*About this resource:*

This is a Suggested Wording. It is a set of paragraphs you can use to argue to the school’s governors that the headteacher’s decision to exclude constitutes indirect discrimination.

To understand when you might want to use this text, read the [Step by Step Guide: Preparing Written Arguments for the School’s Governors](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/making-case-schools-governor/meeting-preparing-case-governers/step-step-guide-creating-written-submissions)

If you want to understand more about the relevant law, read the [Quick-Guide: the Headteacher’s Power to Exclude](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/making-case-schools-governor/meeting-preparing-case-governers/quick-guide-headteachers-power-exclude#3c)

To use this resource, go through the text and enter the information where prompted to do so. Prompts appear as grey text. Then copy and paste your finished text into the [Template Document: Submissions to the Governors](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/making-case-schools-governor/meeting-preparing-case-governers/step-step-guide-creating-written-submissions/quick-guide-headteachers-power)*.*

This text is a guide. You might need to make amendments to fit your circumstances.

At paragraph 2, the Exclusions Guidance states that an exclusion must be made in line with the provisions set out in the Equality Act 2010.

The Equality Act 2010 states at section 19 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—*
	1. *A applies, or would apply, it to persons with whom B does not share the characteristic,*
	2. *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,*
	3. *it puts, or would put, B at that disadvantage, and*
	4. *A cannot show it to be a proportionate means of achieving a legitimate aim.*

Section 4 states that:

*The following characteristics are protected characteristics—*

*age;*

*disability;*

*gender reassignment;*

*marriage and civil partnership;*

*pregnancy and maternity;*

*race;*

*religion or belief;*

*sex;*

*sexual orientation.*

There are now two sections to choose from, a yellow one and a blue one. Complete the most appropriate section with the required information, remove the highlighting and then delete the spare section.

The yellow section is most appropriate if you are only arguing that the young person has been the victim of indirect discrimination.

The blue section is most appropriate if you are arguing that the young person has been the victim of direct discrimination and indirect discrimination. If this is the case, you should use the [Suggested Text: Young Person the Victim of Direct Discrimination](https://justforkidslaw.org/school-exclusions-hub/legal-practitioners-and-professionals/making-case-schools-governor/meeting-preparing-case-governers/step-step-guide-preparing-written-arguments-governors/did-exclusion-result) before this one.

young person is protected characteristic, which is a protected characteristic under the category of category of protected characteristic.

We are not submitting that the school has directly discriminated against young person, but instead that by applying the same policies and practices equally to them, they have been severely disadvantaged as a result of their protected characteristic.

We have submitted above that young person’s exclusion resulted from direct discrimination. However, even if the governors do not agree with that submission, we still submit that by applying the same policies and practices equally to anyone who is protected characteristic as those who are not, they have been severely disadvantaged.

This submission is best explained by setting out the test at section 19 of the Equality Act as a series of questions and answering each in turn.

The first question is: has young person been subject to a provision, criterion or practice that would apply to persons who are not protected characteristic?

There are now two sections to choose from, a yellow one and a blue one. Complete the most appropriate section with the required information, remove the highlighting and then delete the spare section.

The yellow section is most appropriate if you are arguing that the indirect discrimination has resulted from a written school policy.

The blue section is most appropriate if you are arguing that the indirect discrimination has resulted from a practice at the school that is not written in policy (for example, a practice of moving a child to isolation after an informal “three strikes” rule is breached).

The answer is yes. The school has excluded young person with reference to their behaviour policy. These policies apply to all students in the school, without making adjustment for people who are protected characteristic. These policies are provisions for the purpose of the Act.

The answer is yes. The school has excluded young person after following their standard practice of description of practice.

The second question is: has the application of these policies/practices disadvantaged young person as a result of their being protected characteristic, in a way that they would not disadvantage a person who was not protected characteristic?

The answer is yes. Leading up to the exclusion, young person was subjected to these policies/practices. The result was that description of the disadvantage suffered which has left young person more vulnerable to exclusion than their peers.

The last question is whether this disadvantage is justified by being a proportionate means of achieving a legitimate aim?

No. it is acknowledged that good behaviour in school is a legitimate aim and that, logically, removing young people exhibiting behavioural difficulties is likely to reduce disturbances in the learning environment.

However, in assessing proportionality in the context of the Equality Act, the governors must not only consider the personal impact on young person. The governors must also consider the inherent injustice that exists as a because young person is more likely to be excluded because they are protected characteristic. There must therefore be a very compelling case from the school to warrant this. The test requires that that the young person must be disadvantaged because no plausible alternative for achieving a legitimate aim exists.

We submit to the governors that the school has failed to satisfy this test, and the discrimination against young person is therefore unlawful.

The governors are invited to reinstate with immediate effect.