Welcome to this presentation for governors in preparation for sitting on a Governors' Disciplinary Panel. It DOES NOT cover specific administrative duties. **Ensuring you have a trained Clerk for GDP meetings is essential.**

It is important to note that this is an abridged version of the full training. It assumes that you have already familiarised yourself with the statutory guidance on suspensions and permanent exclusions published by the DFE.

The narration accompanying the presentation is not a full description of what is contained in each slide. The contents of each should be carefully considered.

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School Governor Training

Permanent Exclusion Panels: Your Legal Role and Responsibilities

Based on August 2024 Statutory Guidance

Session Overview

- Legal framework for exclusions
- The role of the governing body disciplinary panel
- Key principles: Independence and lack of bias
- Decision-making process
- Practical scenarios and role play
- Questions and answers



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Legal Framework

Key Legislation

- Education Act 2002 (Section 52)
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012
- Statutory Guidance on Exclusion (August 2024)
- Equality Act 2010

Resources

- Suspension and Permanent Exclusion
- Behaviour in Schools
- SEND Code of Practice: 0 to 25 years
- Keeping Children Safe in Education
- Arranging Alternative Provision
- UKCIS sharing nudes and semi nudes advice for education settings
- Local Authority Ordinarily Available Provision

Types of Exclusion

- **Fixed-term suspension** Up to 45 school days in one academic year
- **Permanent exclusion** Child removed from school roll



When Must a Panel Be Convened?

1 For permanent exclusions (mandatory)

2 For suspensions totalling more than 15 schooldays in one term

3 When requested by parents for suspensions of 6-15 days

4 Must meet within 15 schooldays of notification

Panel Composition

1 Minimum of 3 governors

2 Must have no prior knowledge of the case

3 Cannot include the headteacher

4 Should reflect diverse perspectives

5 Can include governors from other schools if necessary



The Panel's Core Responsibility

Your fundamental duty is to determine whether the headteacher's decision is:

- Lawful
- Reasonable
- Fair
- Proportionate

And to ensure that permanent exclusion was used only as a 'last resort' after all alternatives and support measures were exhausted



The Statutory Test for Permanent Exclusion

From paragraph 11 of the August 2024 statutory guidance:

> "A permanent exclusion is when a pupil is no longer allowed to attend a school (unless the pupil is reinstated). The decision to exclude a pupil permanently 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 such as staff or pupils in the school"

BOTH conditions must be satisfied for the exclusion to be lawful.

The "would seriously harm" threshold must be tested rigorously - not just potential or possible harm, but serious harm.

Independence and Impartiality

Why This Matters

- Legal requirement for fair process
- Protects rights of all parties
- Enables objective decision-making
- Reduces risk of successful review

Common Challenges

- Presumption that headteacher must be supported
- "Rubber stamping" decisions
- Prior knowledge or relationships



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Your Role is NOT to Support the Headteacher



Common Misconception

Many governors believe their role is to automatically support the headteacher's decision



Reality

You are an independent panel reviewing evidence



Your Duty

To the excluded pupil and the school community

The headteacher's decision must be legally sound and proportionate. You are protecting the school from legal challenge.usYou m verify that permanent exclusion was truly a 'last resort'.



Panel Responsibilities

Before the Meeting

Review Evidence

Review all written evidence thoroughly

Understand Requirements

Understand legal requirements and statutory guidance

Identify Gaps

Identify any missing information

Consider Equality

Consider equality implications

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Verifying Procedural Compliance

Check the headteacher has properly informed parents:

- In writing without delay
- With reason for exclusion clearly stated
- With information about governor review rights

Verify relevant parties were notified:

- Local Authority
- Social worker (for Children Looked After or children with social worker)
- Virtual School Head (for Children Looked After)
- SEND professionals (where applicable)



Checking Support and Interventions

Review Interventions

Review evidence of interventions prior to exclusion



Examine Support

Examine whether appropriate support was provided

Reasonable Adjustments

Check reasonable adjustments were implemented

SEND/LAC Considerations

Review Education, Health and Care Plans if applicable

For pupils with SEND, verify specialist advice was sought and followed. Was the pupil's behaviour a 'symptom' of their special

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During the Meeting



Ensure Fair Hearing

Ensure all parties are heard and maintain impartiality throughout the process



Ask Probing Questions

Ask relevant, probing questions about the incident and interventions



Consider All Evidence

Consider all evidence fairly and scrutinise whether exclusion was genuinely a 'last resort'

Ask the Clerk or Local Authority representative if questions relate to procedure

Evidence to Consider









- ☑ Headteacher's case for exclusion
- ☑ Pupil and parent perspective
- ☑ Witness statements and accounts
- ☑ School policies
- ☑ Behaviour records and interventions
- ☑ Special educational needs and disabilities / Social Care
- ☑ Mitigating circumstances
- ☑ Evidence of alternatives considered before permanent exclusion
- ☑ If an Off-site direction was issued, were statutory procedures followed?

Equality Act Considerations

Protected Characteristics

- Special educational needs and disabilities require particular attention
- Evidence of reasonable adjustments made



Legal Duty

The Equality Act 2010 places specific obligations on schools and governors when making exclusion decisions:

- Must not discriminate directly or indirectly
- Must make reasonable adjustments
- Must demonstrate proportionality

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Natural Justice

- **Fair Hearing:** Every party should have the opportunity to present their case.
- **Impartial Decision -Making:** Panel members must remain unbiased and avoid conflicts of interest
- **Transparency:** Decisions should be based on clear evidence and communicated openly.
- **Right to Representation:** Students and parents should be allowed to bring a representative.
- **Reasoned Decisions:** Provide clear reasons for the outcome.



The Meeting Process

Headteacher presents case for exclusion

The headteacher explains the reasons for the exclusion and presents supporting evidence

Questions to headteacher

Panel members and parents can ask questions about the case presented

Parents/pupil present their case

The family has the opportunity to explain their perspective and present any mitigating factors

Questions to parents/pupil

Panel members and the headteacher can ask questions about the family's case

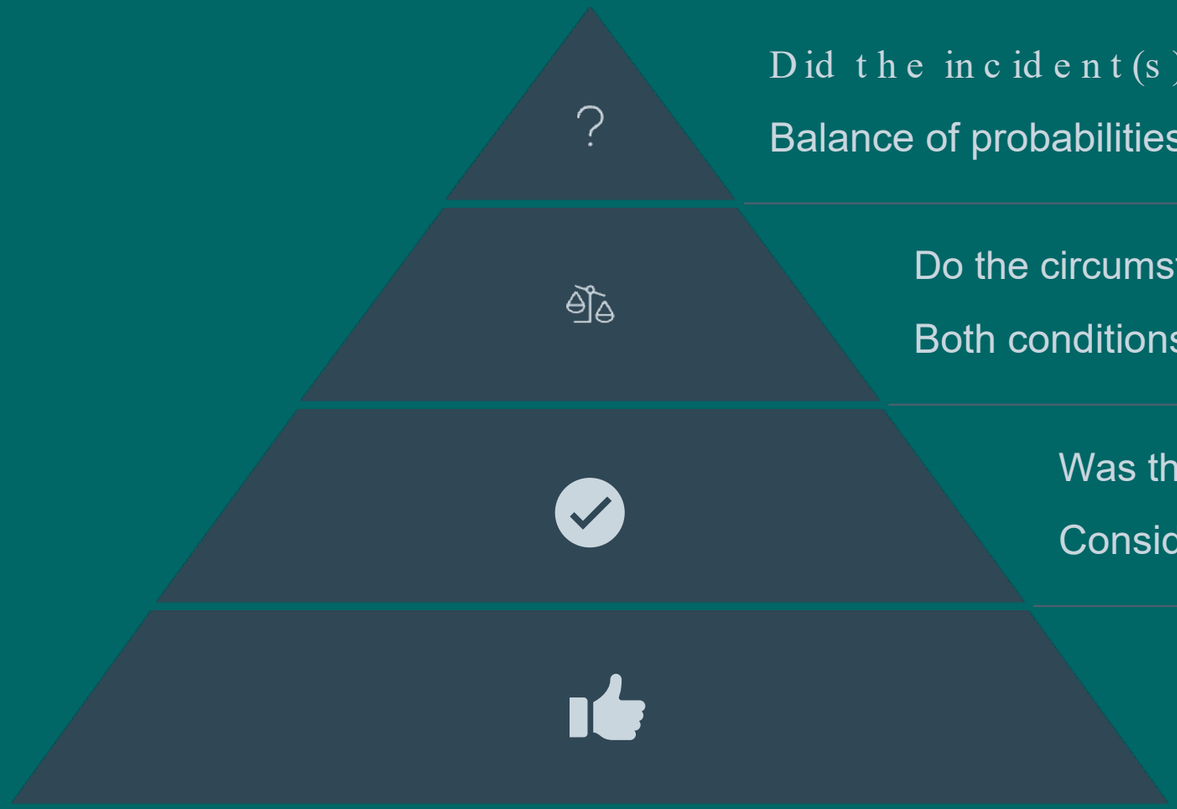
Final statements

Both sides have a final opportunity to summarize their position

Panel deliberation

All parties withdraw except panel, who deliberates and makes decision

Decision -Making Test



Did the incident(s) occur as described?

Balance of probabilities

Do the circumstances meet the statutory test?

Both conditions must be met

Was the response proportionate?

Consider multiple factors

Was permanent exclusion truly a 'last resort'?

All alternatives exhausted

For the statutory test, you must verify: Was there a serious breach or persistent breaches of the behaviour policy? AND? Would allowing the pupil to remain in school SERIOUSLY harm the education or welfare of the pupil or others?

When considering proportionality, examine: Seriousness of behaviour, school policies, mitigating factors, alternatives explored and impact on the pupil and wider school.



The 'Last Resort' Test

Questions to consider:

- Were other strategies tried first?
- What support was offered to the pupil?
- Were external agencies involved appropriately?
- For SEND pupils, were adjustments made and reviewed?
- For Children Looked After, was the Virtual School Head consulted?
- Could a further suspension have been appropriate instead?
- Was the response proportionate to the behaviour?

The "Serious Harm" Threshold



Is there evidence that allowing the pupil to remain would SERIOUSLY harm education or welfare?



Is the evidence of potential harm specific and concrete?



Is it serious harm or just disruption/inconvenience?



Has the threshold for "serious" been rigorously tested?



Was a risk assessment undertaken?

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Possible Outcomes

The panel can only:

Uphold

The headteacher's decision

Direct reinstatement

Immediately or by a specific date

The panel cannot:

Impose a "compromise" solution

Create alternative arrangements



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Communicating the Decision

Timing

Decision must be communicated in writing within 24 hours

Content

Must include reasons for the decision

Rights

Must explain right to apply for independent review

Reasoning

Must identify how each key issue was considered

Last Resort

Must demonstrate consideration of whether exclusion was a 'last resort'



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Practical Scenario 1:
Drug-Related Exclusion

Facts to consider:

- Year 11 pupil found with cannabis in school
- No previous drug incidents
- Good academic record
- School has zero-tolerance drug policy
- ADHD diagnosis

Role play:

Break into groups and consider what questions you would ask to determine if:

1. The headteacher followed proper procedures
2. This was truly a 'last resort' decision

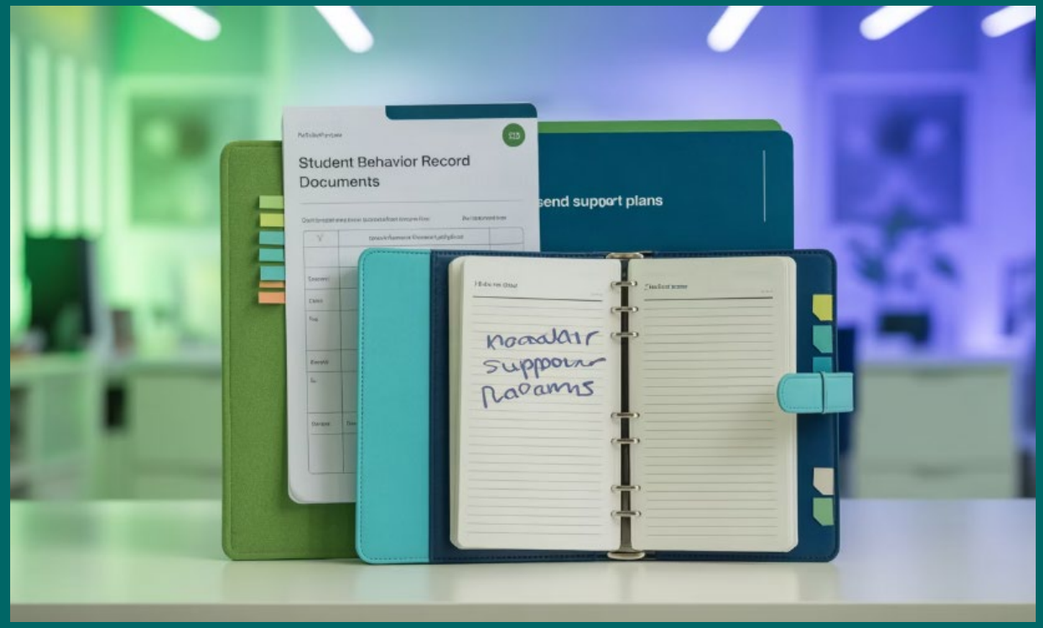
Practical Scenario 2: Persistent Disruptive Behaviour

Facts to consider:

- Year 9 pupil excluded for accumulated behaviour incidents
- 30+ behaviour points, 5 previous suspensions
- Parents claim inadequate SEND support
- Recent diagnosis of autism
- School claims all reasonable adjustments made

Role play:

What evidence would you need to review to determine if this exclusion was lawful, reasonable, fair and a 'last resort'?



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Practical Scenario 3:
Physical Assault (Primary)

Facts to consider:

- Year 4 pupil (age 8) permanently excluded for punching a teacher
- Numerous previous incidents of aggression towards staff and pupils
- Child has an EHCP for Social, Emotional and Mental Health needs
- Recent changes in home circumstances (parental separation)
- Individual Behaviour Plan in place but not recently reviewed
- Parents claim triggers were not managed appropriately

Role play:

How would you examine whether:

1. Both statutory conditions have been met?
2. The school has fulfilled its duties under the Equality Act?
3. The "serious harm" threshold has been properly assessed?

Practical Scenario 4: Weapon Possession (Primary)

Facts to consider:

- Year 6 pupil (age 10) found with a kitchen knife in their bag
- Child says it was for protection from bullies on the way to school
- No previous exclusions but some concerning behaviour noted
- Child is known to social services as a Child in Need
- School has anti-bullying policy but parents claim reports were ignored
- No risk assessment conducted following the incident

Role play:

Discuss what questions you would ask the headteacher to determine if:

1. The response was proportionate to the risk
2. Alternative measures were properly considered
3. The serious harm test has been met
4. The school fulfilled its safeguarding responsibilities



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Common Panel Mistakes

- Failing to properly consider SEND implications
- Accepting headteacher's account without scrutiny
- Not giving appropriate weight to pupil/parent perspective
- Inadequate reasons for decision
- Lack of procedural fairness
- Pre-judging the outcome
- Not verifying that exclusion was a 'last resort'
- Not testing whether BOTH statutory conditions are met
- Setting the "serious harm" threshold too low

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Independent Review Panels

1

Parent Request

Parents can request an independent review

2

Panel Powers

Reviews can quash your decision

3

Outcomes

Can order reconsideration or recommend reconsideration

4

Financial Impact

Can award costs against the school in some cases



Key Takeaways

Independent decision-maker

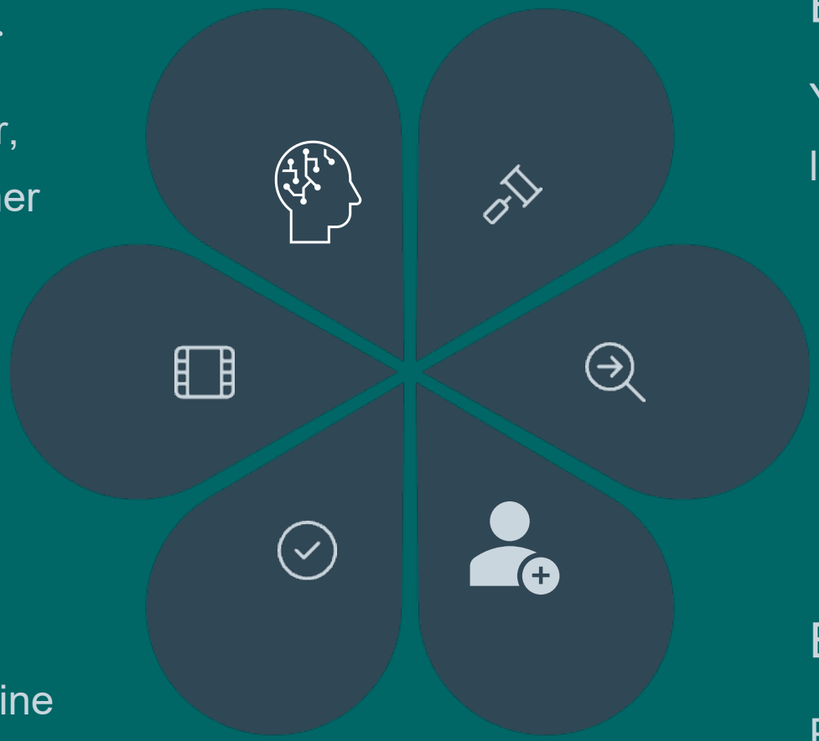
You are an independent decision-maker, not a supporter of the headteacher

Clear reasoning

Provide clear reasoning for your decision

Last resort verification

Verify permanent exclusion was a genuine last resort



Ensure fairness

Your role is to ensure fairness and lawfulness

Objective evidence review

Consider the evidence objectively

Equality duties

Pay careful attention to equality duties

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