

SCHOOL EXCLUSION APPEALS

A guide for parents appealing
against an Exclusion
by a Buckinghamshire School

RESOURCES PORTFOLIO
LEGAL AND DEMOCRATIC SERVICES



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School Exclusion Appeals: Parents' Guide to Submitting an Appeal

Introduction

This guidance is provided for parents who are considering appealing against a decision to permanently exclude their child from school. Please read this booklet carefully.

You should have already received formal notice from your child's school regarding the exclusion, a decision that will have been confirmed by the Governing Body's discipline committee. You will now need to decide whether or not you feel that this decision was appropriate given all the circumstances of your child's individual case.

Buckinghamshire County Council is the Local Authority for Buckinghamshire. The term 'LA' will be used in this booklet to refer to the Local Authority.

Points to consider

The right to appeal is a right available to all parents, irrespective of the reasons for the permanent exclusion. On confirming permanent exclusion, the Governing Body of the school must provide you with reasons for the exclusion. Consider the reasons given very carefully and you may want to also think about the following:

- Would I like my child to return to the excluding school? (even if you don't it is still possible to appeal against the exclusion).
- Was my child responsible for the incidents leading to permanent exclusion?
- Do I agree with the School's decision to permanently exclude my child and is this a proportionate response, given the circumstances?

Finally, do you feel that the School and the governing body have considered your views carefully and administered the exclusion process in the correct way? In other words, is there anything which has occurred (or not) which you feel may have affected the outcome in some way? If you are unsure about this, independent advice can be sought from the Advisory Centre for Education (ACE). Contact details are provided at the end of this booklet.

An Independent Panel will consider the appeal objectively and impartially. The Panel members will all be completely independent of your child's school and of the LA (and the Council as a whole, although Council employees - such as the Clerk - do provide administrative support to the Panel). This will be a fresh opportunity for you to put your case and the Panel will base its decision on the information provided by you and the school. This is your appeal and your final opportunity to overturn the school's decision (if this is what you would like to do). The school is allowed to defend its decision. The school and the governing body are asked to provide evidence to support their decision to exclude and they can be questioned on any aspect of the exclusion process by both you and the members of the Panel.

Registration at another school, or pupil referral unit

You might not wish your child to return to the excluding school but to appeal simply on the grounds that you want to clear your child's name. Registering at another school will not invalidate your appeal and you have a right to refuse to return your child to the excluding school, should your appeal be successful.

When will the appeal be heard?

We will contact you as soon as we have received your form. A hearing date for the Independent Appeal Panel to hear your appeal must be set within **15 school days** of receiving your appeal form. This might mean that the process is delayed if any school holidays or inset days intervene.

In exceptional circumstances, this period may be extended, and the full hearing held at a later date, for example, where there are parallel criminal proceedings being considered at the same time. The reason for this is that the Panel hearing the appeal must satisfy itself that it has sufficient evidence on which to base its decision. In exceptional circumstances the hearing may also be delayed with the discretionary agreement of the school and the LA.

The hearing will be held at a date and time convenient to you **and** to the school and its governing body, taking into account the availability of all parties, so far as it is reasonably practicable. An officer from the Appeals Team will contact you, and the school and its governing body, in order to discuss the arrangements for the hearing. Establishing a suitable date and time for all parties can sometimes be complicated and your co-operation and flexibility in this would be helpful, in order to avoid any unnecessary delays.

What will happen next?

Once the practical arrangements for the hearing have been confirmed, the Appeals Team will send you a set of papers, normally 5 working days prior to the date of the hearing. This will include the following documents:

- Letter confirming the arrangements
- Order of business
- A copy of your appeal form together with any papers submitted in support of the appeal
- A statement from the school and its governing body providing the reason or reasons supporting the decision to permanently exclude your child, together with any supporting documents
- Map showing venue for hearing and directions

You will also be notified of the names of the clerk and the three IAP members that will hear your appeal. Please note, however, that these names are subject to last minute change in unavoidable circumstances.

Whilst the appeal process continues, your child will remain on the roll of the school until the Appeal Panel has made its decision. During the first five school days of permanent exclusion the school should send work home for the pupil to complete. From the sixth school day, the LA is responsible for ensuring that suitable full-time education is provided.

The Independent Appeal Panel

The Education (Pupil Exclusions and Appeals) (Maintained Schools) (England) Regulations 2002 and The Education (Pupil Exclusions and Appeals) (Pupil Referral Units) (England) Regulations 2002 require the LA to set up Independent Appeal Panels to hear appeals against decisions made by Governing Bodies not to reinstate a pupil who has been permanently excluded from school. The Panel will normally consist of three members made up of three categories:

- The chair must be a lay member, someone who has not worked in school in a paid capacity, although they may have been a school governor or worked as a volunteer;
- One 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 (but must not be or have been a teacher or head teacher in the last 5 years);
- One must be, or have been within the last 5 years, a head teacher of a maintained school. If the exclusion is from a Pupil Referral Unit (PRU) then this representative can be either a head teacher of a maintained school or a teacher in charge of a PRU.

The Panel is constituted and guided by the following publication by the Department for Children Schools and Families (DCSF); **“Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units – September 2007”**

Members of the Panel are appointed by Buckinghamshire County Council and receive regular training and support. The members of the Independent Appeal Panel (“IAP”) who will hear your appeal will not have been previously involved in your child’s case. They will not be connected with the school from which your child was excluded.

Who May Attend the Hearing?

The following people are entitled to attend the hearing and some or all of them do, depending on each individual case:

- Parent(s), accompanied by friend, relative or legal representative, who may make oral representations
- Head teacher, who may make oral representations
- Representative from the school's governing body, who may make oral representations
- Local Authority representative, who may make oral representations
- Those providing evidence such as witnesses, an alleged victim or character referee, may attend at the discretion of the Panel or the Clerk, but may be asked to wait outside, at particular points during the hearing.
- The excluded child – please see page 8 “Must My Child Go To The Appeal Hearing?”

The Role of the Clerk

The role of the Clerk is to provide you and the school and its governing body with impartial support whilst arrangements for the hearing are made. This does not extend to advising either party as to the content or conduct of their respective cases. It is the Clerk's responsibility to ensure that everybody involved in the process clearly understands the process and what is required of him or her.

The Clerk remains neutral and independent and cannot advise you on how to conduct your appeal. The Clerk is an independent source of advice on procedure for all parties and will have received training and have experience in the conduct of appeal hearings. The Clerk must also ensure that all the relevant facts are established and that the appeal hearing is fair.

When the Panel withdraws to make its decision in private, the Clerk remains with the Panel but only for the purpose of offering advice on procedure or law, and recording the decision itself, and the reasons for it. **The Clerk takes no part in the discussion or the decision making process.**

During the course of the hearing, the Clerk is required to take notes of what is said. **These notes will remain confidential and are kept confidentially for a period of five years.** Proceedings are not tape-recorded.

The Clerk will communicate the Panel's decision to you in writing, within two school days of the hearing.

Should I attend the hearing?

It is very strongly advised that you attend the hearing. The appeal is an opportunity for you to give as much information as possible in order to help the Panel reach an informed and balanced view on events which led to the permanent exclusion.

Remember also that the school will be able to present its own views, which you may disagree with.

You may want to bring along a friend for support or a representative to help present your case. In either case please notify the Appeals Team before the hearing of the names and contact details of those accompanying you and what their roles are. Please note you will be responsible for ensuring that they are able to attend and it is up to you to agree any arrangements with them.

If for some reason you find that you are unable to attend the hearing, please inform the Appeals Team as soon as possible. It may be possible to make alternative arrangements and perhaps convene a new date, if this is appropriate. If the hearing cannot be deferred, your case can be heard in your absence and the Panel will consider all written evidence before coming to a decision.

If you have any special requirements, for example, if you have a disability or require an interpreter (language/signer), please inform the Appeals Team, who will address your requirements.

Do I need legal representation?

This is optional. The appeal hearing is not a court of law and every attempt is made to ensure informality in the conduct of proceedings. However, if you feel that it would assist you to have legal representation, then you may wish to appoint a lawyer or barrister at your own expense. The Appeals Team have a specific duty to notify the other party should either side intend to bring legal representation, please therefore let us know as soon as you possibly can if you do intend to appoint a legal professional.

Must my child go to the appeal hearing?

No. Children often do not attend. The members of the Panel understand that this is not an easy process for a young person. Unless there are strong reasons against, you will be allowed to bring your child if you wish. You cannot, however, be made to do so. Do you think it would help if your child were there for all or part of the time? Decide beforehand if you are happy for them to be questioned or if you just want them to make a statement and then leave. Make it clear to the Appeals Team or the Clerk (on the day of the hearing) which it will be.

What will happen at the hearing?

Every attempt is made to ensure that the hearing is conducted without excess formality, within flexible and clear guidelines. The order of business (which will be circulated to you before the hearing) ensures that everyone has an opportunity to say all that they want to say, and will normally follow the stages outlined below:

1 The case for the school and governing body

A member of the governing body plus a headteacher from the school will be asked to present the school's case

2 Questions

The parent and the members of the Panel ask questions of the school and the governing body or its representative, and any witnesses supporting the school's case

3 The case for the parent

The parent or a representative will be asked to present the case for the excluded pupil

4 Questions

The members of the Panel, the governing body and the school's representative ask questions of the parent, and any witnesses supporting the excluded pupil's case

5 Statement by Exclusions Officer

6 Summing up by the governing body or school's representative

7 Summing up by the parent or representative

Please remember that this is not intended to be followed rigidly, and there are opportunities to go back over anything that you may not understand, is unclear, or which requires further detail. No new issues can be raised by either party at the summing up stage.

How long does the hearing last?

The main aim of this process is to make sure that all parties have a fair and impartial hearing, with every opportunity to say what you need to say, and to ask as many questions as you feel necessary. For that reason, no time limit is set and the hearing will take as long as is necessary for all the information to be put to the Panel by you and by the school. It is not unusual for an exclusion appeal to last all day.

Short Adjournments

It may be necessary for the hearing to be adjourned for a short period, for example, for a break or, to clarify a particular issue. If this is the case, both parties will be asked to leave the room. Neither party may be left on its own in the same room as the Panel. It is possible that a longer adjournment may be required, in which case the hearing can be arranged for an alternative date whilst the information is obtained or considered. It is also possible (although very rare) for the process to take more than a day.

How should I present my case? What should I say?

Everyone who will be involved with your appeal realises and understands that this will be a difficult time for you, your child and your family. It is important to consider very carefully about the impact this process may have on your child. It is strongly recommended that you consult, for example, the Advisory Centre for Education (ACE) contact details are provided at the end of this booklet. A recommended starting point would be to sit down, and make a note of all the events leading to the permanent exclusion. It may help if you bear in mind that the Panel will be considering first whether your child actually did what they are accused of and, if yes then second, whether permanent exclusion was a proportionate response to that conduct. The Panel will probably want to know as much personal details about your child as possible, in order for them to get a full picture, and they may want to know your interpretation of events leading up to the exclusion, and your feelings about, for instance, support measures which were offered before the exclusion.

Evidence and Witnesses

Wherever possible, try to ensure that any documents that you rely upon as part of your submission are sent to the Appeals Team prior to the hearing (we also ask the school to do the same). This is to allow both you and the Panel sufficient time to read and consider any item submitted. Remember, the Panel will receive the same information and case papers as you.

If you intend to raise matters or produce documents at the hearing, which are not covered by your appeal submission, these should also be sent to the Clerk

in good time before the hearing. If substantial new issues are raised for the first time at the hearing, an adjournment may be necessary to allow all parties to consider the issues.

All written witness statements must be attributed and signed. This means that the person making the statement must be the person who observed the incident. The exception to this is where the school determines that it is in the best interests of the pupil witness concerned to remain anonymous and that there is good reason to do so. In such cases, the statements will not be attributed and some names may be blanked out.

The general principle remains that a person accused of something is entitled to know the substance and the source of the accusation. It is at the discretion of the Chairman of the Panel as to whether or not a witness (for either you or the school and the governing body) remains in the room throughout the hearing. It is for the Panel to decide whether any witnesses, having given evidence, should stay for the remainder of the presentation of the case. Any objections by either party will be fully considered by the Panel.

The decision

Your appeal will be considered on its own merits and the Panel will consider all representations made to it. If the Panel decides your child was responsible for the incident(s), which led to the permanent exclusion, it will consider whether permanent exclusion was a proportionate response to that behaviour.

If the Panel decides your child was not responsible, or that permanent exclusion was not proportionate, it will then consider whether he or she can go back to school on a particular date.

When will I hear the outcome of my appeal?

The decision of the Panel is final and binding on all parties. The Clerk will write to you, the school and the governing body by the end of the second school day after the appeal hearing. Where a hearing is held on the last day of a term or outside term-time, the Clerk will try to notify all parties by the end of the second working day after the conclusion of the hearing.

Decision letters are usually posted first class to all parties. In the event that you do not receive your letter by this date, please contact The Appeals Team who can arrange for a further copy to be sent to you by fax or email, as appropriate.

Further remedies available to the parents

Local Government Ombudsman

The Local Government Ombudsman (LGO) can look into cases where there has been a fault in the way a Council has or has not done something. He cannot question what has been done or decided simply because you do not agree with it. For example, the LGO could criticise a case where there was evidence of some administrative fault which affected the decision of the Panel. On the other hand, the LGO would not criticise the decision of a Panel which fairly took into account all the evidence presented by all parties, but the parents disagreed with the decision reached.

Judicial Review

If any party to the appeal considered that the decision of the Panel was legally flawed, they could apply for a judicial review. If 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, it could quash the decision. If appropriate, it could order the LEA to set up a fresh appeal hearing before a newly constituted Panel. It should be noted that there are strict time limits in applying for Judicial Review and this must be done as soon as possible.

The Role of the Secretary of State

The role of the Secretary of State is to provide guidance on the use of exclusions. The Secretary of State cannot intervene in the proceedings or decisions of an Appeal Panel.

*This advice has been prepared with reference to **'Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil Referral Units – September 2007'** * and any subsequent amendments issued by the DCSF. The DCSF monitors and provides advice both to local authorities and parents on procedure and legal requirements.*

The Appeals Team
Legal and Democratic Services

*(*Copies obtainable from Department for Children Schools and Families, tel 0870 000 2288 or can be read at www.dcsf.gov.uk)*

Useful Contact Addresses:

The Appeals Team
Legal and Democratic Services
Buckinghamshire County Council
County Hall
Aylesbury
Bucks
HP20 1UA
Tel: 01296 383384/3677
Email: appeals@buckscc.gov.uk

Advisory Centre for Education (ACE)
1c Aberdeen Studios
22 Highbury Grove
London
N5 2DQ
Tel: 0808 800 5793
Fax: 020 7704 9822
www.ace-ed.org.uk

Local Government Ombudsman
Millbank Tower
Millbank
London
SW1P 4QP
Tel: 020 7217 4620
Fax: 020 7217 4621
Advice Line 0845 602 1983
Email; enquiries.london@lgo.org.uk
Website: www.lgo.org.uk

Department for Children Schools & Families (DCSF)
Sanctuary Buildings
Great Smith Street
London
SW1 3B
Tel: 020 7925 5637
Fax: 020 7925 6329
Email: info@dcsf.gsi.gov.uk
Website: www.dcsf.gov.uk

The Equality and Human Rights Commission
Disability Helpline (England)
Freepost
MIDO2164
Stratford-upon-Avon
CV37 9HY

Tel: 08457 622 633

Fax: 08457 778 878

Website: www.equalityhumanrights.com