



Children's
Rights Alliance
for England

FAQ - Full Answer



“My mum gave me a hair cut that included shaving patterns into my hair. The school has excluded me until they grow out. My parents say they’re being racist and I’m thinking, what has hairstyle to do with education?”

The law on exclusions

Government guidance explains the current law on exclusions, which is mainly set out in section 51A of the Education Act 2002 (as amended by the Education Acts 2006 and 2011) and the School Discipline Regulations 2012.

The law states that:

- ◆ only the head teacher can exclude a pupil;
- ◆ an exclusion must be for a disciplinary reason (for example, you cannot be excluded because you can't do the schoolwork or because your parent refused to attend a meeting).
- ◆ all schools must have a “behaviour policy” setting out what the school rules are, including those about uniform and appearance and the penalties for breaking the rules (section 89 of the Education and Inspections Act 2006 and guidance on Behaviour and Discipline in Schools) which the school must have publicised to you and your parents. The law also says the rules should be drawn up following consultation with parents and pupils.
- ◆ the decision to exclude must be rational, reasonable, fair, proportionate and in line the school's wider legal duties – for example to promote your welfare and to comply with their duties under the Human Rights Act and Equality Act 2010.
- ◆ under the Equality Act 2010 schools must not discriminate against, harass or victimise pupils because of their sex, race, disability, religion or belief, sexual orientation, because of a pregnancy or maternity or because of a gender reassignment (these are called “protected characteristics”). Schools must also have due regard to the need to eliminate discrimination and should make sure that their behaviour policies do not unintentionally discriminate against pupils by unfairly increasing their risk of exclusion.
- ◆ under the exclusion regulations your parents must be told in writing about the reasons for the exclusion, how long it is and their rights to take this to the governing body, as well as the arrangements for your education during the exclusion.



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- ◆ the governors must consider your parents' representations, but if the exclusion is under five days they can't order your reinstatement. If it is between five and 15 days, they can order reinstatement but don't have to consider your parents' representation for 50 days. If the exclusion goes beyond 15 days (or at any point you are prevented from taking an exam), they must consider reinstatement – whether or not your parents complain – within 15 days.
- ◆ at the governors' meeting, your parents can submit written evidence and be accompanied by a friend or representative.
- ◆ the law requires that the governors must also consider your views (Education Act 2002, [section 176](#)). They should encourage you to attend the meeting (with a friend if you want) or find out your views in some other way.
- ◆ for the first five days the school can set and mark work for you at home but beyond that time they should make arrangements for suitable full-time education for you (section 100 and 101 of the [Education and Inspections Act 2006](#)).

Government guidance on school uniform

The Government has issued [guidance](#) to head teachers and governing bodies on uniform, which they must follow unless there is good reason not to do so in a particular case. In this guidance, schools are encouraged to have “a very clear position” about hairstyle. It states that pupils can be excluded for breaches of uniform rules, so long as this complies with the law. This includes that the decision is proportionate, meaning it is no more than necessary to achieve the legitimate aim of promoting good school discipline. Your exclusion may well be disproportionate, particularly if this was a “first offence” and you and your mum did not know that hairstyles such as yours were not allowed under the school's behaviour policy.

The guidance strongly recommends that the school gives careful consideration to whether the uniform rules discriminate against or fail to promote equality among the different groups of pupils.



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The guidance explains both direct discrimination (for example a uniform that cost more for girls or breached modesty requirements of a religion) and indirect discrimination, which is the relevant issue here:

A school should also bear in mind the concept of “indirect” discrimination. This involves the application of a requirement, which, although applied equally to everyone, puts certain people at a particular disadvantage because of their gender, race, sexual orientation, religion or belief or gender reassignment. Such a requirement will need to be justified as a proportionate way of achieving a reasonable objective if it is to be lawful, and the policy will need to be flexible enough to allow for necessary exceptions.

An example of indirect discrimination could be a school that bans ‘cornrow’ hairstyles. As these are more likely to be seen as part of a family’s custom and practice and therefore constitute part of a person’s ethnicity. Banning this type of hairstyle without justification could constitute indirect racial discrimination.

The guidance also strongly recommends that the governing body should:

consider carefully, once the uniform/appearance policy has been agreed, any request that is made to vary the policy, in particular to meet the needs of any individual pupil to accommodate their religion or belief, ethnicity, disability or other special considerations. Even a rule which is imposed for a good reason may constitute unlawful indirect discrimination if it is imposed in a way which never allows for exceptions to meet special circumstances.



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Your human rights

Under the [Human Rights Act 1998](#) and the [European Convention on Human Rights](#) you have a right to private life (Article 8) and to freedom of expression (Article 9). You also have a right to freedom of thought, conscience and religion (Article 10) but this would only be relevant if the hairstyle was connected to a belief system. You also have a right not to be denied education and to an education that conforms with your parents' religious and philosophical convictions (Article 2 of the First Protocol). This last right would be particularly relevant if you were excluded for a longer period and not provided with suitable alternative education – this is also required by section 19 of the Education Act 1996.

Several decades ago the European Court of Human Rights rejected an application by a UK mother that school uniform rules breached her and her children's rights under Article 9 and Article 2 of the First Protocol. It found that *'...although the right to freedom of expression may include the right of a person to express his ideas through the way he dresses; it has not been established on the facts of the case that the applicant's children have been prevented from expressing a particular opinion or idea by means of their clothing'* (*Stevens v UK*). This probably prevents arguing that uniform rules in general breach your freedom of expression rights – unless the hair patterns have some deeper meaning - but there is still room to argue under the Human Rights Act that you are being denied education because of discrimination.

Under the [UN Convention on the Rights of the Child](#) the government must ensure that *'school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention'* (Article 28(2)) and that education shall be directed to *'...The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own'* and *'...The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin..'* (Article 29(1)(c) and (d)). Unlike the Human Rights Act, these rights are not part of English law but should nonetheless be considered by courts and public bodies when making decisions.



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What you can do

You and your parents could consider making a case, first to the head teacher and then to the governing body, that excluding you for this hairstyle constitutes indirect discrimination under the Equality Act, as explained above. You should ask that the school reverse their decision and allow you to come back straight away.

If you can show that this hairstyle is common for people from your background, that it is neat, safe (for science experiments, PE etc), unprovocative (the patterns don't have hidden meanings, for example) and that you felt singled out and humiliated by being punished for it, then you have a good chance of having the exclusion overturned.

Some key questions you can ask include:

Has the school followed all the correct procedures, as outlined above? Does the school's published behaviour policy specifically mention shaved hair patterns? Did they consult with parents and pupils from your culture or ethnic group when setting the behaviour policy? Do they have good reasons for setting the rules on hairstyles? If they have not acted correctly or the policy is not clear or reasonable, then again you may be successful in overturning the exclusion.

If you don't succeed, your parents should consider making an official complaint about your treatment and a formal request to change the hair rules in the behaviour policy. Under the Education Act 2002 ([section 29](#)), schools are required to establish and publicise procedures for dealing with complaints – ask to see the complaints policy for your school.

If the complaint does not succeed, consider complaining further to the [Department for Education](#) (DfE). (Until August 2012 such complaints were handled by the Local Government Ombudsman, often with successful results. It remains to be seen how effective the transfer of these complaints to the DfE will be).

You could also [ask a lawyer](#) about an application for [judicial review](#) in the High Court, if you feel strongly that you have been treated unfairly and the exclusion had a serious impact on you. Legal aid may be available to meet your legal costs.