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)
* [Behaviour in schools: advice for headteachers and school staff](https://www.gov.uk/government/publications/behaviour-in-schools--2)

Relevant excerpts:

* *“Any decision of a headteacher, including suspension or permanent exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to suspensions and permanent exclusions and a school’s wider legal duties); reasonable; fair; and proportionate.”*

Paragraph 2: [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)

* *“When establishing the facts in relation to a suspension or permanent exclusion decision the headteacher must apply the civil standard of proof, i.e. ‘on the balance of probabilities’ it is more likely than not that a fact is true, rather than the criminal standard of ‘beyond reasonable doubt.’ This means that the headteacher should accept that something happened if it is more likely that it happened than that it did not happen. The headteacher must take account of their legal duty of care when sending a pupil home following an exclusion.”*

Paragraph 3: [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)

* *“Headteachers should also take the pupil’s views into account, considering these in light of their age and understanding, before deciding to exclude, unless it would not be appropriate to do so. They should inform the pupil about how their views have been factored into any decision made. Where relevant, the pupil should be given support to express their view, including through advocates such as parents or, if the pupil has one, a social worker. Whilst an exclusion may still be an appropriate sanction, the headteacher should also take account of any contributing factors identified after an incident of misbehaviour has occurred and consider paragraph 45 of the Behaviour in Schools guidance.”*

Paragraph 4: [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)

* *“The consistent and fair implementation of the measures outlined in the behaviour policy is central to an effective whole-school approach to behaviour. Consistent implementation helps to create a predictable environment. Some pupils may require additional support to meet a school’s behaviour expectations. This support should be given consistently and predictably, applied fairly and only where necessary.”*

Page 10: [Behaviour in schools: advice for headteachers and school staff](https://www.gov.uk/government/publications/behaviour-in-schools--2)

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).*

A headteacher must conduct a fair, balanced and dispassionate assessment of the facts before deciding to exclude a young person. The headteacher is bound by the public law principal of fairness in their decision making. This is made clear in the Exclusions Guidance at paragraph 2.

Fairness includes the right that a person is told of the case against them and given an opportunity to put their side of the story forward. In other words, a person has a right that their defence is fairly heard.

In addition, a public body making any decision about another person must be impartial and be seen to be impartial. This principle was explained in the case of *R v Sussex Justices, ex parte McCarthy* which was heard in 1924 in the King’s Bench division. The Court found that:

*“a long line of cases shows that it is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done”.*

Before the headteacher decided to exclude young person, they set out the steps the headteacher took to investigate the incident(s) that led to the exclusion. However, they failed to set out the steps the headteacher should have taken but didn’t.

The headteacher’s failure to investigate the incident/incidents fairly and even-handedly means that young person’s defence has not been fairly heard and, even if the governors do not conclude that there was bias against young person, the mere appearance of bias means that the decision is procedurally flawed.

This is a serious failing by the school. The right to a fair process is fundamental in any decision making but is particularly important in exclusion proceedings where the impact on young person will be so significant.

We therefore submit that the exclusion is procedurally flawed, and young person should be reinstated with immediate effect.