

PE2139/A: Automatic expulsion for children charged with committing a crime against another child

Cabinet Secretary for Education and Skills written submission, 10 March 2025

Thank you for the opportunity to provide the Scottish Government's views on the action called for within Petition PE2139 on automatic expulsion for children charged with committing a crime against another child.

I acknowledge the petitioner's concerns about situations where young people who have been the victim of alleged criminal behaviour may be in close proximity whilst at school to the young person who has displayed this behaviour. The wellbeing and safety of children and young people in Scotland is a key priority for the Scottish Government. Our schools should be safe and consistent learning environments for all.

The petition raises two main points, and I shall address these in turn.

Firstly, the petition calls for an automatic expulsion for children charged with committing a crime against another child. Our national policy on exclusion is set out in the guidance document '[Included, Engaged and Involved – Part 2 – preventing and managing school exclusions](#)', which was published in June 2017. This policy has at its foundation a whole school ethos of prevention, early intervention and support against a background which promotes positive relationships, learning and behaviour. Exclusion should only be used as a last resort. It should be a proportionate response where there is no appropriate alternative.

Exclusions, where used, should not be viewed as a purely punitive measure, rather should be a short term measure with the aim of improving outcomes. Regulation 4 of the Schools General (Scotland) Regulations 1975 ("the 1975 Regulations"), provides that an education authority shall not exclude a pupil from school unless the authority: "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." Exclusion from school of a child or young person other than in conformity with the terms of the 1975 Regulations as amended has no statutory authority and may leave the education authority open to legal challenge. Therefore, the Scottish Government's position is that it would not be lawful to employ a policy of automatic exclusion without considering the individual circumstances of each case. The Scottish Government has no plans to change the law on exclusions.

Schools and education authorities should therefore consider all the facts and circumstances surrounding the incident(s) leading to exclusion. The purpose of the exclusion and the impact on the child or young person should be taken into consideration, including the long term impact on life chances. The wellbeing and

safety of the whole school community should also be taken into account when considering exclusion.

I would also note that in the circumstances where a pupil has been charged in relation to a criminal activity, there may be considerations by Police Scotland, in relation to conditions attached to bail. This can include, that the person who is alleged to have committed the criminal activity and the person who has experienced the criminal activity should not be in contact. That is a legal requirement, and schools are compelled to make alternative arrangements for the education of the person who is alleged to have committed the crime. Education authorities remain under a duty to provide education, in these circumstances.

Secondly, the petition raises concerns that victims have been treated worse than the alleged perpetrators because of policies that protect young perpetrators, with parties required to share classrooms, putting the at risk and potentially damaging their educational prospects.

All children and young people have the right to education, safety and justice, and to learn in an environment free from violence.

We expect everyone working with children and young people, not just core professionals, to identify and act on any concerns to ensure the safety and wellbeing of the young person concerned. Where staff have reason to believe a crime may have occurred, they should follow agreed child protection procedures, and schools should work closely with their local authority and colleagues in core agencies including social work, health and Police Scotland, to ensure the safety and wellbeing of children, young people, and staff.

Where staff are alerted via a multi-agency response that a young person has been charged in connection with an incident involving another pupil, school staff should follow the advice of social work and/or Police Scotland about how to manage the situation while the young people are attending school.

In line with a GIRFEC approach, a school should consider what action is required to meet the needs of all young people involved – the victim, the young person charged with the offence, and the wider school community. Appropriate action should be taken in line with the school's established relationships and behaviour policy and child protection procedures.

The needs of the child or young person who has been harmed should be central in determining a response to support them. A young person charged with a crime may also need specialist approaches to be put in place, with a view to identifying causes and appropriate interventions including additional resources to reduce the likelihood of recurrence. Of particular concern may be the safety of all young people involved. A clear plan to secure the safety of all children and young people involved should be established, including appropriate actions.

I hope the Committee finds the information in this letter helpful. While the legal framework managing exclusions does not allow for automatic exclusion, I hope the Committee is reassured that robust processes and supports are in place to assist schools to appropriately manage complex situations where a young person has been charged with a crime against another pupil.

Yours sincerely

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