

Policies & Procedures



No: PP5.8
Subject: Indiscipline and Exclusion Procedures

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1. Introduction

- 1.1 The following procedures are legally binding on West Dunbartonshire Council. Head Teachers should only consider excluding a pupil from school when all other measures have been tried and have failed; or in cases of serious indiscipline. Exclusion should be seen as a last resort and Head Teachers should be aware that they may be required to justify such action in a court of law.

The procedures here must be followed in conjunction with, and in the spirit of, the Scottish Government's publication: *Included, Engaged and Involved, Part 2 (March 2011)*.

- 1.2 The power to exclude a pupil from school rests with the education authority. It is, however, open to an education authority to devolve the power to exclude to senior management level within a school. The Head Teacher is responsible for ensuring that the procedures in this Policy and Procedure document are followed. Only on occasions when the Head Teacher is not in school is the power to exclude a pupil delegated to the member of staff deputising for the Head Teacher in his or her absence.

An education authority shall **not** exclude a pupil from school unless the authority:

“is of the opinion that the parent of the pupil refuses or fails to comply, or to allow the pupil to comply, with the rules, regulations, or disciplinary requirements of the school”; or,

“considers that in all the circumstances to allow the pupil to continue attendance at the school would be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the learners there”.

Exclusion from school of a pupil other than in conformity with the terms of the 1975 Regulations has no statutory backing. Failure to comply with the Regulations in such circumstances may render the Authority open to legal challenge by the parent/s, or the pupil (where the pupil is a young person or is a child with legal capacity in terms of the Age of Legal Capacity (Scotland) Act 1991) or to action by Scottish Ministers under section 70 of the Education (Scotland) Act 1980, as amended.

School exclusions must also operate within the duties imposed by anti-discrimination, human rights and other relevant legislation. Therefore, education authorities and schools should keep fully aware of developments. The requirements of the Equality Act 2010 must also be taken into account.

An education authority must not discriminate against a disabled pupil by excluding him or her from school. This does not mean that a pupil with a protected characteristic within the Equality Act (2010) cannot be excluded from school; there may be occasions when it is appropriate to exclude a pupil with a protected characteristic. However, it does mean that a pupil must not be excluded **because** of their protected characteristic. For example, excluding a disabled pupil for behaviour which arises as a consequence of his or her disability may be unlawful discrimination unless the exclusion is a proportionate means of achieving a legitimate aim. In addition there is a duty to make reasonable adjustments for pupils with a disability.

Note 1: A person is deemed for the purposes of the Act to have a disability if he or she: Has physical or mental impairment, and the impairment has a substantial (not minor or trivial) and long term (about a year or longer) adverse effect on his or her ability to carry out normal day-to-day activities. Pupils with either HIV, Multiple Sclerosis or Cancer are deemed to have met the criteria.

Note 2: The protected characteristics defined in the Act include:

- *age;*
- *disability;*
- *gender reassignment;*
- *marriage and civil partnership;*
- *pregnancy and maternity;*
- *race;*
- *religion;*
- *sex; and,*
- *sexual orientation.*

- 1.4 There are additional requirements placed on the Council in respect of children and young people who are deemed to be "Looked After Children" which have been addressed within this policy by introducing additional safeguarding procedures.

2. Imposing Periods of Exclusion

The school must, on the day upon which a decision to exclude a pupil is taken, intimate in writing (refer to Appendix 1(a) and 1(b) and choose as appropriate) or orally to the pupil's parent or if the pupil is a young person, the young person (defined in section 135(1) of the Education (Scotland) Act 1980 ("the 1980 Act") as "a person over school age who has not attained the age of 18 years"):

- the decision to exclude; **and**
- the date, time and place where the Head Teacher, or teacher or official of the education authority, shall be available to discuss the decision to exclude. This meeting must be within 7 calendar days following the day of the decision to exclude.

Where intimations are oral, details should be confirmed in writing. (Please see Appendix 1(a) and 1(b) and choose as appropriate).

Intimation of exclusion must be made to the parent or young person and the meeting to discuss the exclusion must also be with the parent or young person. It is good practice to inform and involve parents of a young person in consultation with the young person.

Section 41 of the 2000 Act extended the right of appeal in section 28H of the 1980 Act to pupils with legal capacity. The Age of Legal Capacity (Scotland) Act 1991 states that a person under the age of 16 has legal capacity to instruct a solicitor where they have a general understanding of what it means to do so and there is a general presumption that children aged 12 years or more are of sufficient age and maturity to have that understanding. It is good practice for the education authority to send the intimation to the pupil as well as the parent so that the pupil has full knowledge of the decision since they may also have the right of appeal, as well as their right to express a view. It is good practice to keep parents of a young person informed and involved.

In the case of pupils who are under 16 the intimation should be to the parent and the meeting to discuss the decision should be with the parent. The pupil may attend the meeting if both the education authority and the parent(s) agree and should attend if the pupil has exercised the right of appeal.

While not required by the relevant legal provisions, it is the Council's practice for schools to contact parents prior to the pupil being required to leave school premises. In all cases, the school should check that appropriate arrangements for the care of a child or young person are being made, before they are sent from school premises.

The school **must** notify the parent or young person within three calendar days immediately following the decision to exclude, in writing of:

- the reason(s) the pupil was excluded;
- the conditions, if any, with which the parent and/or the pupil must comply, or undertake to comply before being re-admitted;
- the right of appeal and how appeals can be initiated; and
- any other information which the school considers appropriate.

Appendices 1(a) and 1(b) are sample letters to be sent to parents notifying them of an exclusion. The letter appropriate to the circumstances should be chosen. Appendices 2(a) and 2(b) outline the information relating to the appeal of an exclusion and this should be enclosed with the letter to the parent(s). Appendix 3 is a record of exclusion and this should be filled out and enclosed in the letter to the parent(s) only in cases where a referral has been made to the Executive Director of Education.

The reasons for the exclusion may be brief as schools are not expected to meet the requirements of a legal brief, but to simply state the reasons or indicate the grounds. The information must be sent by post or handed to the young person or parent.

It is **not** a requirement that pre-return conditions are set, but return to school can be made the subject of conditions on a pupil or parents, depending upon the individual case. For example, a condition might require a pupil to comply with a support plan or action plan setting out respective roles and responsibilities. However, the refusal to

agree to the conditions of the return would not be deemed a reason to extend the exclusion.

It is good practice to provide notification to pupils, since they may also have the right of appeal. However, this is not a legislative requirement. Parents of a young person should also be copied into notification.

3. Length of Exclusion

The length of exclusion is not defined in the legislation and accordingly is a matter for the discretion of the education authority. The length of the exclusion will be at the discretion of the Head Teacher and it should reflect the severity of the incident but must not exceed **the maximum of 10 school days or 4 days for a pupil deemed to be looked after by the authority (see section 5)**. On most occasions, a one day exclusion is the most appropriate tariff and any exclusion should be for the minimum number of days appropriate to the offence.

Any single temporary exclusion should not span a designated school holiday, except in the case of an exclusion for a very serious offence where the holiday concerned is of one or two days duration (eg public holidays and in-service days).

- 3.1 While most exclusions will relate to serious incidents within the school, there may be occasions where the issue of the exclusion of pupils for behaviour outwith school premises and outwith school hours is raised. The question of the exclusion of a pupil in such circumstances should be assessed by the Head Teacher in terms of whether or not the incident(s) is likely to have “a seriously detrimental” effect on the order and discipline of the school, and/or on the well-being of the pupils.

4. Serious Misbehaviour

- 4.1 In situations where actual physical violence, or threats of violence, occur against members of staff, the matter must be recorded on the appropriate form. All such acts of violence against staff must be reported to the Executive Director of Educational Services immediately in line with Educational Services’ policy: *Violence Against Staff*.

In this respect, physical violence to staff should normally involve exclusion from school and consideration of involvement of the Police.

- 4.2 Where an offence is serious and where a pupil commits an act of physical violence to a member of staff a case management meeting should be held within 4 working days of the incident, convened by the Executive Director or his representative, regarding the need for further sanctions and interventions.

5. Looked After Children

Section 17(6) of the Children (Scotland) Act 1995 provides that a child who is Looked After by a local authority is a child:

- (a) for whom the local authority is providing accommodation under s25 of the 1995 Act;

- (b) who is subject to a supervision requirement and in respect of whom they are the relevant local authority;
- (c) who is subject to an order made, or authorisation or warrant granted by virtue of Chapter 2, 3 or 4 of Part II of the 1995 Act (e.g. child assessment order, child protection order);
- (d) who is subject to an order which has been made in England, Wales or NI and which, by virtue of regulations made under s33 of the 1995 Act, is to be treated as a corresponding Scottish order;
- (e) in respect of whom a permanence order is in force.

The majority of children who are considered to be Looked After will come into one of the following two categories:

- (a) Looked After at Home;
- (b) Looked After Away from Home

There are particular responsibilities and considerations for the school and Council as corporate parents regarding the exclusion of a Looked After Child. Details of who should be informed when the decision has been taken to exclude a Looked After Child are the child's designated Social Worker; Team Leader, Youth Services; Section Head, Childcare; and Quality Improvement Officer (Pupil Support). The maximum length of an exclusion for a pupil deemed to be Looked After is **four** days. In cases of serious incidents or violence against staff a case management meeting should be held to discuss further sanctions and interventions.

6. Pupils on the Child Protection Register

In cases where there are either current or past child protection concerns there are a number of additional safeguarding protocols to be followed before enacting an exclusion:

- (a) inform the school's designated Child Protection Coordinator;
- (b) inform Social Work before sending the pupil home; and,
- (c) undertake a risk assessment to ensure that the pupil will not be placed at further risk whilst excluded.

7. Alternative Education Provision

Section 14 (3) of the Education (Scotland) Act 1980 places a duty on the education authority to make alternative education provision for excluded pupils.

The education authority will discharge its duty to provide continuity of education for pupils by providing the following options during a period of exclusion:

- (a) Up to four days: homework programme to be provided and marked on the pupil's return;

- (b) Up to five days: homework programme to be provided and marked on the pupil's return; **plus the offer** of one tutorial session (time and location to be arranged by the school);
- (c) Six to ten days: homework programme to be provided and marked on the pupil's return; **plus the offer** of two tutorial sessions (time and location to be arranged by the school).

8. Appeals

8.1 Exclusion Appeals

A decision to exclude a pupil from school can be referred to an appeal committee. Where a pupil is over 16 years of age he or she has the sole right of appeal. In other cases the parent may appeal. There is no statutory time limit within which an appeal can be lodged, but when an appeal is made the committee must hold the hearing within one month or it will be deemed to have refused the appeal resulting in a possible further appeal to the Sheriff. The committee can confirm or annul the exclusion; however, it has no power to change the length of the exclusion. The education authority has no right of appeal against the decision.

Head Teachers will be informed if a parent makes an appeal against the decision to exclude a pupil and he/she will require to be the principal witness for the Authority at the subsequent appeal hearing and, if necessary, in the Sheriff Court. The Executive Director of Educational Services will arrange for the Head Teacher to be suitably briefed prior to the appeal hearing or Sheriff Court proceedings and, in due course, will notify them of the results of such appeals.

The information on appeals (appendix 2(a) and 2(b)) should be issued to all parents or young people with the written confirmation of exclusion (appendix 1 (a) and 1(b))

8.2 Appeal to the Sheriff

A parent, young person, or pupil with legal capacity may appeal against the decision of the appeal committee to the Sheriff. The appeal documentation has to be lodged within twenty eight days from the day of the decision of the appeal committee. Appeals are heard in chambers and evidence would be taken from school staff. As with the appeal's committee the Sheriff can confirm or annul the exclusion but not alter the length.

8.3 Record Keeping

If the appeal is annulled then the pupil's records should no longer contain a reference to the exclusion.

(see Appendices 2 (a) and 2(b) for details of the Appeals procedures).

9. Referral to the Executive Director of Educational Services

In circumstances where an incident leading to exclusion was the result of violence or threatening behaviour then a meeting to be chaired by the Executive Director or his representative can be requested:

- (a) In circumstances where an individual pupil has been excluded for more than twenty days in one academic year; or
- (b) In circumstances where a parent or pupil has stated that a legal representative will attend the meeting to discuss the exclusion.

When referring the case to the Executive Director of Educational Services, a copy of all paperwork sent to the parents should be forwarded to the Executive Director of Education with appendix 3.

APPENDIX 1 (a)
Educational Services
Parental Letter Advising of Exclusion



To be inserted onto Headed Paper

Dear (insert name of parent/guardian)

A decision has been taken today to exclude (insert pupil name) from attendance at (insert school name).

I regret to inform you that (insert pupil name) has been involved in an incidence of misconduct. I would ask you to attend a meeting in the school on (insert date and time) in order to discuss the matter. (Insert pupil name here) should be present at this meeting but should not return to school before it takes place. The reasons for this decision are detailed on the attached sheet and, in my view, are such that (insert pupil name here) continued attendance at this school would be likely to be seriously detrimental to order and discipline in the school or to the educational well-being of other pupils.

You may bring someone to support you along to this meeting if you so wish. Please contact me as soon as possible if this time is unsuitable in order that we can make other arrangements.

This exclusion has been made within the terms of the Education (Scotland) Act 1980 and you have the right under section 28H of the same act to appeal against the exclusion. Details of how you might appeal are included with this letter and should you intend to appeal, you should do so as soon as possible.

I look forward to meeting you on the above date.

Yours sincerely

Head Teacher

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APPENDIX 1 (b)
Educational Services
Parental Letter Advising That Matter Has Been Referred to
the Executive Director of Education



To be inserted onto Headed Paper

Dear (insert name of parent/guardian)

A decision has been taken today to exclude (insert pupil name here) from attendance at this school.

I regret to inform you that (insert pupil name here) has been involved in an incidence of misconduct. I would ask you attend a meeting in the school on (insert date and time here) in order to discuss the matter. (Insert pupil name here) should be present at that meeting but should not return to school before it takes place. The reasons for this decision are detailed on the attached sheet, and in my view, are such that (insert pupil name here) continued attendance at this school would be likely to be seriously detrimental to order and discipline in the school or to the educational well-being of other pupils.

You may bring someone to support you along to this meeting if you so wish. Please contact me as soon as possible if this time is unsuitable in order that we can make other arrangements.

Given the serious nature of this matter, it has been necessary for me to inform the Executive Director of Educational Services and you may be invited to meet with the Executive Director of Educational Services or another Educational Services representative.

This exclusion has been made within the terms of the Education (Scotland) Act 1980 and you have the right under section 28 H of the same act to appeal against the exclusion. Details of how you might appeal are included with this letter and should you intend to appeal, you should do so as soon as possible.

I look forward to meeting you on the above date.

Yours sincerely

Head Teacher

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APPENDIX 2 (a)
Educational Services
Appeal Procedures for Children and Young Persons Excluded from School



1. The statutory provisions for appeal are contained in Section 28H and schedule A1 of the Education (Scotland) Act 1980 Section 41 of the Standards in Scotland's Schools etc Act 2000 and the Education (Appeal Committee Procedures) (Scotland) Regulations 1982.
2. Under these provisions a parent of a pupil who has been excluded from attending school or where the pupil is a young person (a pupil over school age who has not attained the age of 18 years) the pupil, may appeal against the exclusion. A pupil has the right to appeal against exclusion where they would have legal capacity in terms of the Age of Legal Capacity (Scotland) Act 1991.
3. A parent or young person who wishes to make an appeal against a decision to exclude should do so in writing to the Head of Legal and Administrative Services, Council Offices, Garshake Road, Dumbarton G82 3PU.

The letter should give the name of the pupil or young person and should contain a clear statement requesting the referral of an appeal against the decision to exclude to an appeal committee set up under Section 28D of the Education (Scotland) Act 1980.

4. You may wish to take independent advice on this matter.
5. The appellant will be given the opportunity to go to the hearing and speak to the appeal committee. The appellant may ask up to three people to accompany him/her and if he/she wishes they can ask one of them to speak on his/her behalf. If the appellant does not wish to be present he/she can nominate someone else to attend and speak for them.

The appellant may decide to make a written submission to the appeal committee and if he/she decides they should send their submission to the appeal committee to the divisional office not less than 10 days before the date of the hearing.

The appellant may decide, however, simply to submit a letter of appeal and this will be considered by the appeal committee.

6. If the appellant does make a written appeal it will be acknowledged by the appeal committee within five working days of receipt.

7. DEEMED DECISIONS

In the following circumstances, an appeal committee will be deemed to have confirmed the decision of the education authority: where within

- (i) a period of one month immediately following receipt by the appeal committee of the reference a hearing has not been held;
- (ii) 14 days immediately following an adjournment of a hearing the appeal committee has failed to fix a date for a resumed hearing;
- (iii) 14 days following the conclusion of a hearing the appeal committee has failed to notify the parent of the young person, the young person and the education authority of their decision and the reasons for it.

8. If the appeal committee confirms the decision of the authority an appeal may be made to the Sheriff of the area in which the school is situated.

APPENDIX 2 (b)
Educational Services
Appeal Procedures for Children and Young People Excluded From
School – Conducting the Appeal by the Appeal Committee

Under the current legislation either a parent or a young person, considered to have legal capacity in terms of the Age of Legal Capacity (Scotland) Act 1991, can make an appeal against the decision to exclude.

In order to make an appeal, parent/young person writes directly to Corporate Services who make arrangements to hold a hearing in a neutral venue within the Council area.

The appeals panel itself comprises members drawn from Parent Councils, assisted in technical and legal matters by the Principal Solicitor to the Council. The appeal is against the Authority's decision to exclude and as such a member of the Directorate, usually a Head of Service represents the Authority at the hearing. The Directorate member is normally accompanied by the Head Teacher of the school.

The parent(s) as the appellant(s), has/have the opportunity to attend the hearing and address the appeal committee. They may also be accompanied by up to three other people to either support them, or present the case on their behalf. They may also be represented by a Solicitor. If they do not wish to attend the appeal committee they can make a written submission to the committee.

The chair of the panel will start the appeal by inviting the member of the Directorate to make an initial presentation on behalf of the Authority regarding the circumstances of the exclusion.

Following this presentation the parent will be invited to make comment or ask any questions of the Directorate member.

The panel will then ask questions of the Authority representative and/or the Head Teacher. As the appeals procedure is an independent process the Education and Cultural Services Department has no control over or prior knowledge of, the nature of the information likely to be sought by the panel and the scope of the questions asked.

In most cases however questions will relate to the details leading up to the exclusion and the circumstances of the exclusion itself, but there may also be reference to school procedures regarding promoting positive behaviour and managing behaviour, the history of the pupil in the school in terms of educational needs and difficulties, and the interaction between the school and the parents.

Following this period of questioning by the Panel, the parents or their representative, will then be invited to make an initial statement to the panel regarding their reasons for appealing against the decision to exclude.

The Authority representative/Head Teacher will then be invited to comment upon the statement or ask questions of the parents. The panel will then address any appropriate questions to the parents.

The process is concluded by both sides being invited to make final statements to the panel.

At this stage both the Authority representatives and the parents withdraw and the committee considers the information provided and makes a decision on the appeal.

The decision is conveyed informally to the Education Authority by the end of the day, and in writing to both the Authority and the parents within 14 days. No explanation is given as to why an appeal has been rejected or upheld.

Where an appeals panel upholds the parents' appeal against exclusion this simply means that all reference to the exclusion is expunged from the child's records.

It is the normal practice when intimation is given to the department that parents have made an appeal against exclusion, for the Directorate member involved to meet with the Head Teacher to fully discuss all the circumstances related to the exclusion and prepare for the hearing. The preparation will relate to the action taken by the school staff and the record of those actions which form the material to support formal exclusion.

While appeals against exclusion happen infrequently it is important that Head Teachers are aware of the parent's/pupil's right to appeal and the role the Head Teacher will be required to play at an appeal committee.

**APPENDIX 3
Educational Services
Record of Exclusion Form**



Record of Exclusion

Only to be completed if exclusion has been referred to the Executive Director of Education. This should accompany the letter informing parent(s) of exclusion (appendix 2(b)). A copy of both the letter and this form should be sent to the Executive Director of Education.

Name of Establishment	
Date of Exclusion	

Pupil Name	
Stage	
Address	
Contact Telephone Number	
Date of Birth	
Looked After Child (delete as appropriate)	Yes / No
Parent/Guardian	
Parent/Guardian Contact Details (if different from above)	

Reason for Exclusion (Please see attachment 1 and choose correct code)	Code:
	Comments:
Length of Exclusion	
Please list any previous exclusions including date, length and reason for exclusion	
Cumulative Total of Exclusions	

Date of Latest JAT Meeting (if applicable)	
Date of Latest SW/ED Meeting (if applicable)	
Date of latest Child Care Review/Case Conference of LAC Review (if applicable)	
Comments (please also attach	

minutes from above meetings if available)	
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Please complete the table below, answering all applicable questions as fully as possible.

School Procedures	Date	Comments
Has the pupil been referred and if so to whom?		
Has the pupil been interviewed and if so by whom?		
Have any complaints been received from pupils, staff or other?		
Has the Pupil been re-admitted to school and is so when?		
What contact has been made with parent/guardian? (e.g. letter, phone call etc)		
Has parent/guardian been sent a copy of the exclusion letter?		
Has the Executive Director of Education been sent a copy of the exclusion letter?		
Has an interview been held with parent/guardian and if so who was present at interview?		
Please list names and contact details of involvement of any outside agencies (e.g. Psychological services, Social Work, Police etc).		

Please outline details of any other action taken to support the pupil and any ongoing support plan

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Action by Educational Services (if applicable)	Date	Comments
Interviewed		
Re-admitted to own school		
Transferred to another school		
Parent/guardian appealing against exclusion		
Appeal Committee decision		
Sheriff Court decision		

Completed by (Print name)	
Designation	
Signature	
Date	

Attachment 1 (part of Appendix 3)

Code	Reason for Exclusion
34	Fighting
35	Spitting
36	Verbal abuse of staff
37	Verbal abuse of pupil
38	Fire raising
39	Damage to school property
46	Threat to school property
48	Indecent exposure
51	Sustained peer exclusion for the purpose of causing significant distress
53	General or persistent disobedience
54	Insolent or offensive behaviour
55	Refusal to attend class
56	Parental non-cooperation
57	Substance misuse – alcohol
58	Substance misuse – not alcohol
60	Physical assault with no weapon against pupil
61	Physical assault with no weapon against staff
62	Physical assault using weapon against pupil
63	Physical assault using weapon against staff
64	Physical assault using improvised weapon against pupil
65	Physical assault using improvised weapon against staff
66	Damage to personal property of pupil
67	Damage to personal property of staff
68	Theft from pupil
69	Theft from staff
70	Threat of sexual violence against pupil
71	Threat of sexual violence against staff
72	Threat of physical violence, no weapon, against pupil
73	Threat of physical violence, no weapon, against staff
74	Threat of physical violence using weapon or improvised weapon, against pupil
75	Threat of physical violence using weapon or improvised weapon, against staff
76	Threat to personal property against pupil
77	Threat to personal property against staff
78	Malicious communications against pupil
79	Malicious communications against staff
80	Slander and libel (incl. website) against pupil
81	Slander and libel (incl. website) against staff
82	Stalking of pupil
83	Stalking of staff
84	Extortion from pupil
85	Extortion from staff
99	Other (please state on form)