



Education & Cultural Services

Policy: Exclusion from School

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INDEX

1.	Introduction	2
2.	The Legal Framework And Policy Context	3
3.	Looked After/Accommodated Children/Young People	5
4.	Children/Young People With A Record Of Needs/Co-Ordinated Support Plan	6
5.	Procedures For Exclusion From School	6
6.	Length Of Exclusion	10
7.	Monitoring The Use Of Exclusion	12
8.	Appeals Against Decisions To Exclude	12
	Appeal to the Sheriff	12
	Exclusion Appeals – Practice Implications	13
9.	Definitions	13

1. INTRODUCTION

A prerequisite for effective learning and teaching is good discipline and a positive ethos within the school. It is however acknowledged that there have long been tensions between the inclusion agenda and the emphasis on the need to raise standards of achievement and attainment. Recent research by the Centre for Research in Education Inclusion and Diversity included:

'it should be of immediate concern to schools that exclusion, a central long established part of the school discipline process is seen simultaneously as significant yet ineffective.' It was also noted within the research that young peoples' objections to exclusion were often not to the use of exclusion per se but to its overuse, its sometimes inappropriate use and to a perceived lack of effectiveness in many cases'. (CRE 2005)

The council's Continuum of Support strategy acknowledges the need for agencies to work together to support children who have additional support needs, including those who are vulnerable to exclusion. This guidance details the proposed changes to the policy and procedures contained within West Lothian Council's "School Discipline: Strategies for Effective Learning" on issues concerning exclusion from schools. The changes are proposed in light of the guidance received from the Scottish Executive circular no 8/03 "Exclusion From School" and in developing a "Continuum of Support for Children with Additional Support Needs".

The Scottish Executive, through Circular No 8/03, has confirmed the role of exclusion as a sanction that schools may use as a legitimate last resort. There is also, however, a clear expectation that Education Authorities and therefore schools should seek to minimise the need to use exclusion procedures through promoting a positive and inclusive ethos. West Lothian Council Education & Cultural Services recognises that a positive ethos is fundamental to raising achievement and that it is built upon the development of effective learning and teaching, anti-bullying, peer support and other whole school strategies which promote inclusion.

In taking forward these guidelines, a number of key principles are acknowledged which are vital in the promotion of effective inclusive practice in planning, delivering and reviewing services to all young people:

Entitlement

All young people are entitled to receive a range and level of services at local level appropriate to their needs. A fundamental aspect of service delivery is the ability to recognise and respond to diversity by developing and sustaining an ethos which recognises and supports the achievement and attainment of all children. For those children identified as vulnerable to exclusion, joint planning and a proactive approach to the integrated delivery of appropriate support, advice and resources is fundamental in meeting the child's entitlement to provision.

Early Intervention

Early intervention is a proactive approach to meeting needs. All young people are entitled to have their needs assessed. This requires a focus on early identification and assessment of potential needs and a requirement of services to respond positively in meeting the diversity of needs across the service area. The shared commitment to the development of preventative and proactive approaches for children who are vulnerable to exclusion is based on the concept of minimum effective intervention. Where there are concerns about behaviour or welfare, concerns should be raised with the parent/carer and their co-operation sought at an early stage.

The aim should be positive, proactive reinforcement of acceptable behaviour involving support from home, school and other services as appropriate.

Parental agreement must also be sought prior to engagement with psychological services or any other support service, the aim of which is to institute effective early intervention, thereby precluding the need for exclusion.

Empowerment

Adults and young people will be positively engaged in the development and delivery of support services. If this is achieved, there can be shared responsibility for ensuring the development of creative responses to individual needs which will be built upon a shared commitment for improvement in behaviour and support.

Collective Responsibility

Every young person is entitled to be taught within a positive learning environment. The inclusion of challenging or vulnerable children is therefore an issue for all services across the council rather than the exclusive responsibility of a particular group or individual.

The Importance of Continuing Professional Development

Because inclusiveness is an evolving concept, it requires both the application of existing skills and the development of new ones. It is recognised that staff will be at different stages of promoting and supporting inclusiveness. The diversity of our staff as learners must therefore be recognised and all aspects of the service must be encouraged to audit and plan to take forward an inclusive agenda, within the context of 'Succeeding Together'. All staff need to feel supported through this process and have access to a range of advice and resources including opportunities to engage in multi-disciplinary training.

Quality Assurance

Promoting and supporting an inclusive model of planning and delivery of services to young people is required to be quality assured. As part of Focus on Inclusion, the Additional Learning Needs Team has developed appropriate indicators in support of a framework for developing inclusive practice including consideration of effective behaviour management. These indicators will be used to develop benchmark in monitoring and evaluating quality of service delivery.

2. THE LEGAL FRAMEWORK AND POLICY CONTEXT

The power to exclude a pupil from a school and the circumstances under which a pupil may be excluded are set out in Regulation 4 of the Schools General (Scotland) Regulations 1975, as amended. The power to exclude and therefore legal responsibility for exclusion, lies with an education authority. It is, however, open to an education authority to devolve the power to exclude to senior management level in schools.

Schools must not exclude a pupil unless either of the two grounds for exclusion are met. Regulation 4 states that an education authority (or a school, if operating under devolved responsibility) shall not exclude a pupil from school unless the authority (or school):

- "are of the opinion that the parent of the pupil refuses or fails to comply, or to allow the pupil to comply, with the rules, regulations, or disciplinary requirements of the school"; or
- "consider that in all the circumstances to allow the pupil to continue his attendance at the school would be likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there."

Removing a child from school or sending a pupil home from school for disciplinary reasons can only be done within the context of a formal exclusion.

Exclusion from school of a pupil other than in compliance with the Schools General (Scotland) Regulations 1975 has no legal basis. **This includes sending a pupil home without a formal exclusion.** Failure to comply with the Regulations in such circumstances may render the authority open to legal challenge by the parent/s or the pupil (where the pupil is a young person or is a child with legal capacity in terms of the Age of Legal Capacity (Scotland) Act 1991 or to action by Scottish Ministers under section 70 of the Education (Scotland) Act 1980, as amended.

The length of an exclusion is not defined in the legislation and accordingly is a matter for the discretion of the education authority. The guiding principle is that any sanction should be proportionate to the breach of discipline. Therefore the length of the exclusion should reflect the seriousness of:

- the breach of discipline which resulted in the exclusion;
- the pupil's past disciplinary record; and
- any other relevant circumstances surrounding the pupil and/or the incident/s on which the decision to exclude is based. (This includes consideration of the effect on the wider school community that would be caused by the pupil's continued attendance in school. Consideration of the effect on the school should be closely related to a consideration of alternatives to exclusion.)

As it is the ultimate sanction available, it is particularly important that any decision to exclude is taken locally, and is a proportionate response in the light of the individual circumstances of the case. Currently, the Director of Education and Cultural Services delegates the power to exclude pupils to the Headteacher of the school (and/or their Senior Management Team as appropriate) for exclusions which are up to 10 school days.

Where a pupil is likely to be excluded for longer than ten school days, there is a requirement for the Headteacher to advise the Education Officer of the special measures that would be put into place for the child/young person.

It is important, however that each case is looked at on the facts and circumstances relating to the child or young person. Schools must not set tariffs or implement automatic exclusions for particular offences.

On the grounds of natural justice, a decision to appeal against the exclusion should in itself have no effect on the length of the exclusion. Accordingly, the period of an exclusion cannot be extended or reduced simply because an appeal is pending.

Other relevant legislation includes:

- The duty under Section 1 of the Education (Scotland) Act 1980 for the education authority to secure that there is made for their adequate and efficient provision of school education. 'School education' means "progressive education appropriate to the requirements of pupils regards being had to the age, ability and aptitude of such pupils."
- The Human Rights Act 1998 requires that public authorities must act consistently with the European Convention on Human Rights.
- Article 2 of the First Protocol to the European Convention provides that no one shall be denied a right to education and requires that where education is provided it accords with the religious or philosophical beliefs of the parents.
- The Children (Scotland) Act 1995 requires that the local authority as a whole offers an integral provision for meeting the needs of the child/young person.

- The Standards in Scotland's Schools etc Act 2000 lays a duty on the education authority to ensure that school education is directed at the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential. It also requires that steps are taken to ensure that the views of the child/young person are accurately established and properly taken into account in decisions that significantly affect the child or young person. Exclusion is relevant here. Due weight must be given to the views of the child/young person in accordance with age and maturity. As the view of the pupil may diverge from their parents it is not sufficient to assume that the parents' views automatically reflect those of the child/young person. This Act also creates a presumption that a child of 12 years or older has a right to appeal his or her own exclusion and makes a presumption in favour of mainstream schooling for all pupils.
- The Disability Discrimination Act 1995, as amended, makes it unlawful to exclude a disabled pupil on grounds of his or her disability. Advice on this Act should be sought in the first instance from the Education Officer with a strategic responsibility for Additional Learning Needs.
- The Education (Additional Support for Learning) 2004 Act (Scotland) places a duty on the authority to assess whether a child or young person has additional support needs, and to co-ordinate plans to meet those needs.
- The guidelines and procedures must also operate within the framework of national policies such as "Better Behaviour, Better Learning", "Learning with Care" and "For Scotland's Children" and the progress towards Integrated Learning Communities as well as West Lothian's overarching range of policies relating to pupil welfare such as Anti-Bullying, Child Protection, and Equal Opportunities.

3. LOOKED AFTER/ACCOMMODATED CHILDREN/YOUNG PEOPLE

Children/young people who are looked after or looked after and accommodated are vulnerable to exclusion and should have the same educational opportunities as other children/young people and, where necessary, should receive additional help and support in order to succeed at school.

Every school has a Designated Person for Looked After Children who has specific responsibilities in relation to looked after and looked after and accommodated children/young people. These guidelines must also be read in conjunction with West Lothian's policy on Looked After Children.

In the case of a child/young person who is looked after or looked after and accommodated, the school must maintain routine, regular contact with the allocated social worker. The allocated social worker must be contacted at once if there are any concerns in relation to the child/young person. The aim of all discussion must be how best to progress matters so as to avoid any further deterioration and possible exclusion.

The exclusion of a looked after or looked after and accommodated child/young person raises particular issues in relation to meeting the educational needs of that child/young person. Should a Looked After/Accommodated child/young person be excluded from school the Headteacher must discuss with the allocated Social Worker and Education Officer the reasons for the exclusion and the planned educational provision for the child/young person.

The formal meeting following the exclusion should be arranged for the earliest date possible in order to ensure the child/young person is returned to an education provision as soon as possible. Where the child/young person is accommodated by the local authority, the allocated social worker may attend the meeting where the parent is unable or unwilling to do so.

Where a child/young person is looked after and accommodated by the local authority the allocated social worker or care staff may provide the assurance necessary to resolve the exclusion.

4. CHILDREN/YOUNG PEOPLE WITH A RECORD OF NEEDS/CO-ORDINATED SUPPORT PLAN

Where a child/young person has a Record of Needs/Co-ordinated Support Plan, steps must be taken to ensure the involvement of all appropriate services and agencies in supporting the child/young person's education placement and so avoid the need to exclude.

Where a child/young person is at risk of exclusion and the Record of Needs or Co-ordinated Support Plan, is such that the child or young person's additional support needs cannot be catered for appropriately unless, the child or young person attends the nominated school, the Education Officer, Support for Learning must be consulted immediately.

Should a child or young person with a Record of Needs or a Co-ordinated Support Plan be excluded from school the headteacher must discuss the reason for the exclusion and the planned educational provision for the child/young person with the Education Officer. This action is to ensure that the case for exclusion is balanced with the need to take all reasonable steps to secure that appropriate provision is made for the pupil's additional support needs. This additional consideration would not prevent exclusion where this is deemed absolutely necessary.

Where aspects of the Record of Needs or Co-ordinated Support Plan are provided other than at the school from which the child or young person is excluded, those aspects must continue to be provided regardless of the exclusion.

5. PROCEDURES FOR EXCLUSION FROM SCHOOL

5.1 Exclusion from school is a serious step. It must only be used where no other course of action is appropriate. Ordinarily a school should implement appropriate collaborative, inter-agency support strategies prior to using exclusion as described in "A Continuum of Support for Children with Additional Learning Needs". The school must have explored and recorded all appropriate procedures directed at:-

- meeting the needs of the child/young person
- modifying the child/young person's behaviour
- securing the interest and attention of parents and
- employing appropriate supports before seeking to invoke an exclusion.

The school will take steps to ensure contact and consult with parents. Such contact with parents may be by telephone or in writing. If by telephone it must be confirmed in writing. Timescales between these contacts should allow for strategies to be implemented and take effect. The purpose of this process should be clearly focused on engaging parents in a positive and constructive partnership in supporting the child/young person in adopting appropriate behaviour and responses.

5.2 The exception to this would be a case of an act by a pupil that, on its own, is sufficiently extreme as to justify exclusion.

5.3 Where misconduct or inappropriate behaviour is brought to the attention of school staff in circumstances that suggest that exclusion may be an outcome, particular care must be taken in investigating the matter:

- (a) The member of staff investigating must seek to establish what has happened from those involved. This must include an opportunity for the pupil, whose actions are being

investigated, to give his/her account of the matter.

- (b) Where the investigation is carried out by a member of staff other than one empowered to take a decision to exclude and the matter continues to require consideration of exclusion, it must be brought to the attention of a senior member of staff.
 - (c) The senior member of staff (the decision maker), either as the person who carried out the investigation, or the person to whose attention it is brought should reach a view based on the investigation as to what has happened. The decision-maker should consider the situation from the point of view of proof on a balance of probabilities. The conclusion of the investigation should be capable of being justified if the exclusion is appealed.
 - (d) Clear notes of any investigation must be retained.
 - (e) The decision maker should then go on to consider whether the outcome of the investigation and the circumstances of the pupil are such as meet the statutory ground(s) for exclusion. In considering whether the continued attendance of the child/young person in school is likely to be seriously detrimental to order and discipline in the school or the educational well-being of the pupils there, the decision maker should consider the seriousness of the incident giving rise to the investigation and its impact on the school community. The wilful nature or public context of any such misconduct may be factors pointing to a ground of exclusion being established.
 - (f) The decision maker must give consideration to any appropriate alternative to exclusion from within school resources, this could include 'in-school' suspension within a support base if resources permit. The success or failure of such alternatives in relation to previous incidents involving the pupil will be a relevant factor to take into account in reaching this decision.
 - (g) The period of exclusion should be as short as is consistent with maintaining order and discipline in the school and the educational well-being of the pupils. **The welfare of the excluded pupil should also be considered in deciding the length of the exclusion.** To promote consistency across schools, Section 6 below outlines guidelines on the duration of any exclusion deemed necessary.
 - (h) Where the decision maker reaches a view that exclusion may be necessary, the pupil must be informed and his/her views sought in relation to the proposed decision.
- 5.4 The child/young person shall be advised of the exclusion decision before leaving for home. Primary schools should always consider involving parents in advising the child/young person of the decision. This must be dealt with by the most appropriate person in the context of the particular circumstances of the individual child/young person but will ordinarily be the decision-maker.
- 5.5 The time limits for notifying parents, holding meetings and sending reminders are set out in the 1975 regulations and must be adhered to at all times. On the day on which the decision to exclude is taken, the headteacher must:-
- (a) inform the parent/guardian of the child/young person, either orally or in writing, of the:
 - decision to exclude the child/young person and
 - The time, date and place for a meeting to be held at which the decision to exclude and the reasons for it can be discussed. This meeting must be arranged to take place within 7 calendar days of the decision to exclude.

If this information has been given orally, it must be confirmed in writing as soon as is practicable and the letter posted first class on the day the decision was made to

exclude the child/young person.

- (b) Where the pupil is 16 and over, intimation shall be made to him/her. The meeting to discuss the decision to exclude shall generally be with the pupil. However the pupil's parent/guardian must be kept informed and involved at every stage and may attend the meeting.
 - (c) If the pupil is under 16 intimation shall be made to the parent and the meeting to discuss the decision should be with the parent/carer.
 - (d) If the pupil is looked after or looked after and accommodated the school should discuss the appropriate recipients of the intimations with the pupil's social worker. For example, where the child/young person is accommodated with a foster carer and there is no ongoing parental contact, the appropriate recipient is the foster carer.
- 5.6 Schools must contact parents/guardians prior to the pupil being required to leave school premises. The Headteacher must check that appropriate arrangements for the care of the affected child/young person are made before they are sent from school premises.
- 5.7 Where a pupil is under 12, or is otherwise regarded as being especially vulnerable, and no contact has been possible by telephone and there is reason to doubt that the letter will be delivered before the pupil would normally leave home the following day to attend school, the pupil should be allowed to attend, despite the exclusion, if they present themselves at school. He/she should be supervised for one school day after the letter has been posted. In reaching the decision to allow the pupil to attend school, it would be expected that the headteacher will consider the balance of risk to the child and/or others. Consideration should be given to arranging an alternative to the pupil's usual classes.
- 5.8 Copies of the exclusion letter must be sent to Psychological Services and Social Work Services where these agencies are known to be involved in supporting the child/young person.
- 5.9 Schools must complete and return the monthly exclusion monitoring proforma to the Performance Officer. This information shall be monitored by the Principal Support Officer.
- 5.10 The meeting to discuss the decision to exclude should take place early within the 7-day period in order that resolution can be taken forward timeously:
- The purpose of the meeting is to allow the parent/guardian an opportunity to discuss the decision to exclude. This will allow the school to offer an explanation as to why exclusion was necessary. Those attending the meeting should aim to agree a plan to return the pupil to school. Where the pupil is receiving support from Psychological Services or Social Work Services, it may be useful to invite a representative from those services to attend the meeting.
 - If the parent/carer is unable to attend the meeting on the proposed date a further date can be arranged which is outwith the 7 day period to accommodate the parent/carer. Reasonable efforts should be made to accommodate the parent/guardian.
 - Where the pupil has been excluded for a period exceeding 7 days, or where the parents/ carers of the pupil or young person have not, within 7 days of first being informed of the decision to exclude, indicated to the headteacher that they do not intend to appeal the decision (whether or not the pupil has been readmitted to the school), there must be written notification issued within 8 days of the decision to exclude to the parent of the pupil or, where the pupil is a young person, to the young person of:

- the reasons for the decision to exclude
- the conditions, if any, with which the pupil and his parent/carer or either the pupil or his parent/carer are required to comply or to undertake to comply as conditions precedent to the pupil being readmitted to the school.
- the right to refer the decision under Section 28H of the Education (Scotland) Act 1980 to the West Lothian Council (Placing in Schools) Appeal Committee set up and maintained under Section 28D of that Act
- the address to which such a reference should be made; and
- any other information which the education authority considers appropriate

and such information may be sent out by post or be handed to the parent/carer or, where the pupil is a young person, to the pupil by the Head Teacher or other teacher of the school from which the pupil was excluded or an official of the education authority.

- Where the parent and pupil fail to agree to undertake, as far as they are able, to comply with the rules and disciplinary requirements of the school, the pupil must still be readmitted at the end of the exclusion period. The current exclusion cannot be extended. A new exclusion can be imposed if further circumstances warrant this.

- 5.11 School staff must provide appropriate alternative educational provision for the child/young person during the period of exclusion. This is to ensure that excluded pupils are given every chance to continue their studies, even in situations where their behaviour has been such that they have to be removed from a school. The duty on schools to make alternative educational provision arises immediately when the pupil is excluded and must be discharged without undue delay although it is recognised that some delay may be unavoidable to enable appropriate arrangements to be put in place. It is expected that, in all cases, those arrangements will be effective within 10 school days of the exclusion.

The excluded pupil should be provided with appropriate work for completion, marking and return. Unless the exclusion is of only a few days duration, it is not sufficient simply to provide excluded pupils with homework or classwork if they do not also receive sufficient guidance to enable them to understand the material. Consideration as to the amount of any contact time required needs to be given on an individual basis. The reason(s) for a pupil being excluded should be taken into account when deciding levels of contact, in order to ensure the security of all those involved. **It is expected that this support will be provided from within school resources.**

- 5.12 Where there is concern about the child/young person returning to school the Principal Support Officer (ALN) should be contacted as soon as possible:
- There is no requirement for a *written* assurance in order that the exclusion be resolved. An oral assurance may be accepted;
 - Where a parent/carer of a child under 16 gives a written assurance there is no need for the child/young person to give his/her separate assurance, he/she is merely invited to co-sign the agreement.

- 5.13 When a child/young person is excluded from school, the parent is legally responsible for the child/young person's welfare during the school day. In a situation where the school becomes aware that the parent is not making adequate provision for the child/young person's safety and welfare when excluded, the school must immediately contact Social Policy and advise them of these concerns.

- 5.14 During the period in which the child/young person is excluded from school, appropriate support mechanisms must continue to operate in order that the child/young person is properly prepared for re-admittance to school. This will include links with parents and other agencies as appropriate. Planned and structured support, as well as arrangements for reviewing and monitoring support will be necessary to ensure the child/young person is reintegrated successfully.
- 5.15 In a circumstance where a child/young person is in attendance at two establishments, the procedures for resolving an exclusion should be dealt with by the headteacher who made the decision to exclude and should apply only to that establishment. The exclusion pertains solely to the establishment where the decision to exclude has been taken. The decision to exclude must be communicated in writing to the headteacher of the other establishment on the same day.
- 5.16 The child/young person's record of attendance must show "X" from the day after the decision is made to exclude, that is, the first day of the period of exclusion.
- 5.17 Each exclusion must be recorded on the Pupil Record using the Exclusion Letter which will contain the following information:
- date of exclusion
 - date of readmission
 - total number of half day attendances lost by the exclusion
 - the circumstances of the exclusion.
- 5.18 Existing procedures in relation to formal disciplinary warnings remain unchanged and schools should continue to follow these procedures as appropriate.

6. LENGTH OF EXCLUSION

The length of an exclusion is not defined in the legislation and accordingly is a matter for the discretion of the education authority. The period of exclusion should be as short as is consistent with maintaining order and discipline in the school and the educational well-being of the pupils. The welfare of the excluded pupil should also be considered in deciding the length of the exclusion. To promote consistency across West Lothian schools, Headteachers are offered the following guidelines. The guiding principle is that any sanction should be proportionate to the breach of indiscipline. Therefore the length of the exclusion should reflect the seriousness of:

- the breach of discipline which resulted in the exclusion;
- the pupil's past disciplinary record; and
- any other relevant circumstances surrounding the pupil and/or the incident/s on which the decision to exclude is based. This includes consideration of the effect on the wider school community that would be caused by the pupil's continued attendance in school. Consideration of the effect on the school should be closely related to a consideration to take forward as an alternative to exclusion a flexible package of support.

It is important, however, that the facts and circumstances of each case are carefully looked at. Schools may not set tariffs or implement automatic exclusions for particular offences.

Suggested Exclusion Duration	Code	Examples of Seriousness of Incident
½ a school day up to 2 school days	A	<ul style="list-style-type: none"> • the exclusion may be in response to an unexpected or uncharacteristic action or reaction by a pupil • the pupil is unlikely to have had a previous exclusion • the purpose of the exclusion is to signal to parents and pupils the unacceptable nature of the behaviour, while minimising the loss of attendance
3 school days up to 5 school days	B	<ul style="list-style-type: none"> • the exclusion may be in response to continuous or repeated serious and unacceptable behaviour or a very serious but isolated offence • the pupil is likely to have had a previous exclusion
6 school days up to 15 school days	C	<ul style="list-style-type: none"> • the exclusion may be in response to persistent, serious breaches of school discipline despite appropriate interventions by school support mechanisms • the exclusion may be in response to an isolated incident or short series of incidents involving serious acts of violence or the threat of serious acts of violence • where the exclusion results from a continued pattern of unacceptable behaviour, the pupil is likely to have been excluded on one or more previous occasions

Where the Headteacher considers that the seriousness of the incident is beyond a code C situation and the pupil can no longer attend the school then the Headteacher should contact the Education Officer to request that the child be placed in another school. The Education Officer will take this forward in liaison with the parent/child/young person. Should there be disagreement about the appropriateness of the action then the matter will be referred to Head of Service for consideration.

The placement of the pupil in another school by the Director of Education and Cultural Services or his/her nominee is not negotiable but will be monitored to ensure that all schools are treated fairly.

7. MONITORING THE USE OF EXCLUSION

SEED requires that education authorities collect from schools information on the circumstances and length of exclusion.

For reasons of consistency, schools should record information about exclusion in a standard way by means of the specified form and return it to the Performance Officer immediately the exclusion has been resolved. It is the intention to incorporate this function as part of schools' current ICT management systems.

Particular attention must be paid to the accuracy of information regarding looked after children/young people. The Designated Person for Looked After Children should hold accurate information on the looked after and looked after and accommodated children/young people in school.

It should be noted that the incidents listed under 'Circumstances' on the pro forma are not in themselves grounds for exclusion.

8. APPEALS AGAINST DECISIONS TO EXCLUDE

Where a parent of a pupil, where the pupil is not a young person, is dissatisfied with the exclusion of his or her child, the parent has the right of appeal. The appeal should be made in writing and directed to

The Clerk to the West Lothian (Placing in Schools) Appeals Committee
West Lothian Council
West Lothian House
Almondvale Boulevard
Livingston
EH54 6QG

A pupil who is over school leaving age has the right to make an appeal on his/her own behalf as does a pupil with legal capacity in terms of subsections (4A) and (4B) of section 2 of the Age of Legal Capacity (Scotland) Act 1991.

On receipt of an appeal against an exclusion, the Clerk to the above committee will inform the school. The Head Teacher will provide a report on the exclusion in accordance with the Style Report. Appeal Hearings will be attended by the Head Teacher, representing the school, and the Pupil Support Manager or representative.

Where an appeal is upheld, the following comment should be noted in the Pupil's Progress Record " Exclusion annulled by Appeal Committee" along with the date of the Appeal Hearing.

Where an appeal is not upheld, the comment should be " Exclusion confirmed by Appeal Committee" along with the date of the hearing.

Appeal to the Sheriff

If the Appeal Committee reject an appeal, the parent or young person can refer this decision to the Sheriff by way of a summary application (under section 28H(6) of the 1980 Act, as read with Section 28F of that Act). Appeals to the Sheriff must be made within 28 days of the intimation of the Appeal Committee's decision to reject the appeal. The parties to the appeal would be the appellant and the council, as education authority. The Head Teacher who took the decision to exclude would be required to attend court proceedings as a witness for the council. The Appeal Committee are not involved in the appeal process to the Sheriff.

In practice, the hearing before the Sheriff is a re-hearing of the Appeal.

The Sheriff may confirm or annul the decision to exclude and in confirming a decision to exclude may modify any conditions.

If the Appeal Committee does not deal with an appeal timeously (generally within 28 days), there can also be an appeal to the Sheriff by way of a summary application (see the Education (Placing in Schools Etc. – Deemed Decisions) (Scotland) Regulations 1982).

Appeals can be held after the child is re-admitted to the school. **If the appeal is upheld, the school and council cannot disclose that the exclusion took place.**

Exclusion Appeals – Practice Implications

Head Teachers must be prepared to account for their decision to exclude, because the right of appeal, if exercised, will result in the Head Teacher's actions being closely examined. (In the case of other disciplinary action, a parent may complain to the Director of Education and Cultural Services, also resulting in an examination of the Head Teacher's decision. This, however, is a less formal process).

It is important that the correct ground of exclusion is used and quoted consistently throughout the exclusion and appeal procedures, including correspondence to the parent and in the report to the Appeal Committee. Use of the standard correspondence and report formats will help ensure that Head Teachers comply with statutory requirements, and present the best possible case.

The Principal Support Officer (ALN) will provide support to the school in its case to the Appeal Committee

Similar annotation of the Pupil Progress Record is required to record any decisions made on appeal to the Sheriff.

9. DEFINITIONS

In the course of this document, the following terms are used based on the following definitions:

- the **length of exclusion** will be based on days where attendance at school was possible. Weekends and holiday periods will not be taken account of as a result;
- **exclusion** is used when a pupil is excluded from a school but remains on the register of that school. The pupil will return to that school when the period of exclusion is over;
- **parent** as defined in section 135 (1) of the Education (Scotland) Act 1980 includes a guardian or any person who is liable to maintain, or has parental responsibilities in relation to, or has care of, a child or young person;
- a **child** means a person who is not over school age as defined in section 135 (1) of the Education (Scotland) Act 1980;
- a **young person** is a person over school age who has not attained the age of 18 years as defined in section 135 (1) of the Education (Scotland) Act 1980;
- **children with additional support needs:** a child or young person has additional needs if he/she requires a different educational provision or additional support to learn effectively from that which is normally provided for children or young persons of their age. The Education (Scotland) Act 1980 as amended at section 1(5)(d) states that children have special

educational needs if they have "a learning difficulty which calls for provision for special educational needs to be made for them"; and

- **looked after children** as in section 17(6) of the Children (Scotland) Act 1995 includes children who are looked after by a local authority in a residential establishment, a foster home or under a supervision requirement in their own home.