
STATUTORY INSTRUMENTS

2012 No. 1033

**The School Discipline (Pupil Exclusions
and Reviews) (England) Regulations 2012**

PART 4

Academies

Application and modification of Act and regulations

21.—(1) Section 51A of the Act applies with the following modifications.

(2) In subsection (1)—

- (a) for “head teacher” substitute “principal”; and
- (b) for “a maintained school” substitute “an Academy”.

(3) In subsection (4), after “subsection (3)(c),” insert “as it applies in relation to Academies,”.

(4) For subsection (6) substitute—

“(6) In a case where the panel gives a direction under subsection (4)(c) to the proprietor of an Academy, the panel may, in prescribed circumstances, order the proprietor to make a payment to the local authority.”.

(5) For subsection (10) substitute—

“(10) In this section—

- “Academy” means an Academy school or an alternative provision Academy;
- “exclude”, in relation to the exclusion of a pupil from an Academy, means exclude on disciplinary grounds (and “exclusion” is to be construed accordingly);
- “principal” means the head teacher of an Academy, and includes acting principal;
- “the responsible body” means, in relation to exclusion from an Academy, the proprietor of the Academy.”.

(6) The regulations in Parts 2 and 3 apply to Academy schools and alternative provision Academies with the following modifications.

The power of a principal to exclude pupils

22. A principal may not exercise the power under section 51A(1) of the Act (as modified) so as to exclude a pupil for one or more fixed periods if, as a result, the pupil would be excluded for more than 45 school days in any school year.

Exclusion of pupils: principal’s duty to inform relevant person, proprietor and local authority

23.—(1) Where the principal decides to exclude a pupil for a fixed period, the principal must, without delay—

- (a) inform the relevant person of the period of the exclusion and the reasons for it; and
- (b) give the relevant person notice in writing stating the following matters—
 - (i) the period of the exclusion and the reasons for it;
 - (ii) that the relevant person may make representations about the decision to the proprietor and that, where the pupil is not the relevant person, the pupil may also be involved in the process of making representations, and an explanation as to how the pupil may be involved;
 - (iii) the means by which representations may be made; and
 - (iv) where and to whom representations should be sent.
- (2) Paragraph (3) applies where the principal decides—
 - (a) to exclude a pupil permanently; or
 - (b) to exclude a pupil and, as a result of the exclusion, the pupil would—
 - (i) be excluded for a total of more than 5 school days in any term; or
 - (ii) lose an opportunity to take a public examination or a National Curriculum test.
- (3) The principal must, without delay—
 - (a) inform the relevant person, the proprietor and the local authority (and, in the case of a permanent exclusion, if applicable, the home local authority) of the period of the exclusion and the reasons for it; and
 - (b) give the relevant person notice in writing stating the following matters—
 - (i) the period of the exclusion and the reasons for it;
 - (ii) that the relevant person may make representations about the decision to the proprietor and that, where the pupil is not the relevant person, the pupil may also be involved in the process of making representations, and an explanation as to how the pupil may be involved;
 - (iii) the means by which representations may be made;
 - (iv) where and to whom representations should be sent; and
 - (v) where a meeting of the proprietor is to consider the exclusion, that the relevant person may attend and be represented at the meeting (at their own expense), and may be accompanied by a friend.
- (4) Any expense in connection with the representation of the relevant person is to be an expense of the relevant person.
- (5) In each term the principal must inform the proprietor and the local authority of the following—
 - (a) all exclusions that have occurred in that term to which paragraph (3) does not apply;
 - (b) unless the principal has already done so, any such exclusions occurring during previous terms in that school year; and
 - (c) the period of each exclusion and the reasons for it.

Functions of the proprietor in relation to excluded pupils

- 24.**—(1) Paragraphs (2) to (6) apply where the proprietor is informed under regulation 23(3)
- (a) of—
 - (a) the permanent exclusion of a pupil;
 - (b) the exclusion of a pupil where, as a result of the exclusion, the pupil would—
 - (i) be excluded for a total of more than 15 school days in any term; or

- (ii) lose an opportunity to take a public examination or a National Curriculum test; or
- (c) the exclusion of a pupil where—
 - (i) the pupil would as a result of the exclusion be excluded for a total of more than 5 school days in any term; and
 - (ii) the relevant person makes representations under regulation 23(3)(b).
- (2) The proprietor must decide—
 - (a) whether or not the pupil should be reinstated; and
 - (b) where it considers that the pupil should be reinstated, whether the pupil should be reinstated immediately or by a particular date.
- (3) In order to decide whether or not a pupil should be reinstated, the proprietor must—
 - (a) consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and persons working at the Academy (including persons working at the Academy voluntarily);
 - (b) consider any representations about the exclusion made to the proprietor by or on behalf of the relevant person or the principal;
 - (c) take reasonable steps to arrange a meeting at which the exclusion is to be considered for a time and date when each of the following persons is able to attend—
 - (i) the principal;
 - (ii) the relevant person (and, where requested by the relevant person, a representative or friend of the relevant person); and
 - (iii) where requested by the relevant person, a representative of the local authority (and, if applicable, the home local authority);
 - (d) allow each of the persons described in sub-paragraphs (c)(i) and (ii) to attend the meeting and to make representations about the exclusion; and
 - (e) allow the person described in sub-paragraph (c)(iii) to attend the meeting as an observer, unless the proprietor gives that person permission to make representations.
- (4) If the proprietor decides that the pupil should be reinstated, it must without delay—
 - (a) direct the principal accordingly; and
 - (b) inform the relevant person and the local authority (and, if applicable, the home local authority) of its decision and the reasons for it in writing.
- (5) The principal must comply with a direction of the proprietor to reinstate the pupil.
- (6) If the proprietor decides not to reinstate the pupil it must without delay—
 - (a) inform the relevant person, the principal and the local authority (and, if applicable, the home local authority) of its decision and the reasons for it in writing; and
 - (b) in the case of a pupil who is permanently excluded, give the relevant person notice in writing stating the following—
 - (i) that the exclusion is permanent;
 - (ii) that the relevant person may apply for the proprietor's decision to be reviewed by a review panel;
 - (iii) where the relevant person applies for a review, that the relevant person may require the proprietor to appoint a SEN expert to advise the review panel;
 - (iv) the role of the SEN expert in relation to a review;
 - (v) how an application for a review may be made and what the application must contain;

- (vi) where and to whom to send the application and the date by which the application must be received;
 - (vii) that the relevant person may, at their own expense, appoint someone to make representations for the purpose of the review; and
 - (viii) that the relevant person may issue a claim under the Equality Act 2010 where the relevant person believes that unlawful discrimination has occurred, and the time within which such a claim should be made.
- (7) Subject to paragraph (8), after being informed of the matters in regulation 23(3)(a), the proprietor must take the steps referred to in paragraphs (2) and (3) within—
- (a) 15 school days in the case of—
 - (i) a permanent exclusion;
 - (ii) an exclusion for a fixed period which would cause the pupil's total number of days of exclusion to exceed 15 school days in any term; or
 - (iii) an exclusion where the pupil would, as a result of the exclusion, lose an opportunity to take a public examination or a National Curriculum test; or
 - (b) 50 school days in the case of an exclusion for a fixed period where—
 - (i) the pupil would, as a result of the exclusion, be excluded for a total of more than 5 school days but not more than 15 school days in any term; and
 - (ii) the relevant person has made representations under regulation 23(3)(b).
- (8) Where a pupil has been excluded in circumstances in which the pupil would, as a result of the exclusion, lose an opportunity to take a public examination or a National Curriculum test, the proprietor must (so far as it is reasonably practicable) take the steps referred to in paragraphs (2) and (3) before the date on which the pupil is due to take the examination or test.
- (9) Where—
- (a) a pupil has been excluded in circumstances where paragraphs (2) to (6) do not apply; and
 - (b) the proprietor receives representations made under regulation 23(1)(b) from the relevant person about the exclusion,
- the proprietor must consider those representations.
- (10) The proprietor will not be relieved of the duty to take any step referred to in paragraph (2) or (3) because it has not been taken within the period specified in paragraph (7) or (8).
- (11) The notice in writing referred to in paragraph (6)(b)—
- (a) may be given by—
 - (i) delivering it directly to the relevant person;
 - (ii) delivering it to the relevant person's last known address; or
 - (iii) sending it by first class post to the relevant person's last known address; and
 - (b) unless the contrary is shown, will be taken to have been given—
 - (i) where first class post is used, on the second working day after the date of posting; or
 - (ii) where the notice is delivered, on the date of delivery.

Review of permanent exclusion of a pupil

- 25.—(1) Where the relevant person applies for a review, the proprietor must, at its expense—
- (a) make arrangements for the review of its decision not to reinstate a pupil who has been permanently excluded; and

- (b) if requested by the relevant person, appoint, for the purpose of that review, a SEN expert to provide impartial advice on how special educational needs may be relevant to the decision to exclude the pupil permanently.
- (2) The proprietor is not to take the steps in paragraph (1) where the relevant person has not applied for a review within the time limit specified in Schedule 1.
- (3) Where the relevant person wishes that a SEN expert be appointed for a review, the request must be made in writing to the proprietor with, and at the same time as, the application for a review.
- (4) In exercising its functions under these Regulations, the review panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and persons working at the Academy (including persons working at the Academy voluntarily).
- (5) In addition to the powers of the review panel under section 51A(4) of the Act (as modified), the panel may—
 - (a) direct the proprietor to place a note on the pupil’s educational record;
 - (b) order that the proprietor is to make a payment to the local authority in the sum of £4,000 if, following a decision by the panel to quash the proprietor’s original decision, the proprietor—
 - (i) reconsiders the exclusion and decides not to reinstate the pupil; or
 - (ii) fails to reconsider the exclusion within the time limit specified in regulation 26(1).
- (6) The review panel’s decision is binding on the relevant person, the principal and the proprietor.

Reconsideration by proprietor following a review

- 26.**—(1) Where the review panel—
- (a) recommends that the proprietor reconsiders a decision not to reinstate a pupil who has been permanently excluded; or
 - (b) quashes the proprietor’s decision and directs the proprietor to reconsider the matter,
- the proprietor, within 10 school days after notification under paragraph 19 of Schedule 1 of the review panel’s decision, must reconsider the exclusion.
- (2) When the proprietor has reconsidered its decision it must inform the relevant person, the principal and the local authority (and, if applicable, the home local authority) of its reconsidered decision and the reasons for it without delay.
 - (3) Notification of the review panel’s decision is taken to be given—
 - (a) where first class post is used, on the second working day after the date of posting; or
 - (b) where the notice is delivered, on the date of delivery.

Exclusions of pupils: guidance

- 27.** In exercising their functions under section 51A(1) of the Act (as modified) or under these Regulations, the following persons and bodies must have regard to any guidance given from time to time by the Secretary of State—
- (a) the principal;
 - (b) the proprietor;
 - (c) the review panel; and
 - (d) the SEN expert.

Exclusions: standard of proof

28. Where it falls to—

- (a) the principal, in exercise of the power conferred by section 51A(1) of the Act (as modified);
- (b) the proprietor, in exercise of its functions for the purposes of regulations 24 and 26; or
- (c) the review panel, in exercise of its functions for the purposes of regulation 25,

to establish any fact, any question as to whether that fact is established is to be decided on a balance of probabilities.

Information

29. The local authority must, on request, forward to the Secretary of State any information they have received from a principal, a proprietor or a review panel under this Part or Schedule 1.