Runnymede Trust
17 February 2012

Response to Department for Education consultation on revised statutory guidance and regulations for exclusions from schools and pupil referral units in England

This response collates our responses to a number of questions answered on an online form for this consultation. This is available at the end of this document. The original government consultation document is available here: http://www.education.gov.uk/consultations/downloadableDocs/Exclusion%20Guidance%20-%20Consultation%20Version.pdf

1. Do you agree with the scope of the proposed regulations for Academies? If not, what further changes should be made so that the regulations are appropriate for Academies?

We are unclear regarding paragraph 45 of the guidance, which refers to the information maintained schools need to provide to local authorities in relation to exclusions.

It is not clear whether this also applies to academies. If not, we would be extremely concerned as it is crucial that the information specified is reported in order to monitor rates of exclusion, and also to monitor which groups (eg those with SEN and those from different ethnic groups) are most affected.

2. Do you think that the guidance on early intervention is sufficiently clear? If not, how might it be improved?

We think that it would be useful if schools monitor (particularly by ethnicity) who receives access to these interventions and what relationship this has in reality to lowering levels of exclusion. There are some concerns that access to a statement and other SEN interventions are not fairly distributed.

We also believe that schools should also assess the success of their interventions by ethnicity.
3. Do you think the explanation of how the Equality Act 2010 applies in relation to exclusions and the statutory guidance on exclusion of pupils from ethnic groups vulnerable to exclusion is sufficiently clear? If not, how might it be improved?

The guidance on how the Equality Act 2010 applies to exclusions is clear, although the government should ensure that the guidance is in line with recently released guidance on the Act issued by the Government Equalities Office/Home Office.

In relation to the statutory guidance on exclusion of pupils from ethnic groups vulnerable to exclusion, we are concerned that given the scale of the problem there is no further guidance on this issue which teachers can be directed to.

As the department will already be aware Black Caribbean and mixed Black and White Caribbean boys experience a high rate of exclusion – 16.6% of all Black Caribbean boys and 16.3% of all Mixed Black and White Caribbean boys experienced a fixed-term exclusion during 2008/09 in comparison to 8% of their White and 4% of their Asian counterparts.

Exclusions have an incredibly negative impact on a pupil's education and future life chances, and also negatively impact on society as a whole. Experts on the issue of race and exclusion have reported that excluded pupils are 4 times more likely to finish their education without having gained academic qualifications. Subsequent access to higher education and employment is therefore limited. Furthermore, if a child has lower academic achievement they are more likely to become involved in criminal activity.

Given the large numbers of Black Caribbean pupils excluded, we believe that the government should seriously consider putting together some substantial guidance advising teachers on ways to reduce the risk of exclusion of pupils from this group, as well as Gypsy/Roma and Traveller pupils. This should take into account the possibility of unconscious bias being a factor contributing to high exclusion rates of Black Caribbean children (as highlighted in the former Department for Education and Skills 2006 report “Getting it. Getting it Right”, now unavailable online), and advise teachers on how to be aware of this.

13. The financial readjustment / payment
Where a governing body is directed to reconsider an exclusion decision by an independent review panel but chooses not to reinstate the pupil, the school will be expected to provide a fair contribution towards the potentially significant extra costs of alternative provision. This would be in addition to the funding that would normally follow an excluded pupil. The system of financial readjustment needs to be clearly understood and consistently applied. It is, therefore, proposed that a flat rate sum of £4,000 would be payable by all schools where the governing body has been
directed to reconsider an exclusion but does not offer to reinstate the pupil, so long as that school has its own budget from which to make the payment (paragraphs 131 and 143 to 145 of the guidance).

Is a flat rate sum of £4,000 right? If your answer is no, please go to question 13b.

If you answered ‘No’ to question 13, please indicate whether you consider the amount should be higher, lower or varied. If you think it should be varied, please explain how you think the amount should be calculated so that it is clearly understood and consistently applied.

As we have argued elsewhere, we would prefer independent review panels to have to power to reinstate pupils. Despite this, we do, in theory, support the concept of a disincentive for schools to refuse reinstatement if an appeal is overturned, and therefore support a flat rate being paid by the school in these instances.

However, it is not clear to us from the guidance what the rationale is for choosing the £4000 figure, and it would therefore be useful for this amount to be justified and to explain where the money would go. It would be particularly useful to make clear how this figure relates to per-pupil funding.

If the government does intend the £4000 to be a disincentive, its use should be monitored. Some wealthier schools for example may view the amount as less of a disincentive than a school with less resources/money. We would like to see an update report on this measure a year after its implementation.
View your response

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

**View your response**

**Personal Details**

- Please tick if you want us to keep your response confidential.
- Please tick if you are responding on behalf of an organisation.
- Please tick if we can contact you in the future.
- Please tick if you would like us to acknowledge your response.
- Please tick if you would like us to inform you when the consultation results are published.

**Respondent Information Questions**

Whilst respondents are welcome to answer every question some questions apply directly to specific groups of people. Respondents may, therefore, wish to complete only those questions which are directly relevant to them. In order to make this easier the questions are grouped as follows.

Questions 1 to 16 are general questions for all respondents.

Question 17 is aimed at head teachers, Principals and teachers in charge of pupil referral units (PRUs).

Question 18 is aimed at school governors and management committee members.

Questions 19 and 20 are aimed at local authority officials and Academy Trust members.

‘Head teacher’ in this consultation questionnaire applies equally to the Teacher in Charge at a Pupil Referral Unit and Principals of Academies. ‘Governing Body’ applies equally to a PRU Management Committee and ‘Governor’ to Member of a Management Committee. Apart from where specifically stated, the duties of a local authority to arrange an independent review panel also apply to Academy Trusts.

Please tick the box that best describes you as a respondent.

- Head Teacher/Principal
- Teacher/School Professional
- School Governor/Management Committee Member
- Parent
- Local Authority Official
- Pupil
- Voluntary/Community Organisation
- SEN Professional or Practitioner
- Other (please specify)

Please Specify: I am responding on behalf of the Runnymede Trust. The Runnymede Trust is a social policy research organisation focused on race equality and race relations. We work by identifying barriers to race equality and good race relations; enabling effective action for social change; and influencing policy at all levels through providing thought leadership and robust evidence.

Please tick to indicate which phase of education you are involved with:

- Primary
- Secondary
- Combined
- Not relevant

Please Specify:

Please tick to indicate which type of school your answers relate to

http://www.education.gov.uk/consultations/responseprint.cfm?consultationId=1795

17/02/2012
Maintained School
Pupil Referral Unit
Academy / Free School
- Other (please specify)

Please Specify: All schools

**Consultation Questions**

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<td>3. Do you think the explanation of how the Equality Act 2010 applies in relation to exclusions and the statutory guidance on exclusion of pupils from ethnic groups vulnerable to exclusion is sufficiently clear? If not, how might it be improved?</td>
<td>Yes, No, Not Sure, No Response</td>
<td>The guidance on how the Equality Act 2010 applies to exclusions is clear, although the government should ensure that the guidance is in line with recently released guidance on the Act issued by the Government Equalities Office. In relation to the statutory guidance on exclusion of pupils from ethnic groups vulnerable to exclusion, we are concerned that given the scale of the problem there is no further guidance on this issue which teachers can be directed to. As the department will already be aware, Black Caribbean and mixed Black and White Caribbean boys experience a high rate of exclusion - 16.6% of all Black Caribbean boys and 16.3% of all Mixed Black and White Caribbean boys experienced a fixed-term exclusion during 2006/09 in comparison to 8% of their White and 4% of their Asian counterparts. Exclusions have an incredibly negative impact on pupils’ education and future life chances, and also negatively impact on society as a whole. Experts on the issue of race and exclusion have reported that excluded pupils are 4 times more likely to finish their education without having gained academic qualifications. Subsequent access to higher education and employment is therefore limited. Furthermore, if a child has lower academic achievement they are more likely to become involved in criminal activity. Given the large numbers of Black Caribbean pupils excluded, we believe that the government should seriously consider putting together some substantial guidance advising teachers on ways to reduce the risk of exclusion of pupils from this group, as well as Gypsy/Roma and Traveller pupils. This should take into account the possibility of unconscious bias being a factor contributing to high exclusion rates of Black Caribbean children (as highlighted in the former Department for Education and Skills 2006 report “Getting It. Getting It Right”, now unavailable online), and advise teachers on how to be aware of this.</td>
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<td>4. Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to enable the SEN expert to perform their role effectively? If not, how might it be improved?</td>
<td>Yes, No, Not Sure, No Response</td>
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Comments:
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<td>Do you believe these examples are sufficient to enable the local authority to identify individuals that are suitable for the role? If not, please explain what other examples of expert would clearly meet the criteria of having the required expertise and experience of the SEN requirements on schools.</td>
<td>Yes, No, Not Sure, No Response</td>
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<td>6  Do you think the statutory guidance in relation to the exclusion of looked after children is sufficiently clear? If not, how might it be improved?</td>
<td>Yes, No, Not Sure, No Response</td>
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<td>Comments:</td>
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<td>7  Do you agree with this approach to simplify the requirements on when information relating to an exclusion should be provided?</td>
<td>Yes, No, Not Sure, No Response</td>
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<td>8  Do you think the explanation of the legislation and the statutory guidance is sufficiently clear to ensure that parents will be properly informed about the exclusion process? If not, how might it be improved?</td>
<td>Yes, No, Not Sure, No Response</td>
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<td>9  Do you think that the guidance on supporting pupil participation is sufficiently clear? If not, how might it be improved?</td>
<td>Yes, No, Not Sure, No Response</td>
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<td>10 Do you agree with the proposal to allow governing bodies to meet in order to consider reinstatement earlier than six school days after being notified?</td>
<td>Yes, No, Not Sure, No Response</td>
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<td>Comments:</td>
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<td>11 What should the limit on the number of school days of fixed period exclusion in a school year be under the new system?</td>
<td>Higher, Lower, The Same, Not Sure, No Response</td>
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12. Do you think the guidance on pupil reintegration following a fixed period exclusion is sufficiently clear? If not, how might it be improved?

- Yes
- No
- Not Sure
- No Response

Comments:

13 a) Is a flat rate sum of £4,000 right? If your answer is no, please go to question 13b.

- Yes
- No
- Not Sure
- No Response

Comments: As we have argued elsewhere, we would prefer independent review panels to have to power to reinstate pupils. Despite this, we do, in theory, support the concept of a disincentive for schools to refuse reinstatement if an appeal is overturned, and therefore support a flat rate being paid by the school in these instances. However, it is not clear to us from the guidance what the rationale is for choosing the £4000 figure, and it would therefore be useful for this amount to be justified and to explain where the money would go. It would be particularly useful to make clear how this figure relates to per-pupil funding. If the government does intend the £4000 to be a disincentive, its use should be monitored. Some wealthier schools for example may view the amount as less of a disincentive than a school with less resources/money. We would like to see an update report on this measure a year after its implementation.

13 b) If you answered 'No' to question 11, please indicate whether you consider the amount should be higher, lower or varied. If you think it should be varied, please explain how you think the amount should be calculated so that it is clearly understood and consistently applied.

- Higher
- Lower
- Varied
- Not Sure
- No Response

Comments:

Q14 and Q15 are asked on behalf of the Tribunal Procedure Committee

14. Do you regard this 15 day requirement for responses as reasonable?

- Yes
- No
- Not Sure
- No Response

Comments:

15. Do you think the Tribunal Procedure Rules need amending in any other respect in order to be suitable for permanent exclusion cases? If so please explain. (They can be seen by clicking here.)

- Yes
- No
- Not Sure
- No Response

Comments:

16. Please let us have any other comments on the revised guidance or regulations, including any further suggestions for how they might be improved without significantly increasing their length.

Answer:

17. Overall, do you think that the explanation of the legislation and statutory guidance is sufficiently clear to enable head teachers to fulfil their statutory duties? If not, how might it be improved?

- Yes
- No
- Not Sure
- No Response

Comments:
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<td>18 Overall, do you think the explanation of the legislation and statutory guidance is sufficiently clear for governing bodies to fulfil their statutory duties? If not, how might it be improved?</td>
<td>Yes, No, Not Sure, No Response</td>
<td></td>
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<td>19 Do you think the statutory guidance is sufficiently clear to enable local authorities to carry out this financial adjustment? If not, how might it be improved?</td>
<td>Yes, No, Not Sure, No Response</td>
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<td>20 Overall, do you think the explanation of the legislation and statutory guidance is sufficiently clear for a local authority to fulfil their statutory duties? If not, how might it be improved?</td>
<td>Yes, No, Not Sure, No Response</td>
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