Relevant guidance:

* [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement - from September 2023](https://www.gov.uk/government/publications/school-exclusion)

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 - from September 2023](https://www.gov.uk/government/publications/school-exclusion)

* *“Public law principles underpin good decision making. All decisions of a governing board must be made in accordance with public law. Panels are expected to understand the legislation that is relevant to suspensions and permanent exclusions and the legal principles that apply. Headteachers and governing board members of panels are likely to have first hand experience of the education context that may be relevant to considerations about whether a decision was reasonable in the circumstances.”*

Paragraph 226: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement - from September 2023](https://www.gov.uk/government/publications/school-exclusion)

* *“Where the governing board is legally required to consider the reinstatement of a suspended or permanently excluded pupil they should not discuss the suspension or permanent exclusion with any party outside the meeting.”*

Paragraph 112: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement - from September 2023](https://www.gov.uk/government/publications/school-exclusion)

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).*

The IRP is asked to agree that the process of the governing board hearing of young person’s permanent exclusion was procedurally flawed.

In public law, "fairness" describes the requirement that any decision the governing board takes must result from a procedurally correct process.

The procedure followed by the governing board in this case was flawed because the governing board and the headteacher had discussed the matter outside of the hearing, and this is prohibited in accordance with 112 of the exclusions guidance.

While we cannot know what the content of these discussions is, it is, in a sense, irrelevant. The 1923 case of R v Sussex Justices Ex Parte McCarthy set out the principle 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”*

The effect of this is that the governing board's appearance of bias has already undermined the integrity of the process, even if the family cannot prove what the content of these conversations was.

When the family were invited to enter the hearing room, the school staff was already in the room and seated. They appear to have been speaking with the governors in confidence.

The governors/headteacher stated in the hearing that “quote that indicated private conversations had taken place” which was a reference to something that was not said in the hearing or anywhere the family had been present.

Clearly, therefore, conversations have been had in private regarding young person’s exclusion. The IRP is asked to quash the permanent exclusion and direct reconsideration of it.