

**OXFORDSHIRE SCHOOL/ACADEMY/PRU  
PERMANENT EXCLUSION REVIEWS**

**PARENTS' FULL GUIDE TO  
EXCLUSION REVIEWS**

**This Guide is based on the DfE guidance 2012**

**IMPORTANT**

**This Guide only applies to permanent exclusions which occur on or after:  
1 September 2012**

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For further information

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1 September 2012  
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## Introduction

This guidance explains how the review 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 a review hearing;
- understand how Independent Review Panels make their decisions.

### 1. Who will be at the Review Hearing?

- You and your partner; where requested, a friend; representative or legal adviser (who would attend at your own cost); and, if you wish, your son/daughter. **(NB If you have any special requirements e.g. interpreter, signer or other, please contact 01865 810180).**
- The Independent Review Panel (IRP) - 3 members.
- The Clerk to the Review Panel.
- If attending, the legal or other representative of the Governors.
- The Head Teacher / Principal of your son's/daughter's school/ academy/PRU.
- Any witnesses called by either the school / academy / PRU or by you.
- If school / PRU is maintained by the Local Authority (LA), an LA representative may attend.
- If school / alternative provision has academy status, an LA representative may attend at your request but may only make representations with the consent of the Academy.
- An SEN expert, but only when you requested one attends at the time you lodged your application for review. NB The LA/Academy bears this cost.
- If attending, and where relevant, the alleged victim or his/her representative may be present for part of the review hearing.

**PLEASE NOTE:** There is a limit to how many people can be accommodated. If either party wishes to bring more than one representative, the Clerk to the IRP would have to speak to the IRP members to seek their agreement.

Sometimes there is also an observer. This may be someone who is training to be an Independent Review Panel member or Clerk to Panel.

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 Independent Review Panel (IRP) will have three members and:

- One must be, or have been within the previous five years, a Head Teacher / Principal;
- One must be, or have been:
  - (i) a governor of a maintained school,
  - (ii) a member of a pupil referral management committee,
  - (iii) a director of an Academy,provided they have served in that capacity for at least 12 consecutive months within the last 5 years, and they have not been a teacher or Head Teacher during the last 5 years;
- One must be a lay person, that is, someone who has never worked in a school in a paid capacity (disregarding any experience as a school governor or volunteer).

NB 1) The Lay member must be the Chairperson of the Panel.

2) All the IRP members (and their clerk) will have received the required training.

### **IMPORTANT**

Anyone who has, or has had, a connection with the school or with any of the parties involved in the case **cannot** sit on the Independent Review Panel.

## 3. Is anyone disqualified from sitting on the IRP?

Yes. The following people cannot sit on the IRP:

- any member of the local authority or of the governing body of the school / Academy / PRU in question;
- the current or a former Head Teacher of the excluding school / Academy;
- an employee of the local authority (or governing body) unless employed as a Head Teacher at another school/ Academy;
- any person who has, or at any time has had, any connection with –
  - (i) the Local Authority / Academy Trust or the school; or
  - (ii) the parents or pupil in question; or

(iii) 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/Academy/PRU which your son/daughter might next attend.

#### 4. What powers does the Independent 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.

#### **IMPORTANT**

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 Independent Review Panel?**

The Clerk is there to ensure that the hearing is fair and that parties are able to put their case and will help you if you have any difficulty. The Clerk will have been trained on the relevant law and guidance and have an up to date understanding of the law and process.

The Clerk does not have any say at all in the 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, decision, and reasons for decision
- after the hearing, notify all concerned of the IRP's decision and produce a letter confirming the IRP's decision and reasons for decision.

**6. What is the role of the representative of the school's Governing Body at the review hearing?**

The Governing Body's (GB) representative is responsible for presenting their reasons for not reinstating your child to the school and answering any questions either you or the IRP members have.

**NOTE:** The GB's representative is **not** involved with the decision making process of the IRP 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 LA officer at the review hearing?**

Where excluding school is **not** an Academy:

The LA 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.

Where excluded from an Academy:

The LA officer may only speak with the consent of the Academy.

**NOTE:** The LA officer is **not** involved with the decision making process of the Independent Review Panel appeal 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 IRP review hearing?**

**Yes**, if at all possible! You are the best person to tell the IRP why you think the decision to exclude your child was wrong.

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

Yes. You may bring a member of your family, a friend, or a representative with you. They can simply support you or speak on your behalf.

You may be legally represented 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. Should I bring my son/daughter to the IRP review hearing?**

Yes. Your son/daughter is **strongly encouraged** to attend the hearing (subject to his/her age and understanding) so his/her views can be heard. If s/he does not attend, his/her views may be made through a representative or a written statement.



## 12. What happens if I do not attend the IRP review hearing?

If at all possible, you should attend and the hearing 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 at the review hearing?

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

1. all the papers (including witness statements, incident report forms, contemporaneous notes of interviews, photographs, IEPs, PSPs) which were available at the Governing Body's (GB) meeting;
2. The statement of decision of the GB i.e. the GB's decision letter;
3. Minutes of the GB Meeting
4. Any relevant school policy e.g. the school discipline/behaviour policy, race equality policy, bullying policy, drug policy, SEN policy, or other relevant policy;
5. Your application for a review / letter and any discrimination claim;
6. Any papers you have supplied to support your grounds for application, which may include:
  - Relevant correspondence between yourself and the school;
  - Witness statements; and
  - Any supporting documentation.
7. Where submitted: a written representation from the Head Teacher and / or the GB.

8. *Where the school /PRU is maintained by the Local Authority (LA), where submitted: a written statement by the LA.*
9. *Where relevant, a written statement from the alleged victim or their representative.*

Please note: Physical evidence may also be available at the hearing.

#### **NOTE**

The set of documents you receive will also be sent to the IRP members; the IRP Clerk; the Governing Body representative; the Head teacher; the LA representative (where school/PRU maintained by the LA); and, where relevant, an SEN Expert.

#### **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 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/information 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 the hearing
- Make sure you have looked at the GB's case papers before the 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 applying for a review – 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, racial or other discrimination under the Equality Act 2010; any factors which you believe the Headteacher or Governing Body did not consider properly; and

- On the day of the hearing, bring with you to the review: the case papers sent to you (normally) five school days before the hearing; 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 an IRP review hearing take?**

It is difficult to say exactly but it can normally be until late-afternoon and often continues later.

#### **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 the hearing 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 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 Independent Review Panel in the absence of the other party.

#### **17. Does the IRP ever adjourn the review hearing?**

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

- If the school has not provided the documents requested for the hearing; or
- Where one has been requested, SEN Expert is not available to attend the hearing; or
- 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; or
- If the IRP requires further information to be obtained; or
- If it takes longer than anticipated to deal with the case, the IRP may have to adjourn the hearing 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.

**PLEASE NOTE**

If necessary, the IRP may adjourn more than once but it must give consideration to the effect of the adjournment on the parties to the review, your child and any alleged victim.

**18. Why would the IRP adjourn the 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 may be very limited. For example:

- The IRP 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 hearing will be adjourned, therefore the IRP will consider the relevant factors as follows:

**Relevant factors for the IRP to consider are:**

- (i) whether any charge has been brought against your son/daughter and, if so, what the charge is;
- (ii) whether relevant witnesses and documents are available;
- (iii) 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;
- (iv) 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?**

- (i) The LA will already have taken steps to ensure your son/daughter has been provided with suitable full-time education.
- (ii) 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 when the hearing can proceed to a final determination. If necessary, the IRP may adjourn more than once.

**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 s/he was excluded, the acquittal may be due to a legal technicality or the stricter standard of proof in a criminal court i.e. beyond reasonable doubt. However, the IRP must apply the civil standard i.e. the balance of probabilities.

## 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 hearing 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 hearing thinking that things have been left unsaid, 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:**

- (i) If your witness is a pupil at the school they may only attend if they do so **voluntarily** and with **their parent's consent**. The DfE Guidance also states their parents should be invited to attend the hearing in support of their child. It will normally be more appropriate for the IRP to rely on written statements.
- (ii) Character witnesses attend at the discretion of the IRP but they will normally be allowed to attend unless there is good reason to refuse.

Please note that:

- any witnesses who attend the hearing 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;
- The IRP cannot require witnesses to attend the hearing;
- Any witnesses who attend the hearing 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 for the school, s/he, or his/her representative, may attend to tell the IRP about the impact the incident has had on them. Alternatively, they may submit a written statement. If they do attend they may be asked questions.

#### **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 (Paragraph 114 DfE Guidance).

Paragraph 111 of DfE Guidance states:

*"All written witness statements should be attributed, signed and dated, unless the school has good reason to wish to protect the anonymity of the witness, in which case the statement should at least be dated and labelled in a way that allows it to be distinguished from other statements. The general principle remains that excluded pupils are entitled to know the substance behind the reason for their exclusion."*

## 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), in particular if anonymised, 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?

New evidence may be presented to the IRP. This may include evidence that was not previously available to the Head Teacher or the GB. However, in deciding to quash the GB's decision and direct that the GB considers the exclusion again, the IRP can only take into account the information that had been available to the GB at the time it had made its decision or information which it would reasonably be expected to have had e.g., witness statements collected by school staff.

### **IMPORTANT**

The school may not introduce **new reasons** for the exclusion and IRP's must disregard any new reasons that are introduced.

## 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.

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 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 Headteacher/ Governing Body exclude in line with 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 hearing?**

The Clerk to the IRP will telephone you as soon as possible after the IRP has reached its decision.

Then the Clerk will send you a letter that sets out the reasons for the IRP's decision, which will usually be sent by the end of the second working day after the IRP has made its decision.

### 33. Is the IRP's decision binding on anybody?

Yes. The "relevant person" i.e. you, the Governing Body, the Head Teacher/Principal and, where the school is **not** an Academy, the LA are bound by the IRP's decision.

However, where you or the school / academy / PRU apply for judicial review of the IRP's decision and are successful in that application, the High Court may order a re-hearing of the review with new IRP members.

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

You should contact the relevant LA officer with regard to the arrangements for your child's continued education.

### 35. What can I do if I am unhappy about the IRP 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 appeal** as the LGO can only investigate written complaints about maladministration\* on the part of the IRP.

**NB** This does **not** apply if your child has been excluded from an Academy. In this case you must complain to the Education Funding Agency (EFA) at the Department for Education) – see Appendix 2.

**\*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 (or EFA) would not criticise the decision of a IRP, which fairly took into account all the evidence presented, just because the parents disagreed with the decision reached.

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

**36. What is the role of the Secretary of State for Education?**

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 IRP was wrong in law?**

If you or the Governing Body, consider that the IRP's decision is unlawful or not a decision which a reasonable IRP could have reached, either party could apply for a judicial review.

If a judicial review were granted, the High 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), the Court could overturn the decision, and could order that another review hearing be set up with **different** IRP members.

**IMPORTANT**

If either party to the IRP review hearing wishes to consider this course of action they should take independent legal advice **as soon as possible** as normally there is a time limit of 3 months.

## **APPENDIX 1: DISCRIMINATION CLAIMS**

### **Q29. 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.



## APPENDIX 1: DISCRIMINATION CLAIMS

The following might be taken into account in considering what is a reasonable adjustment:

- 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 contacts**

### **Enquiries about this Guidance and the review process in Oxfordshire should be addressed to:**

Clerk to the Review Panel  
Education Appeals and Reviews  
Law & Culture  
County Hall  
New Road  
Oxford OX1 1ND

Tel: 01865 810180

Fax: 01865 783195

E-mail: [schoolappeals@oxfordshire.gov.uk](mailto:schoolappeals@oxfordshire.gov.uk)

Website: [www.oxfordshire.gov.uk](http://www.oxfordshire.gov.uk)

### **Free advice:**

#### **1 The Coram Childrens Legal Centre:**

Tel: 0808 802 0008 (Mon – Fri 8.00 am – 8.00 pm)

Website: [www.childrenslegalcentre.com/](http://www.childrenslegalcentre.com/)

#### **2 Advisory Centre for Education:**

Website: [www.ace-ed.org.uk](http://www.ace-ed.org.uk)

#### **3 IPSEA**

Advice on SEN & disability issues

Tel: 0800 018 4016)

Website: [www.ipsea.org.uk](http://www.ipsea.org.uk)

#### **4 Oxfordshire SENDIASS (Formerly Parent Partnership Service):**

Local help for children with special educational needs

County Hall

New Road

Oxford

Tel: 01865 810 516

Email: [parentpartnership@oxfordshire.gov.uk](mailto:parentpartnership@oxfordshire.gov.uk)

## **APPENDIX 2: Useful contacts**

### **5 The Equality Act 2010:**

Advice / help on discrimination claims:

#### ***Equality Advisory Support Service (EASS)***

FREEPOST

Equality Advisory Support Service

FPN4431

#### **Helpline:**

Telephone: 0808 800 0082

Textphone: 0808 800 0084

Monday – Friday, 9am to 8pm

Saturday, 10am to 2pm

Find out about call charges: <https://www.gov.uk/call-charges>

Website: <https://www.gov.uk/discrimination-your-rights>

### **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

Typetalk: 18001 0370 000 2288

Website: [www.education.gov.uk/help/contactus/dfe](http://www.education.gov.uk/help/contactus/dfe)

DfE Exclusion Guidance 2012 available from:

<https://www.gov.uk/government/publications/school-exclusion>

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

Website: [www.legislation.gov.uk](http://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](mailto:advice@lgo.org.uk)

Website: [www.lgo.org.uk](http://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**

- Chair introduces the Independent Review Panel, and will outline the procedure to be followed and how the Panel will make its decision.

- **Case for the School**

The Governing Body's representative will present the case for the school and may wish to call witnesses who saw the incident or behaviour which gave rise to the exclusion. They may include the Head Teacher, any alleged victim(s), any witness(es), or any teacher (other than the Head Teacher) who investigated the incident and interviewed pupils.

- **Questions**

- **Alleged Victim (where not called as a Governing Body witness)**

*If attending in person*, the alleged victim (or representative) will talk about what impact the incident has had on them OR the written representation will be read out by Clerk.

- **Questions**

- **LA (where relevant: see Q7)**

*If attending*, the nominated LA officer may state e.g. how other schools in the area have dealt with similar incidents or, if they do not attend, any written representation will be considered.

- **Questions**

- **Case for your son/daughter**

You, or your representative, will present your case. You may wish to call any witnesses who have come to support your case. If present, your child may also speak on his/her own behalf at this stage.

- **Questions**

- **SEN Expert (where relevant)**

The SEN Expert will provide advice on whether the school's SEN policies in relation to your child were legal, reasonable and procedurally fair.

- **Questions**

- **Summing Up\* – Governing Body's case**

- **Summing Up\* – Your case**

\*Main points of the case summarised and if new issues are raised – go back to questions