

He wasn't allowed
into school until 2pm

He got sent home every
day for six months

We didn't know this was
illegal - no-one helped us



when will ~~they~~ we learn?

Exclusions consultation response



**Ambitious
about Autism**

About us

Ambitious about Autism is the national charity for children and young people with autism. We provide services, raise awareness and understanding, and campaign for change. Through TreeHouse School, Ambitious College and the Ambitious about Autism Schools Trust we offer specialist education and support.

Our mission is to make the ordinary possible for children and young people with autism.

About autism

Autism is a lifelong developmental disability which affects one in 100 people in the UK. It affects the way a person communicates and how they experience the world around them. Autism is described as a spectrum condition. This means while people with autism including Asperger's Syndrome share certain characteristics, they will be highly individualised in their needs and preferences. Some people with autism are able to live independent lives, but others may face additional challenges including learning disabilities.

Early intervention, education and support are critical if children and young people with autism are to lead fulfilling lives, learn, thrive and achieve.

The number of children receiving extra help for autism in schools has risen by 78% since 2010. Currently 100,012 children are receiving extra help as a result of their autism. The majority of children with autism (72,540) are educated in mainstream schools and academies.¹

Exclusions guidance review – 'when will we learn'

This March, the Department for Education released a consultation on their exclusions guidance. It asked whether the information contained in the guidance was sufficient to support schools to understand their obligations under the law.

The good news is that the exclusions guidance is a clear and easy to follow document. It explains what an exclusion is and what schools must do to exclude children lawfully.

However, unfortunately many parents tell us that their children are missing out on school time because they are being excluded from school in a way that doesn't pay due attention to the guidance.

This consultation response references statistics from our October 2016 '*when will we learn*' report, which heard from 745 young people with autism, parents and carers. The report collected statistics from Freedom of Information requests, research from other organisations and the Department for Education. Together, the research showed the damning reality for children and young people with autism at school today and made a compelling case for changes to our education system. This response also contains figures from a poll taken from 425 parents in April 2017 about what they think the guidance should contain.

Thank you to every parent and professional who shared their experiences with us. Some individuals in this report wanted to remain anonymous; their names have been changed to protect their privacy.

¹ For a detailed breakdown of statistical sources, please visit ambitiousaboutautism.org.uk/whenwillwelearn-stats

► Overview

Ambitious about Autism have been working closely with the government since 2011 to influence the new Children and Families Act and make sure it considered the rights of children and young people with autism. In 2014, we released our *'Ruled Out'* report, which showed that four out of ten children and young people with autism had been illegally excluded at least once.

Two years after that campaign and the Act becoming law, our *'when will we learn'* report showed that little had changed. **Families of children with autism still struggle to get their needs met, and children are still not receiving the education they are entitled to.**

Last year 4,330 children and young people with autism were excluded from school.

Children with autism are four times more likely to be permanently excluded from school than any other child.

Children receiving extra help for special educational needs make up 55% of all children permanently excluded from school.

In addition, **nearly half (45%) of the families we surveyed said their child had been sent home from school, or denied a full education by schools acting outside of the legal guidance.**

School leaders confirm this picture – 33% of them confirmed that they knew at least one child with autism who had been excluded from their school illegally in the last year. 28% of classroom teachers said the same.

This type of exclusion goes unrecorded, which means it is impossible to track exactly its impact across England.

If we assume the parents' experiences in our survey are typical that would mean 26,000 children and young people with autism were unlawfully deprived of education last year.

We welcome the exclusion guidance consultation. We agree with the government's position that the guidance is clear and easy to follow and offers adequate information to schools and governing bodies about how to act within the law. However, we do feel that both the current and revised guidance has gaps on the tracking, reporting and consequences of unlawful exclusions which must be filled if the policy, and the exclusion system, is to be fit for purpose.

Ambitious about Autism believe that the number of families experiencing unlawful exclusion is unacceptable and that this number could be considerably reduced if schools, governing bodies and parents had access to additional guidance.

We are asking for the exclusion guidance to be amended to include details for parents, head teachers and governors on who is responsible for monitoring reports of unlawful exclusions, how to report unlawful exclusions and what the consequences are for schools found to be acting outside the law.

We feel these additions will aid the Department for Education in delivering an exclusion system which is lawful, reasonable and fair for all children.

▶ A parent's experience

Parents have told us they feel powerless to challenge schools even when they know they are acting outside the law. **Allen told us about his fight to get his son Josh's exclusions recorded legally.**

Allen's story

My son Josh is 13. In secondary school last year

Josh was unlawfully excluded for seven mornings and a further six half days prior to his Education Health and Care Plan application.

Josh is a great kid, he enjoys playing sport though this can cause a few problems as his oppositional defiance disorder and other mannerisms can lead to unwanted outbursts. But generally he's polite, he loves maths and is very good at it. Before the exclusions began, he used to say, he wanted to be a Maths teacher.

The half day morning exclusions were when the school was giving Josh 'Intensive Day punishments' which meant he had to go in at 2pm till 5pm on those days. The school recorded him as present in the morning sessions on the legal registers, even though he wasn't allowed to go to school until 2pm. This is unlawful – he had been excluded – and they need to report every time they exclude pupils. This didn't just happen for Josh, 'intensive days' are part of this school's policy for dealing with pupils with challenging behaviour. They are habitually, illegally excluding children, across the school.

At first we didn't know it was unlawful to call parents to pick up during school time without recording it and telling us our rights. On one occasion, I was called in to take him home as he was upset and wandering the school and not listening to them. I asked how they were recording this

when they called us to pick him up as they couldn't cope. I wanted to be sure they had evidence that Josh needed extra support. School decided that they would mark these occasions in the registers as 'C' (collected by parents) with a notation next to it. We agreed to this, as we believed this would help us collect the evidence that Josh needed extra support, and because we didn't know that technically this was an exclusion. Beforehand, they were marking the times we were called in to collect, as Josh being present in school for the whole day. I now know both of these actions were unlawful – and worse, us complying with the school in the hope it would build evidence that Josh needed more support actually achieved the opposite. He wasn't recorded as excluded – so no one thought to assess if his needs were being met. He was being failed twice.

These exclusions affected our whole family. On two occasions my daughter, who is a few years above Josh, was asked to call us using her mobile to get us to come in and pick him up. She has anxiety issues and yet they added this sort of pressure to her – it's totally inappropriate.

Eventually I asked the local authority to help...

In June 2016, I called the County Inclusion Office to ask if the school had been in contact with them regarding Josh as they'd promised. They had not heard from the school at all. After describing what was going on and sending over records I'd kept, they said they had two major concerns with the way the school was recording things. They told the school that the unlawful exclusions need to

▶ What is an unlawful exclusion?

'Informal' or 'unofficial' exclusions, such as sending a pupil home 'to cool off' are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.

stop and that the ones that had occurred, needed to be retrospectively altered in the legal registers from the present mark to an exclusion mark. This never happened and County Advisers went back into the school in November 2016 and emailed again in December 2016 to tell the school to bring this and their other unlawful recording process in line with legislation.

Unfortunately nothing changed. The registers were left with fraudulent recordings and I was informed by County recently that nothing can be done as they have now finalised their January 2017 census on the registers.

I felt that the school shouldn't be allowed to unlawfully exclude children and get away with it, County had shown they did not have the power to hold the school to account so I began to look elsewhere...

Over the next couple of months, I contacted my Local Councillors, my local MP, local educational psychologist services and Child and Adolescent Mental Health Services, the Department for Education's advice line and complaints service. I wrote to Ofsted, the Children's Commissioner, and then to the Secretary of State for Education. Despite the fact I had confirmation in writing that school had acted unlawfully in the way they had excluded my son, and that they'd refused to record it correctly even when directed to by the local education authority, no one could help. I knew my child's rights – but it didn't make any difference.

In desperation I called the police. School were acting unlawfully and had knowingly supplied

incorrect records to their funding body – surely someone could take action. But no – the police told me my only option was to make a civil case – and like most parents, I simply can't afford to.

So, in all my efforts, I couldn't find a single body able to hold the school to account.

Because of these exclusions my son stopped liking school, it knocked his confidence and has affected my whole family. In the school he was in, this is happening to other children, and it's happening in other schools too, and no one knows the scale of the problem. Parents are powerless right now, not only in changing our children's situations – but even to get people to acknowledge these exclusions exist.

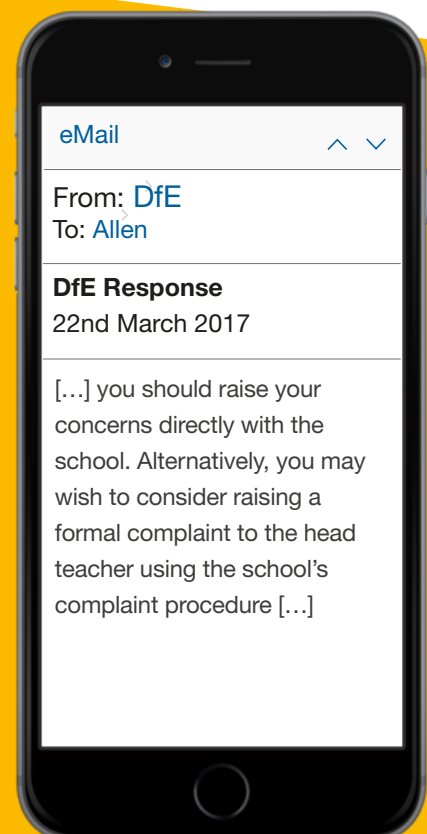
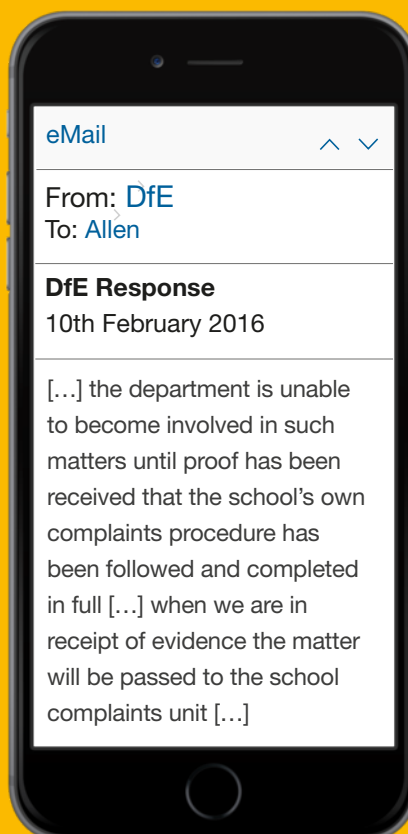
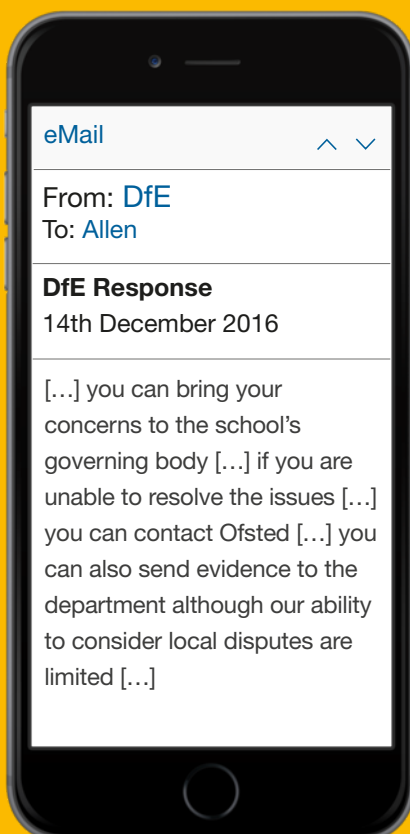
Josh doesn't understand that when he is bored in a lesson he can't put his head on the table to show it. I know it's ridiculous to exclude him for this behaviour. If he's formally excluded I can object to that and it's recorded. When the school doesn't record exclusions within the law, Josh and I lose our right to be heard, and when no-one holds them to account, there is nothing stopping them excluding children for whatever reason they like. It's a dangerous precedent to not enforce this guidance – it's good guidance – but only as good as the amount of attention that is paid to it. **Which is why I believe that the government must add to it, to show parents there is a way to raise concerns, and show schools there are consequences to acting outside the law. And to protect children like my son from being forced to miss out on their education.**

► Unlawful exclusions: no one's responsibility?

Recent Parliamentary Questions have highlighted that:

- No agency or authority under the Department for Education holds data on the improper reporting of pupil exclusions.
- If the Department identified that a governing body had acted unlawfully; then the Secretary of State could issue a direction about this but the Department for Education does not routinely collect data on where/how often this has happened.
- The Department would pass to Ofsted any relevant evidence that fell within the inspectorate's remit, but it holds no records of where this has happened.

Unfortunately Allen's experience shows that the exclusions guidance doesn't provide the necessary detail on what to do when establishments act outside of the law. If every unlawful exclusion must be dealt with – as advised by the Department of Education in its emails to Allen below – by parents working their way through unconnected systems – then how can the Department hope to identify where illegal practice is prevalent?



It is correct that parents should be advised to follow procedures to get their child reinstated, or exclusions taken from their records where these have been recorded legally.

But where institutions are acting outside the law it must be possible for this to be reported to a central body who are responsible for logging reports of unlawful exclusions and making these available to local and national government as well as regulatory bodies.

We asked **425** people who they thought should be responsible for monitoring and reporting illegal exclusions – only **8%** thought it was appropriate to be a school's governing body. Two thirds of people felt that Ofsted should hold this responsibility.

9 out of 10 respondents agreed that the guidance for parents should include the following 5 elements:

- ▶ What constitutes an illegal exclusion
- ▶ What person/body is responsible for ensuring schools comply with exclusion law
- ▶ How to complain if you believe a/your child has been unlawfully excluded
- ▶ How to report if you believe a school is unlawfully excluding pupils
- ▶ What action will be taken when you report an illegal exclusion

Our findings

A massive 95% thought it was essential that parents were told within the guidance what action would be taken if they reported an illegal exclusion.

This percentage was matched by 95% of respondents who believed that head teachers' and governing bodies' guidance should outline the consequences for schools, head teachers and governing bodies when schools are shown to be acting unlawfully.

► What parents have told us about illegal exclusions

"Last year between October and December my son George was unlawfully excluded 8 weeks. He missed 40 half days of school as a result of being sent home from school every day at 1.00pm. George found this very difficult and has made four attempts to end his own life as a result of these exclusions."

Judith

"My daughter was sent home from school early as it was suggested that this would help to make the day easier for her. This was not a formal arrangement; I received no form of documentation.. This arrangement meant that she missed an entire 30 minutes of her education every day. Sadly, she missed story time and saying goodbye to her classmates and teachers. She found this confusing and it did not have a positive impact on her education. It also had a negative impact on me and my family. As I had to go to the school early and also attend regular meetings, I was unable to get a paid job."

Ali

"As it was known at school that I was working from home. I would be contacted by them to come and remove him for the rest of the day. After several weeks of this, I spoke to the Head who hadn't realised that this was even happening to my son. By this time the issue of unofficial exclusion had already been raised."

Laura, mum

"My son Bob is a lively, cheerful child - you always know he's in the room. He's loud, active, boisterous, and very smart. He loves company."

In 2016 he was unlawfully excluded: once for one and a half days, and then for about six weeks, when he was put on a reduced timetable (half a day). This was presented as the only option to avoid permanent exclusion. We were not given any paperwork about this...

Bob had always been happy in his mainstream primary school, until the head teacher changed. Whereas the previous head teacher had a no-exclusion policy, the new one has been using exclusion extensively.

The time that had the biggest impact on me was when he was sent home every day for almost 6 weeks. I could have lost my job. I felt stressed and anxious. For the first time in my life, I thought about killing myself.

I used to be a part of the school's community, and work with the school. I was secretary of the PTA. I now have lost any trust or goodwill I had towards them. The Local Authority were completely inert and passive - I understand they are overworked, but they did nothing to support me, or to help me uphold my son's right to an education. There should be real consequences for schools acting unlawfully."

Clare

"My grandson is now seven years old and in year three at school. He loves watching DVDs and Lego. He likes watching YouTube and learns information verbatim and then recites it. He loves animals, particularly snakes. He was officially excluded from previous school about 8 times but was also sent home without it being recorded numerous times. My daughter struggled a lot and was often called to school to collect him; for almost a year he was on a reduced timetable.

We didn't know at the time that the school was acting illegally. No-one helped us."

Pam



► Our recommendations:

Ambitious believe the amended guidance must contain the following information in order to be fit for purpose:	In guidance to head teachers and governing bodies	In guidance to parents and carers
What constitutes an illegal exclusion	X	X
What person/body is responsible for ensuring schools comply with exclusion law	X	X
How to complain if you believe a/your child has been unlawfully excluded		X
How to report if you believe a school is unlawfully excluding pupils		X
What action will be taken when you report an illegal exclusion		X
What a headteacher's responsibilities are to prevent unlawful exclusions in their settings	X	
What governing bodies responsibilities are to prevent unlawful exclusions in their settings	X	
What the responsibilities of headteachers, governing bodies and school staff are to report schools acting unlawfully.	X	
What person/body is responsible for ensuring schools comply with exclusion law	X	
What the consequences are for schools/ headteachers/governing bodies if schools are found to be acting unlawfully.	X	X

Specifically we recommend the following adjustments to the guidance:

Point 14:

'Informal' or 'unofficial' exclusions, such as sending a pupil home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded. To be followed by the following points:

15. *Any person who has good reason to believe that an unlawful exclusion has occurred must report their concerns directly to the Office for Standards in Education, Children's Services and Skills (Ofsted).*
16. *Where the Office for Standards in Education, Children's Services and Skills consider an individual establishment is not adhering to exclusions guidance they should advise the Secretary of State to issue directions to that establishment.*
17. *The Office for Standards in Education, Children's Services and Skills shall annually report on the information passed to it, including the numbers of reports, and any actions taken to enforce the complete recording of all school exclusions.*

Point 40:

The head teacher must, without delay, notify the governing body and the local authority of:

To have the addition of the following point – *any exclusion of a pupil with an EHC plan or looked after child.*

Point 47:

To replace *may need to* with *must* as shown here:

"In addition, where a pupil has an EHCP plan, the local authority ~~may need to~~ *must* review the plan or reassess the child's needs, in consultation with parents, with a view to identifying a new placement."

Point 103:

As such a high proportion of reviews relate to pupils with protected characteristics, SEND and autism we believe it would be beneficial for independent review panel members to have a understanding of the law, statutory guidance and a school's duty to these pupils. Such an understanding would enable reviews to better determine if an exclusion is within the law and cut the number of appeals, and so we would insert after point 103:

104. *Where possible, panel members and governors should have an understanding of the law, statutory guidance and a schools duty towards protected characteristics and groups who are vulnerable to exclusion as well as having received a basic level of autism awareness training.*

Thousands of people right now are supporting our campaigns for children with autism. Join **Team Ambitious** and together we can make a difference.

We never use government funding for our campaign work. We rely on the support of people like you. If you would like to support or invest in our campaigns to make the ordinary possible for children and young people with autism, please visit: ambitiousaboutautism.org.uk/our-campaigns



**Ambitious
about Autism**



The National
Autistic Society

Every Child

Every child with autism deserves an education that supports them to reach their potential.

Children with autism are more likely than other children to be excluded from school, to be bullied and to leave school with no plans for adult life or getting a job. Their parents tell us that securing the right school placement can be stressful enough to lead to family breakdowns.

This is not acceptable, nor is it inevitable. Ambitious about Autism and The National Autistic Society's *Every Child* campaign is working to get the right educational support so every child and young person with autism can reach their potential. Ambitious about Autism and The National Autistic Society believe that four things need to happen for every child with autism to succeed in education.

Every child and young person with autism must have:

- ▶ their needs assessed fully and promptly,
- ▶ access to school and college places that meet their needs.

Every teaching professional and the schools they work in must have:

- ▶ the training and resources to meet children with autism's needs,
- ▶ the tools to prepare every child with autism for their lives after school.

Together we are determined to make sure Every Child with autism gets the right educational support.

Visit ambitiousaboutautism.org.uk/every-child or autism.org.uk/everychild for more information.



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