



*What can I do  
about...?*

# Exclusions from school

*Exclusion is the most serious disciplinary sanction that can be given to a pupil.  
The power to exclude lies with the headteacher.*

Due to the recent changes in the way legal aid is organised and delivered **legal aid no longer covers education law**, except Special Educational Needs.

This flyer is designed to be a practical guide for parents and guardians to help them deal with the issues related to their children's education when they cannot access legal advice.

# The Law

- ❖ Education Act 2002
- ❖ Government Guidance: “Exclusion from maintained schools, Academies and pupil referral units in England – a guide for those with legal responsibilities in relation to exclusion” (available via [www.education.gov.uk](http://www.education.gov.uk))



## Fixed Term Exclusion

This is exclusion for a specific period of time. A pupil may be excluded for one or more fixed periods up to a **maximum of 45 school days in a single academic year**. In some cases, e.g. where further evidence comes to light, a **fixed term exclusion may be extended or converted into a permanent exclusion**. Pupils whose behaviour is disruptive during lunchtime can be excluded for the duration of the lunchtime period. Lunchtime exclusions count as a half a school day.

The **decision** to exclude **must only be on disciplinary grounds** and must also be:



## Permanent Exclusion

This involves a pupil being removed from the school roll, but the child's name **must not be removed from the school register until the outcome of the Independent Review Panel** if the parent chooses to appeal against the decision to permanently exclude.

A decision to **permanently exclude** should only be taken in **response to a serious breach**, or

**persistent breaches, of the school's behaviour policy;** and where allowing the pupil to remain in school would seriously **harm the education or welfare** of the pupil or others in the school. Further issues related to exclusions are shown in the case studies below.

## Case Study 1



**“A”**

A was a 15 year old girl and a registered pupil at an Academy in Islington. When the client attended the Law Centre her daughter had been out of school for over a month. The client was contacted by telephone a month earlier and informed that her daughter had been excluded. She was also that she should come and collect her from the Academy.

Since the telephone call the client had not received any further contact from the Academy. The law states that the parent must receive **written confirmation of the exclusion. The client had not been provided with the facts relied upon for the exclusion:** the reasons giving rise to the decision to exclude and the period of the exclusion. As a consequence the client had been deprived of the opportunity to make representations about the exclusion to the Governing Body of the Academy.

A was in her last year of compulsory education. She should have been preparing for the public examinations that she is due to sit next spring and summer. The law states that the Academy **should provide school work for the first 5 days of the exclusion.** This did not happen. The client emailed the Academy to request work and she was given a small amount of school work to complete at home. No arrangements have been made for the work to be marked. **Alternative full-time provision should have been made available to the pupil in compliance with the School Exclusion guidance. This guidance has the force of statute behind it and should be followed unless there is good reason to depart from it.**

The Islington Law Centre contacted the Local Authority and we were informed that the Academy had failed to respond to the Local Authority's enquiries. The Local Authority made a formal complaint to the Secretary of State **(in practice it takes several months to receive a response from the Secretary of State).** As a result of the Academy's **governing body's failure to make provision of suitable full-time education** for A, the Law Centre warned the Academy of an intention to make an application for permission to apply for a **Judicial Review.** The Academy capitulated and A was allowed to return to the Academy.

**Behaviour outside the school** can be considered as grounds for exclusion, and the school's behaviour policy will set out when a pupil's behaviour outside school may lead to disciplinary sanctions.

## Case Study 2

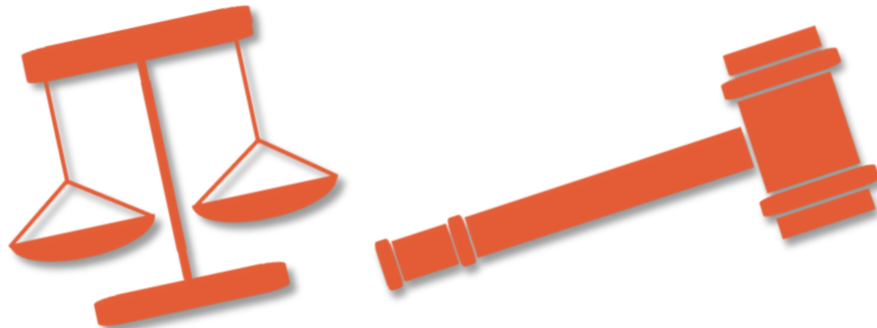


**“J”**

J attended one of the academies in Islington. An incident occurred **on the high street** in which a shop keeper was assaulted. At the time Jamie was in the vicinity as he had left the Academy without permission. The shop keeper came to the Academy and identified a number of the pupils involved in the attack – the shop keeper **did not** identify J as one of the assailants. J was permanently excluded by the Principal and this decision was upheld by the Governing Body. **The governors accepted that there was no evidence to support the allegations that J was involved in the attack on the shop keeper, however, they concluded that the exclusion should still stand because of J's previous behaviour record.**

We challenged this decision because it goes against the advice given by the Department for Children, Schools and Families which says that a **pupil's previous behaviour record should only be considered when it has some bearing on the current problem.** We argued that **he had already been punished for earlier misdemeanours and should not be punished again.** The Independent Appeal Panel agreed that the permanent exclusion should not be upheld and our appeal was successful.

# Discrimination



The **Equality Act 2010** provides that schools must not discriminate against, harass or victimise pupils because of their:

- ✗ **SEX;**
- ✗ **RACE;**
- ✗ **DISABILITY;**
- ✗ **RELIGION OR BELIEF;**
- ✗ **SEXUAL ORIENTATION;**
- ✗ **PREGNANCY/MATERNITY;**
- ✗ **AND GENDER REASSIGNMENT.**



These duties need to be taken into account when deciding whether to exclude a pupil. For disabled children, this includes a **duty to make reasonable adjustments** to policies and practices. **It is unlawful to exclude or extend the length of exclusion for a non-disciplinary reason, e.g. because:**

- the pupil has additional needs or a disability that the school feels it is unable to meet;
- of academic attainment/ability;
- action(s) of the parents;
- of the failure of the pupil to meet specific conditions before they are reinstated.

