Relevant guidance:

* [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](https://www.gov.uk/government/publications/school-exclusion)
* [Equality Act 2010: advice for schools](https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools)
* [Equality and Humans Rights Commission - Technical guidance for schools in England](https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-schools-england)

Relevant excerpts:

* *“Under the Equality Act 2010 (the Equality Act) and the Equality Act 2010: advice for schools, schools must not discriminate against, harass, or victimise pupils because of their: sex; race; disability; religion or belief; sexual orientation; pregnancy/maternity; or gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to any provision, criterion or practice which puts them at a substantial disadvantage, and the provision of auxiliary aids and services.”*

Part two: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](https://www.gov.uk/government/publications/school-exclusion)

* *“Schools must also ensure that any provision, criterion, or practice does not discriminate against pupils by unfairly increasing their risk of exclusion. For example, if reasonable adjustments have not been made for a pupil with a disability that can manifest itself in breaches of school rules if needs are not met, a decision to exclude may be discriminatory.”*

Part two: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](https://www.gov.uk/government/publications/school-exclusion)

* *“Indirect discrimination occurs when a “provision, criterion or practice” is applied generally but has the effect of putting people with a particular characteristic at a disadvantage when compared to people without that characteristic. An example might be holding a parents’ meeting on a Friday evening, which could make it difficult for observant Jewish parents to attend. It is a defence against a claim of indirect discrimination if it can be shown to be “a proportionate means of achieving a legitimate aim”. This means both that the reason for the rule or practice is legitimate, and that it could not reasonably be achieved in a different way which did not discriminate.”*

Paragraph 1.18: [Equality Act 2010: advice for schools](https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools)

* *“A school must not do something which applies to all pupils but which is more likely to have an adverse effect on disabled pupils only – for example having a rule that all pupils must demonstrate physical fitness levels before being admitted to the school – unless they can show that it is done for a legitimate reason, and is a proportionate way of achieving that legitimate aim.”*

Paragraph 4.9: [Equality Act 2010: advice for schools](https://www.gov.uk/government/publications/equality-act-2010-advice-for-schools)

* *“Indirect discrimination will occur if all of the following four conditions are met.*

1. *A school applies (or would apply) the provision, criterion or practice equally to all relevant pupils, including a particular pupil with a protected characteristic.*
2. *The provision, criterion or practice puts, or would put, pupils sharing a protected characteristic at a particular disadvantage compared to relevant pupils who do not share that characteristic.*
3. *The provision, criteria, practice or rule puts, or would put, the particular pupil at that disadvantage.*
4. *The school cannot show that the provision, criteria or practice is justified as a ‘proportionate means of achieving a legitimate aim’.”*

Paragraph 5.25: [Equality and Humans Rights Commission - Technical guidance for schools in England](https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-schools-england)

* *“‘Disadvantage’ is not defined in the Act. It could include denial of an opportunity or choice, deterrence, rejection or exclusion. The courts have found that ‘detriment’, a similar concept, is something about which a reasonable person would complain – so an unjustified sense of grievance would not amount to a disadvantage. A disadvantage does not have to be quantifiable and the pupil does not have to experience actual loss. It is enough that the pupil can reasonably say that he or she would have preferred to be treated differently.”*

Paragraph 5.21: [Equality and Humans Rights Commission - Technical guidance for schools in England](https://www.equalityhumanrights.com/equality/equality-act-2010/technical-guidance-schools-england)

Suggested wording

*(This suggested wording is a guide. You might need to make amendments to fit the individual circumstances of the pupil in question. You can also refer to the above excerpts to strengthen your argument).*

young person Is protected characteristic, which is a protected characteristic under the category of category of protected characteristic.

We are not submitting that the school has directly discriminated against young person, but instead that by applying the same policies and practices equally to them, they have been severely disadvantaged as a result of their protected characteristic.

This submission is best explained by setting out the test at section 19 of the Equality Act as a series of questions and answering each in turn.

The first question is: has young person been subject to a provision, criterion or practice that would apply to persons who are not protected characteristic?

The answer is yes. The school has excluded young person with reference to their behaviour policy. These policies apply to all students in the school, without making adjustment for people who are protected characteristic. These policies are provisions for the purpose of the Act.

**Select relevant paragraph**

The answer is yes. The school has excluded young person after following their standard practice of description of practice.

The second question is: has the application of these policies/practices disadvantaged young person as a result of their being protected characteristic, in a way that they would not disadvantage a person who was not protected characteristic?

The answer is yes. Leading up to the exclusion, young person was subjected to these policies/practices. The result was that description of the disadvantage suffered which has left young person more vulnerable to exclusion than their peers.

The last question is whether this disadvantage is justified by being a proportionate means of achieving a legitimate aim?

No. it is acknowledged that good behaviour in school is a legitimate aim and that, logically, removing young people exhibiting behavioural difficulties is likely to reduce disturbances in the learning environment.

However, in assessing proportionality in the context of the Equality Act, the governors must not only consider the personal impact on young person. The governors must also consider the inherent injustice that exists in the fact that young person is more likely to be excluded because they are protected characteristic. There must therefore be a very compelling case from the school to warrant this. The test requires that that the young person must be disadvantaged because no plausible alternative for achieving a legitimate aim exists.

We submit to the governors that the school has failed to satisfy this test, and the discrimination against young person is therefore unlawful.

The governors are invited to reinstate with immediate effect.