riverside Office Centre
Century House North
North Station Road
Colchester C)1 1RE
DX: 3616 Colchester
Website: www.childrenslegalcentre.com/

BPP Law School Pro Bono Centre

Email: SchoolExclusions@bpplaw.co.uk

Advisory Centre for Education:

Website: www.ace-ed.org.uk

IPSEA

Advice on SEN & disability issues

Tel: 0800 018 4016)

Website: www.ipsea.org.uk

The Equality & Human Rights Commission (EHRC):

Advice / help on discrimination claims:

FREEPOST RRLG-GHUX-CTR

Arndale House, Arndale Centre

Manchester, M4 3EQ

Telephone: 0845 604 6610

Textphone: 0845 604 6620

Email: englandhelpline@equalityhumanrights.com

Website: www.equalityhumanrights.com

The Secretary of State for Education can be contacted at:

Department for Education (DfE)

Sanctuary Buildings

Great Smith Street

London SW1P 3BT

Tel: 0370 000 2288

Typetext: 18001 0370 000 2288

Website: www.education.gov.uk/help/contactus/dfe

DfE Exclusion Guidance – available from:

<http://www.education.gov.uk/schools/pupilsupport/behaviour/exclusions/g00210521/statutory-guidance-regs-2012>

To obtain **Education Acts and relevant Regulations:** (SI 1033 of 2012)

Website: www.legislation.gov.uk

Complaints regarding maladministration:

The Local Government Ombudsman – NOT Academies:

PO Box 4771,

Coventry

CV4 0EH

Tel: 0845 602 1983 or 0300 061 0614

Fax: 0247 682 001

Email: advice@lgo.org.uk

Website: www.lgo.org.uk

Academies: *Complaints to* Education Funding Agency:

Write to DfE address or use its online school complaints form

APPENDIX 3: Order of Hearing

The following suggested procedure should be followed:-

- (i) The Chairman shall first call upon the Head teacher to present his / her case;
- (ii) The parent, the Review Panel and the other parties present shall have the opportunity of asking the Head teacher questions concerning his / her case;
- (iii) A nominated governor of the School shall then have the opportunity to make oral representations;
- (iv) The parent, the Review Panel and the other parties present shall have the opportunity of asking the governor representative questions concerning their statement;
- (v) The parent (or, if aged over 18, the pupil) shall then put his / her case.
- (vi) The Review Panel and all other parties present shall have the opportunity to ask the parent (or pupil) questions in relation to his / her case;
- (vii) A nominated Local Authority officer shall then have the opportunity to make oral representations;
- (viii) The parent, the Review Panel and all other parties shall have the opportunity to ask the Local Authority Officer questions.
- (ix) Each party will then have the opportunity to sum up - this should not include any new facts.
- (x) The Chairman shall then invite all parties to withdraw from the Review to allow the Review Panel to reach their decision. The Clerk to the Panel and legal advisor to the Panel, only, shall remain with the Panel for the purpose of providing advice as to procedure and the law. The Panel shall make the decision.