

SEND Pupils and Exclusion: The Data Behind the Risk

What the evidence means for your setting under the updated exclusions guidance

A briefing for school leaders, SENCOs, governors and MAT trustees | Informed by Department for Education ("DfE") exclusions data and the Suspension and Permanent Exclusion Guidance, July 2026

The updated DfE [Suspension and permanent exclusion](#) guidance comes into force on **26 July 2026** (the "Guidance"). It tightens the legal framework around exclusion making it clear that off-rolling, informal removal and unlawful exclusion will not withstand scrutiny.

The national data on who is actually being excluded gives that message real force. Children with SEND are suspended and permanently excluded at dramatically higher rates than their peers, and the gap has continued to widen since the pandemic.

This briefing sets out what the data shows, what the law requires when SEND is a factor in a behaviour decision, and where informal practice creates the greatest legal exposure for settings.

1. The Scale of the Gap

The DfE's full-year 2023/24 statistics, the most detailed annual picture available, confirm the disparity is severe and consistent across measures.

Pupil Group	Suspension Rate (per 100)	Permanent Exclusion Rate (per 100)
SEN Support (no EHC plan)	29.43	0.41
EHC Plan	25.62	0.26
No identified SEN	7.55	0.08

Source: DfE, Suspensions and Permanent Exclusions in England: Academic Year 2023/24 (published July 2025).

Pupils with SEN Support, who have an identified need but no Education, Health and Care (EHC) plan, were suspended at nearly four times the rate of pupils with no identified SEN, and permanently excluded at five times the rate. Pupils with an EHC plan, despite having formal, legally protected provision, still faced suspension rates more than three times those of their non-SEND peers.

The pattern has not eased. Spring term 2024/25 data shows SEND pupils continuing to be suspended at approximately four times the rate of non-SEND peers, and autumn term 2024/25 data shows SEND pupils, around 18.5% of enrolments, accounting for roughly 50% of all suspensions and 55% of permanent exclusions nationally.

DfE termly data for autumn 2024/25, updated again in 2026, suggests rates may have peaked overall but remain extremely high for pupils with SEN support and EHCPs, with some SEND rates rising even as overall exclusions fall.

Pupils with SEN Support are suspended at nearly 4x and permanently excluded at 5x the rate of pupils with no identified SEN.

DfE, Suspensions and Permanent Exclusions in England: Academic Year 2023/24

A pattern worth noting: pupils on SEN Support consistently face higher exclusion rates than pupils with an EHC plan. Without the formal documentation and legal protection of a plan, the safeguards that might otherwise prompt a school to look for the cause of behaviour before reaching for a sanction are weaker. This is precisely where the risk of an unlawful or poorly evidenced exclusion decision is highest.

2. The Legal Position: No Exemption for SEND

The Guidance does not soften the exclusion framework for pupils with SEND. It sharpens the legal expectations that apply whenever SEND is a feature of the behaviour being addressed.

What the guidance and underlying law require:

- It is unlawful to exclude a pupil simply because they have SEN or a disability the school feels it is unable to meet.
- Reasonable adjustments under the Equality Act 2010 must be considered and made before exclusion is used as a sanction.
- Where behaviour is the manifestation of an unmet need, a decision to exclude without first addressing that need may be discriminatory.
- The school's SEND duties, including duties relating to disabled pupils, remain in force throughout any period of suspension.
- The governing board must have regard to the SEND Code of Practice when administering the exclusion process, and use its best endeavours to secure appropriate provision.
- Where an Independent Review Panel is convened, an SEN expert must consider how SEND factors influenced the original decision.

Sources: Equality Act 2010; Children and Families Act 2014; SEND Code of Practice; DfE Suspension and Permanent Exclusion Guidance (July 2026).

A school cannot treat a SEND pupil's behaviour as a discipline matter without first evidencing that the underlying need was identified, addressed and reviewed. A pupil routinely excluded for behaviour linked to an unmet or unassessed need is a strong indicator that the legal threshold for exclusion, and the duties owed before reaching it, have not been properly considered.

3. Where the Real Risk Sits: Informal Practice

Official exclusion statistics are widely understood to understate the true picture. A growing body of evidence, including Ofsted's own findings, points to informal practices that fall outside recorded exclusions but disproportionately affect SEND pupils, and which carry serious legal exposure for the settings involved.

Informal practices that the Guidance treats as unlawful exclusion or off-rolling:

- Asking a parent to "take their child home" for the rest of the day, or longer, without a formal suspension being recorded. Ofsted has found this illegal practice happening across nearly all local areas inspected.
- Part-time timetables imposed for behavioural reasons rather than agreed as a genuine, time-limited, needs-led arrangement.
- Off-site direction that functions as a de facto exclusion because the receiving setting lacks the provision or expertise to meet the pupil's needs.
- Managed moves agreed under pressure rather than as a genuine, consensual fresh start for the pupil.
- Prolonged internal isolation or removal from class with little or no educational provision, used as a substitute for a formal process.

- Encouraging a parent to remove their child, or to pursue elective home education, under the implicit or explicit threat of permanent exclusion.

Based on examples set out in the DfE Suspension and Permanent Exclusion Guidance (July 2026), p.16

Each of these practices may feel, in the moment, like a reasonable or even compassionate response to a difficult situation. Legally, that does not matter. Where a pupil is kept away from school on disciplinary or behavioural grounds without the formal process being followed, the guidance is direct: it does not matter what the arrangement is called. It is, in substance, an exclusion, and it must be treated as one.

The consequence of getting this wrong is not inconsequential. Coram Children's Legal Centre's May 2026 report, [Fairness in School Exclusions: A Roadmap for Change](https://coram.org.uk/resource/fairness-in-school-exclusions), documents what it terms 'coercive exclusions', where families are pressured to remove a child rather than face formal exclusion proceedings, alongside off-site direction, internal isolation and managed moves being used in practice as exclusion in all but name. A 2025 High Court ruling found that families can potentially access legal aid in permanent exclusion cases involving allegations of race or disability discrimination. Ofsted considers evidence of off-rolling in its leadership and governance evaluation.

Source: Coram Children's Legal Centre, *Fairness in School Exclusions: A Roadmap for Change* (21 May 2026), available at coram.org.uk/resource/fairness-in-school-exclusions

4. Governance: What Boards Should Be Asking

Reviewing exclusion data by pupil characteristic is not an optional good practice step. The guidance frames it as part of a governing board's oversight responsibility, and it sits alongside the public sector equality duty.

Questions every governing board should be able to answer:

- What proportion of our suspensions and permanent exclusions this year involved pupils with SEND, and how does that compare with our SEND population?
- Are pupils with SEN Support, who lack the documentation of an EHC plan, over-represented in our exclusion figures?
- Can we evidence that reasonable adjustments were considered and made before each exclusion decision involving a pupil with SEND?
- Have any pupils been sent home, placed on reduced timetables, or moved off-site without a formal exclusion being recorded?
- Does the board receive and scrutinise exclusion data by characteristic as a standing item, with actions recorded where disproportionality is identified?

A board that has not asked these questions is exposed twice over:

1. to the risk that informal practice has been used in place of lawful process; and
2. to the governance risk of not having the oversight that the guidance now expects as standard.

What This Means in Practice: A Call to Action

The Guidance removes any ambiguity about where the legal line sits, and the data confirms that SEND pupils are disproportionately affected when settings get it wrong.

Five actions to take now

- Pull your exclusion and suspension data by SEND status for the last academic year and compare it against your SEND population. If SEND pupils are over-represented, document why and what is being done.
- Audit informal removals specifically. Any instance of a pupil being sent home, placed on a reduced timetable, or moved off-site without a formal exclusion recorded needs to be reviewed against the guidance.
- Check that reasonable adjustments were considered before each exclusion involving a pupil with SEND, and that this is documented, not assumed.
- Look closely at pupils on SEN Support without an EHC plan. This group faces the highest exclusion rates and the weakest formal protection, making them the highest legal risk category for your setting.
- Put SEND exclusion data on the governing board agenda as a standing item, with a clear record of what was discussed and what action followed.

CDS SEND Inclusion

If your setting cannot yet answer the questions in this briefing with confidence, that is the starting point, not a reason for alarm. CDS SEND Inclusion works with educational settings to understand what the law requires, identify where the risks are, and build inclusion practice that families can genuinely trust.

We offer:

- Inclusion Practice Audits: an external review of your exclusion and inclusion practice against the legal and practical framework.
- Training on Legal Obligations around SEND Inclusion: for leaders, staff and governors.
- Policy Review and Development: checking your exclusion and behaviour policies reflect current law.
- Reform Readiness Reviews: mapping your provision to the emerging national framework.
- Ongoing Advisory Retainer: a critical friend on your SEND strategy when you need one.

cdssendinclusion.co.uk

Legal experience. Governance experience. Lived experience. Inclusion that holds up on both sides of the table.

This briefing is prepared for information purposes and does not constitute legal advice. Legal advice should be sought as appropriate. Statistics are drawn from published DfE statistics and third-sector research; sources are cited at relevant points. CDS SEND Inclusion is a trading name of Cristina Di Santo, qualified solicitor (non-practising).