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)

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 governing board has declined to reinstate young person, instead upholding the permanent exclusion. This is despite the governing board acknowledging in the letter confirming their decision/the minutes of their deliberations that the headteacher’s decision to exclude was not in accordance with the requirements of the Equality Act 2010. This can be seen in their finding that “finding of the governors that shows their agreement that the exclusion was discriminatory”. This means that the exclusion amounted to specify the type of discrimination as defined by the Equality Act.

Direct discrimination is included at section 13 of the Equality Act.

Section 13 states at subsection 1 that:

*“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”*

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was unlawful”, the governing board clearly agree that the permanent exclusion amounted to direct discrimination. They agree that young person is protected characteristic and that they have been treated less favourably because of being protected characteristic. Despite this, the governing board decided to uphold the permanent exclusion anyway.

Therefore, by failing to reinstate young person they have made a decision that they had no lawful power to make. They have therefore acted beyond the scope of their lawful powers, and the IRP is asked to quash the decision and direct the governing board to reconsider.

Indirect discrimination is included at section 19 of the Equality Act.

Section 19 states that:

*“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

*(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*

*(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*

*(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*

*(c) it puts, or would put, B at that disadvantage, and*

*(d) A cannot show it to be a proportionate means of achieving a legitimate aim.”*

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was unlawful”, the governing board clearly agree that the permanent exclusion amounted to indirect discrimination. They are agreeing that young person is protected characteristic and that they have suffered a disadvantage because of being protected characteristic when compared to someone who does not share this protected characteristic. Despite this the governing board decided to uphold the permanent exclusion anyway.

Therefore, by failing to reinstate young person they have made a decision that they had no lawful power to make. They have therefore acted beyond the scope of their lawful powers, and the IRP is asked to quash the decision and direct the governing board to reconsider.

Section 20 of the Equality Act describes the duty to make reasonable adjustments.

At subsection 3, the Act states that:

*“The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.”*

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was unlawful”, the governing board clearly agree that the exclusion amounted to a failure to make reasonable adjustments. They are agreeing that young person is protected characteristic, which is a disability for the purpose of the act, and that they have suffered a disadvantage as a result of being protected characteristic when compared to someone who is not disabled. The school has failed to make reasonable adjustments to accommodate this disability and mitigate the risk of permanent exclusion. Despite this, the governing board decided to uphold the permanent exclusion anyway.

Therefore, by failing to reinstate young person they have made a decision that they had no lawful power to make. They have therefore acted beyond the scope of their lawful powers, and the IRP is asked to quash the decision and direct the governing board to reconsider.

Section 149 of the Equality Act 2010 describes the public sector equality duty.

At subsection 1, the Act states that:

*“A public authority must, in the exercise of its functions, have due regard to the need to—*

*(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*

*(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.”*

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was unlawful”, the governing board clearly agree that name of school has failed to description of the failing under this section. They are agreeing that young person is protected characteristic and that the school had a duty to take proactive steps as a result to foster equality of opportunity between them and young people who are not protected characteristic. However, these are steps that the school failed to take. Despite this, the governing board decided to uphold the permanent exclusion anyway.

Therefore, by failing to reinstate young person they have made a decision that they had no lawful power to make. They have therefore acted beyond the scope of their lawful powers, and the IRP is asked to quash the decision and direct the governing board to reconsider.

Section 27 of the Equality Act describes the act of victimisation.

It states that:

*“(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*

*(a) B does a protected act, or*

*(b) A believes that B has done, or may do, a protected act.*

*(2) Each of the following is a protected act—*

*(a) bringing proceedings under this Act;*

*(b) giving evidence or information in connection with proceedings under this Act;*

*(c) doing any other thing for the purposes of or in connection with this Act;*

*(d) making an allegation (whether or not express) that A or another person has contravened this Act.”*

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was unlawful”, the governing board clearly agree that name of school’s behaviour amounts to victimisation against young person. Despite this the governing board decided to uphold the permanent exclusion anyway.

Therefore, by failing to reinstate young person they have made a decision that they had no lawful power to make. They have therefore acted beyond the scope of their lawful powers, and the IRP is asked to quash the decision and direct the governing board to reconsider.