

By email: ExclusionsGuidance.Consultation@education.gov.uk

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ADCS Response to the DfE's Exclusion Guidance Consultation

The Association of Directors of Children's Services Ltd (ADCS) welcomes the opportunity to comment on the revised statutory guidance on exclusions from maintained schools, academies and pupil referral units in England. ADCS is the professional leadership association representing directors of children's services and their senior management teams in local authorities across England.

ADCS welcomes the continued emphasis on the use of permanent exclusion as a last resort in this updated version of the guidance, particularly in light of the uptick in exclusions - informal, fixed-term and permanent - in recent years following a prolonged period of reductions.

1. Support during fixed-term exclusions and sitting exams

The most recent statistics available from the Department for Education (DfE) show that pupils in years nine or above made up just over half of all permanent and fixed-term exclusions in 2014/15. This is a critical period of study for learners as they work towards national qualifications e.g. GCSEs. We therefore welcome the focus on timely decision making and the assertion that the governing body must, "so far as is reasonably practicable", consider the reinstatement of a learner before a scheduled national curriculum test or exam commences.

ADCS believes it would be helpful if the final version of the guidance placed a much greater emphasis on meeting the learner's needs and putting an appropriate support package in place before commencing a fixed-term exclusion in order to minimise the long-term impacts on educational outcomes for learners, particularly children in care. All schools, in partnership with the local authority, should work together to secure appropriate full time provision for a permanently excluded child or young person until such a time as a new school placement is confirmed in recognition of their vulnerabilities whilst outside of full-time education.

2. Vulnerable learners - children in care

Section four (pages eight - 10) deals with the notifications to be made once the decision to exclude has been taken. It is our belief that, in addition to notifying parents or carers, the relevant local authority should be alerted by the headteacher to a fixed-term exclusion for any child in care. Ideally this will be done via the virtual school head (VSH) who has a duty under the Children and Families Act 2014 to support learners in care via advocacy and the development of solutions with schools, where appropriate, when concerns arise.

Section 6.1 (pages 12 - 13) lists the various parties who should be invited to meet with the governing body to discuss an exclusion, it would be helpful if the guidance specified this should be a corporate parent in the case of a child in care, ideally the VSH, or a member of their team.

ADCS believes the guidance could be more robust around the rights and needs of children in care. Our members would welcome greater consultation between the headteacher and the VSH before taking the decision to exclude a child in care for any length of time given school changes are a known risk-factor in terms of educational progress and attainment. Wherever possible appropriate behavior management strategies should be employed, particularly if a rapid escalation of behaviours following a lower level incident is at the heart of the issue in hand. If poor behaviour is a consequence of very difficult circumstances e.g. a key decision about their life is about to be taken, then sanctions are also not appropriate.

3. Vulnerable learners - special educational needs and disabilities

Meeting the needs of learners with special needs should not be an optional 'recommendation,' especially given the vulnerability of this group to exclusion – according to the government's own statistics, learners with SEND now account for just over half of all permanent and fixed-term exclusions (making them seven times more likely to be permanently excluded than their classmates without SEND).

The focus of the 'Annex B' is useful in terms of the identification of unmet needs and early intervention. However, in order to comply with the 2010 Equality Act and the SEND Code of Practice 2015, the wording used here must be strengthened to better reflect current policy in practice. For example:

*"Schools ~~should~~ **must** engage proactively with parents and carers in supporting the behaviour of pupils with additional needs..."*

The guidance refers to a 'statement of SEN' in several places rather than an education health and care plan (EHC), this will need amending. It would be helpful if the final guidance clearly articulated the role of the LA in situations when the learner who has been excluded has an existing EHC plan in terms of reviewing the plan and/or reassessing need, in consultation with parents and carers.

4. Reviewing and/or challenging the decision to exclude

Whilst these updates seek to clarify key roles in terms of reviewing an exclusion decision, ADCS is concerned that the powers of the independent review panel (IRP) are undermined by the delegation of the final say to the school's governing body. If the IRP, which includes an SEN expert, finds that the decision to exclude was made in error, or flawed because there was no reasonable adjustment made for special educational needs impacting on self-regulation, for example, then reverting to the original decision-maker is unsatisfactory.

It is important that the guidance fully addresses the tensions inherent in the review of a governing body's decision to permanently exclude, the right to a fair hearing and the pupil's right to an effective remedy (this represents a breach of public law principles). Similarly, the latest iteration of this guidance attempts to clarify the notification process the IRP must follow once a decision has been made, including its duties in ordering financial payments. Whilst these changes offer greater clarity, the £4,000 fine payable to the local authority when the school refuses to accept an IRP decision does nothing to compensate the child or their family for the distress caused during this process.

ADCS would urge the Department to give further consideration as to whether this process offers a genuinely independent appraisal of exclusion decisions before the final version of the guidance is published. Such decisions have a significant impact on a child or young person's future life chances.

5. General comments

It is noted that this guidance does not address the use of internal exclusions e.g. placing a child in an on-site isolation unit, which largely go unmonitored. This activity is not currently captured in national data returns so no clear picture exists about the scale and use of this practice nor the impact this activity has on learner's outcomes.

It might be useful to include a glossary of terms e.g. tribunal, NCT, to assist parents, carers and indeed children and young people in understanding and participating in the processes outlined in this guidance.

ADCS would welcome the opportunity to remain in dialogue with the DfE. Please contact Katy Block, ADCS Policy Officer, katy.block@adcs.org.uk, to arrange.