Relevant guidance:

* [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](https://www.gov.uk/government/publications/school-exclusion)

Relevant excerpts:

* *“Any decision of a headteacher, including suspension or permanent exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful (with respect to the legislation relating directly to suspensions and permanent exclusions and a school’s wider legal duties); reasonable; fair; and proportionate.”*

Paragraph 2: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](https://www.gov.uk/government/publications/school-exclusion)

* *“Public law principles underpin good decision making. All decisions of a governing board must be made in accordance with public law. Panels are expected to understand the legislation that is relevant to suspensions and permanent exclusions and the legal principles that apply. Headteachers and governing board members of panels are likely to have first hand experience of the education context that may be relevant to considerations about whether a decision was reasonable in the circumstances.”*

Paragraph 226: [Suspension and permanent exclusion from maintained schools, academies and pupil referral units in England, including pupil movement](https://www.gov.uk/government/publications/school-exclusion)

Suggested wording:

*(This suggested wording is a guide. You might need to make amendments to fit the individual circumstances of the pupil in question. You can also refer to the above excerpts to strengthen your argument).*

name of school’s governing board was bound by the principles of public law when considering young person’s permanent exclusion, including that the decision must be lawful.

In public law, "lawfulness" describes the requirement that any decision the governing board takes must be one that they have the authority to make in law.

The governing board has declined to reinstate young person, instead upholding the permanent exclusion. This is despite the governing board acknowledging in the letter confirming their decision/the minutes of their deliberations that the headteacher’s decision to exclude was not in accordance with the requirements of the Human Rights Act 1998. This can be seen in their finding that “finding of the governors that shows their agreement that the exclusion was unlawful”. This means that the exclusion amounted to a breach of specify the human rights provision that has been breached as defined by the European Convention on Human Rights.

Article 8 of the European Convention on Human Rights states that:

*“1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”*

The 2009 High Court case of LG (by their mother and litigation friend V) v Independent Review Panel for Tom Hood School discussed the issue of whether an exclusion can “engage” a person’s rights under Article 8 of the ECHR. The Court found that:

*“I readily accept that there may be cases in which the permanent exclusion of a pupil from, say, the only school in an area which he or she had attended for years could engage Article 8 rights.”*

Where Article 8 rights are engaged, it means that the young person is protected from arbitrary or disproportionate interference with their private and family life. While not every exclusion will engage a person’s Article 8 rights, any that has a particularly severe impact on a young person’s relationship to friends or family and the stigma they carry by association with the exclusion will engage these rights.

Therefore, by stating that “finding of the governors that shows their agreement that the exclusion was unlawful”, the governing board clearly agrees that the exclusion amounted to an impact on young person’s life which constitutes a breach of Article 8. The result is that they would have to satisfy themselves that the infringement with that right is proportionate to a lawful aim, which is a question they have not been able to satisfy themselves.

Despite this, the governing board decided to uphold the exclusion anyway. This was therefore an unlawful decision, and the IRP is invited to quash it and direct reconsideration.