



School Exclusions During Coronavirus

The School Discipline (England) (Coronavirus) (Pupil Exclusions and Reviews) (Amendment) Regulations 2020 (“the Regulations”) came into force on 1 June 2020 and will end on 24 September 2020. The regulations can be accessed by following this link:

<http://www.legislation.gov.uk/uksi/2020/543/contents/made>

The Regulations apply to exclusions occurring between 1 June 2020 and 24 September 2020 inclusive including:

- Permanent and fixed term exclusions occurring before 1 June, which are yet to be reviewed by the governing body
- Permanent exclusions occurring before 1 June, where the governing body has considered the case but has chosen to not reinstate the pupil and the time limit for a review by an independent review panel of this decision has not passed
- Permanent exclusions occurring before 1 June, where a parent (or 18-year-old pupil) has requested a review of the governing body’s decision by an independent review panel, and this has not yet happened.

For the purposes of the Regulations, an exclusion is deemed to have occurred on the first day of the exclusion rather than the date that the decision to exclude was made or communicated.

The Regulations apply to schools and academies and references to the governing body in this guidance note refer to the governing body in a school and the appropriate decision-making authority in an academy.

On 29 May 2020, guidance was issued by the Department for Education (“the Guidance”). The Guidance can be accessed through the following link:

<https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>

The purpose of this guidance note is to provide dioceses with a summary of the Guidance and the Regulations in order to assist them in any conversations that they might have with schools regarding the appropriate processes for reviewing exclusions at this time.

This guidance note is not a substitute for reading the Guidance and the Regulations and schools should be encouraged to seek more detailed advice from solicitors with expertise in this area if they have a complex question that needs to be answered. Government guidance is being issued on a daily basis and this note is up to date as of 1 June 2020.

Remote access during meetings

Pursuant to the Regulations, it is permissible for governing bodies and independent review panels to consider an exclusion via telephone or video-conference software. Provided that the following conditions are met (“the Conditions”):

- It must not be reasonably practicable for the meeting to take place in person, within the usual timescales, because of coronavirus;
- All participants must agree to the use of remote access;
- All participants must have access to the technology which will allow them to hear and speak throughout the meeting, and to see and be seen, if a live video link is used;
- All the participants must be able to put across their point of view or fulfil their function; and
- The meeting must be capable of being held fairly and transparently via remote access.

The responsibility for ensuring that the Conditions are met rests with the governing body (or independent review panel) and detailed records will need to be kept of the decisions made and the reasons for those decisions. Governing bodies and independent review panels will also need to ensure that they can evidence the agreement of the parent (or 18-year-old pupil) to continuing the process remotely.

When considering if it would be reasonably practicable to meet in person, the governing body (or independent review panel) should consider the following:

- The facts of the case;
- The circumstances in which a meeting in person could be expected to take place;
- The needs of the intended participants; and
- The latest public health guidance.

Arranging a remote access meeting

The governing body (or independent review panel) should explain the technology they propose to use to the intended participants of the meeting. This includes ensuring that all the participants fully understand that they do not have to agree to a remote access meeting if they do not want to. It should however be explained to participants, that if they choose not to agree to use remote access for the meeting, then the meeting is likely to be delayed.

It is a requirement for all participants to agree to using remote access. However, if the parent (or 18-year-old pupil) has agreed to remote access, the other participants should make all reasonable efforts to accommodate this preference.

The normal requirements for who must be invited to a governing body or independent review panel meeting remain in place. However, those who have no intention of taking part in the meeting should not be treated as 'participants' for the purposes of fulfilling the Conditions. This means that a parent who has expressly communicated (in writing) that they will not attend the meeting, will not be entitled to be treated as a 'participant' when determining if the Conditions have been satisfied.

Governing bodies (and independent review panels) should be considerate of the needs of participants – particularly in relation to compliance with equalities legislation. For example, consideration should be given, when determining the mechanisms for a remote meeting, as to whether a participant has a disability or English is not their first language. It is important that every effort is made to ensure that all participants understand the proceedings and are able to engage in them. This is important in ensuring that the use of remote access is fair – if the process is not likely to be fair, then the meeting will need to be adjourned until it can safely be held in person.

Holding a meeting via remote access does not alter other procedural requirements. This includes the appointment of a special educational needs expert to advise an independent review panel (if requested by a parent). The local authority/academy trust must appoint an adviser and cover the

cost as normal. Furthermore, parents will still be entitled to bring a friend or representative to the meeting.

Paper representations can continue to be made, but no exclusion can be reviewed solely on the basis of written representations.

Timescales for meetings of governing bodies

If, due to coronavirus, it has not been reasonably practicable for a governing body to meet to review an exclusion within the normal timescales, then the relevant time period is extended as set out below unless it expired before 1 June.

In addition, the Guidance acknowledges that coronavirus may have had an impact on the ability of governing bodies to hold meetings prior to 1 June. In such circumstances, the Guidance provides that governing bodies should arrange for overdue meetings to take place via remote access (if the Conditions can be satisfied), or in person (when it is safe to do so), as soon as possible.

If the deadline for reviewing an exclusion is extended, then this should be communicated to all the participants in good time.

Meetings to consider permanent exclusions and fixed period exclusions resulting in the pupil missing more than 15 school days in a term

Where a pupil is permanently excluded or receives a fixed term exclusion which results in them being excluded for more than 15 school days in a term, the governing body should meet to discuss reinstatement within 15 school days of the notice of exclusion being provided. However, if it is not reasonably practicable to meet within that time period, either in person or remotely, then the time limit is extended to either 25 school days or as long as is reasonably necessary where the delay is for a reason related to coronavirus.

Meetings to consider fixed period exclusions resulting in the pupil missing between 6 and 15 school days in a term

Where a fixed period exclusion is between 6 and 15 school days in a term, and the parent (or pupil if aged 18+) chooses to make representations about the exclusion, then the governing body should meet to discuss reinstatement within 50 school days of the notice of exclusion being provided. Where it is not possible to either meet in person or remotely during the 50 school days due to coronavirus, the limit is extended to 60 days or as long as is reasonably necessary where the delay is for a reason related to coronavirus.

Timescales for application for independent reviews of exclusions

Where a governing body declines to reinstate a pupil, who has been permanently excluded, the parents (or pupil if aged 18+) can apply for a review of the governing body's decision by an independent review panel. The deadline to apply for an independent review has been increased to 25 school days from the date on which written notice of the governing body's decision was given to the parent (or pupil if aged 18+). Only after the 25 school days have elapsed without an application for independent review, can a pupil be removed from the admissions register of a school.

Security

Governing bodies will need to review the privacy terms and conditions of any remote access platform being used and enable any security features they deem appropriate. IT providers and relevant school

staff will need to be asked to provide support in this regard and a note will need to be made of the decisions made. Governing bodies may also wish to ask their Data Protection Officer to conduct an impact assessment in order to determine whether there are any additional data protection risks as a result of any processes they are planning to adopt.

It is not advisable for virtual hearings to be recorded.

Governing bodies may also wish to refer to the following guidance:

<https://www.ncsc.gov.uk/guidance/video-conferencing-services-using-them-securely>

<https://www.ncsc.gov.uk/guidance/video-conferencing-services-security-guidance-organisations>