



Department  
for Education

# **Alternative Provision**

## **Statutory guidance for local authorities**

**January 2013**

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# Summary

## About this guidance

This is advice from the Department for Education on statutory duties and powers concerning the use of alternative provision.

The first part of this document (paragraphs 1-27) explains the statutory powers and duties that apply in relation to alternative provision. The second part (paragraphs 28-47) contains statutory guidance to which the parties specified 'must have regard'. This means that they should be able to demonstrate that they had considered this statutory guidance, and where it is not followed have reasonable grounds for deciding not to follow it.

The statutory guidance will have effect from 1 January 2013.

This guidance replaces the following guidance documents on alternative provision and pupil referral units:

- *Commissioning Alternative Provision – Guidance for Local Authorities and Schools;*
- *The Constitution, Roles and Responsibilities of Management Committees;*
- *The Operation of Management Committees; and*
- *Guidance for Local Authorities and Schools: Pupil Referral Units and Alternative Provision.*

## Review Date

This guidance is expected to be next reviewed in September 2013.

## Definition

For the purposes of this guidance, the definition of alternative provision is as follows: education arranged by local authorities for pupils who, because of exclusion, illness or other reasons, would not otherwise receive suitable education; education arranged by schools for pupils on a fixed period exclusion; and pupils being directed by schools to off-site provision to improve their behaviour.

## Main legislation covering the duties and powers relating to these issues

- Section 19 of the Education Act 1996, as amended by section 3A of the Children, Schools and Families Act 2010;
- Section 29A of the Education Act 2002;
- Sections 6A and 100 of the Education and Inspections Act 2006;
- Sections 1C and 4 of the Academies Act 2010 (as amended);
- The Education (Pupil Referral Units) (Application of Enactments) (England)

Regulations 2007<sup>1</sup>;

- The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007;
- The Education (Educational Provision for Improving Behaviour) Regulations 2010<sup>2</sup>
- The Education (Short Stay Schools) (Closure) (England) Regulations 2010;
- The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012; and
- The Schools Forums (England) Regulations 2012.

## Who is this guidance for?

- Local authorities – the teams responsible for alternative provision and pupil referral units;
- Maintained schools – governing bodies and head teachers;
- Pupil referral units – management committees and teachers in charge;
- Academies (including Free Schools) – not all duties are applicable to Academies, and this guidance will make clear which are applicable; and
- All providers of alternative provision, including AP Academies and AP Free Schools.

## Key points

- Local authorities are responsible for arranging suitable education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such arrangements being made.
- Governing bodies of schools are responsible for arranging suitable full-time education from the sixth day of a fixed period exclusion.
- Schools may also direct pupils off-site for education, to help improve their behaviour.
- Statutory guidance sets out the Government's expectations of local authorities and maintained schools who commission alternative provision and pupil referral units. The Government expects those who are not legally required to have regard to the statutory guidance to still use it as a guide to good practice.

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<sup>1</sup> As amended by the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012, which came into force on 31 May 2012 and which apply the Academies Act 2010, with modifications, to pupil referral units.

<sup>2</sup> As amended by the The Education (Educational Provision for Improving Behaviour) (Amendment) Regulations 2012, which came into force on 1 January 2013.

## Statutory duties and powers

### The provision of suitable full-time education to those who would not otherwise receive it

1. Local authorities are responsible for arranging suitable full-time<sup>3</sup> education for permanently excluded pupils, and for other pupils who – because of illness or other reasons – would not receive suitable education without such provision<sup>4</sup>. This applies to all children of compulsory school age resident in the local authority area, whether or not they are on the roll of a school, and whatever type of school they attend. Full-time education for excluded pupils must begin no later than the sixth day of the exclusion. The Secretary of State has the power to make statutory guidance about these duties<sup>5</sup>, and local authorities must have regard to it. The current statutory guidance can be found at paragraph 28 onwards.
2. While there is no statutory requirement as to when suitable full-time education should begin for pupils placed in alternative provision for reasons other than exclusion, local authorities should ensure that such pupils are placed as quickly as possible.
3. Any school that is established and maintained by a local authority to enable it to discharge the above duty is known as a pupil referral unit<sup>6</sup>. There is no requirement on local authorities to have or to establish a pupil referral unit, and they may discharge their duties by other means. However, only a local authority can establish a pupil referral unit; although they can only do so after exploring the possibility of opening an AP Academy. Others can establish AP Academies or AP Free Schools.
4. Local authorities have a power (not a duty) to arrange education provision, where not already available, for pupils aged 16-18<sup>7</sup>.
5. Where a local authority maintains one or more pupil referral units, at least one schools member on the Schools Forum must be a representative of a pupil referral unit.<sup>8</sup>
6. Governing bodies and proprietors of maintained schools and Academies are under a duty to arrange for the provision of suitable full-time education from the sixth day of fixed period exclusion<sup>9</sup>.
7. While ‘full-time’ is not defined in law, pupils in alternative provision should receive the same amount of education as they would receive in a maintained school. Full-time can be made up of two or more part-time provisions.
8. The local authority’s duty to provide a suitable education also applies where a pupil is registered at a school (maintained, Academy, Free School or independent) but cannot attend school because of illness. Further information on this can be found in the guidance: ***[‘Ensuring a good education for children who cannot attend school because of health](#)***

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<sup>3</sup> Unless the pupil’s health means that full-time education would not be in his or her best interests.

<sup>4</sup> Section 19(1) of the Education Act 1996, as amended by section 3 of the Children, Schools and Families Act 2010.

<sup>5</sup> Section 19(4A) as amended by section 47 of the Education Act 1997.

<sup>6</sup> Section 19(2) of the Education Act 1996.

<sup>7</sup> Section 19(4) of the Education Act 1996.

<sup>8</sup> Regulation 4(10) of the Schools Forums (England) Regulations 2012.

<sup>9</sup> Section 100 of the Education and Inspections Act 2006.

*needs'*

## **Opening and closing of pupil referral units**

9. From September 2012 if a local authority thinks a new pupil referral unit needs to be established in their area they must seek proposals from potential providers for the establishment of an Academy (AP Academy or AP Free School)<sup>10</sup>.

10. The Secretary of State has the power to direct a local authority to close a pupil referral unit which requires special measures or significant improvement<sup>11 12</sup>. When this happens, the local authority must provide the Secretary of State with information about the arrangements it is making to ensure that pupils receive suitable education<sup>13</sup>.

11. Regulations allow the Secretary of State to make an AP Academy Order in relation to a pupil referral unit which requires special measures or significant improvement<sup>14</sup>.

12. Regulations<sup>15</sup> allow the Secretary of State to establish a management committee consisting of interim executive members (an Interim Executive Board (IEB)) in a pupil referral unit which requires special measures or significant improvement, or in a pupil referral unit the Secretary of State is satisfied is underperforming. As well as being used to ensure that the day to day running of the institution is effectively managed when intervention occurs, IEBs can be used as an effective intervention strategy in their own right, for example IEBs can apply for AP Academy Orders. These regulations define an underperforming pupil referral unit as one where the Secretary of State is satisfied that any of the following apply:

- a) the standards of performance of pupils at the unit are unacceptably low, and are likely to remain so;
- b) the quality of provision for pupils at the unit is unacceptably low;
- c) there has been a serious breakdown in the way the unit is conducted which is prejudicing, or likely to prejudice, such standards of performance; or
- d) the safety of pupils or staff of the unit is threatened (whether by a breakdown of discipline or otherwise).

13. Local authorities must obtain the consent of the Secretary of State before closing a pupil referral unit:

- which requires special measures or significant improvement;
- where the Secretary of State has established an IEB; or

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<sup>10</sup> Section 6A of the Education and Inspections Act 2006, introduced by the Education Act 2011 came into force in relation to pupil referral units on 1 September 2012.

<sup>11</sup> As defined in section 44 of the Education Act 2005.

<sup>12</sup> The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 as amended by The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012, which came into force on 1 September 2012. .

<sup>13</sup> The Education (Short Stay Schools) (Closure) (England) Regulations 2010, SI 2010/1071 as amended by The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

<sup>14</sup> The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 as amended by The Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012.

<sup>15</sup> The Education (Pupil Referral Units) (Management Committees etc.) (England) Regulations 2007 as amended by The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012.

- where Ofsted has notified the pupil referral unit that an inspection is to take place<sup>16</sup>.

## Management of pupil referral units (PRUs)

14. Regulations require local authorities to establish management committees to run pupil referral units in their area, to make provision for the constitution (including composition) and procedures of management committees, and to delegate specific powers to management committees.<sup>17</sup> The management committee must have a strategic role setting out and monitoring the aims and objectives of the unit to ensure children are safe, have their needs met and receive a good standard of education.

15. Changes to legislation<sup>18</sup> require local authorities to delegate budgets to the management committee of the pupil referral unit from 1 April 2013. The relevant regulations<sup>19</sup> prescribe how PRUs' budget shares are to be calculated and what funds for high needs pupils can be retained centrally by a local authority. Further guidance on those regulations can be found [here](#).

16. Giving management committees a delegated budget will ensure that pupil referral units can act more responsively and specifically in the best interests of pupils. From April 2013, local authorities must delegate to the management committee responsibility to set budgets. Management committees will also have responsibility for all other financial decisions necessary to manage and spend budgets effectively, such as maintaining accurate accounts<sup>20</sup>, signing contracts and deciding on severance payments to dismissed members of staff.

17. Funding arrangements for pupil referral units will also be changing from 1 April 2013, in line with changes to 2013/14 school finance. All direct state-funded alternative provision institutions (including pupil referral units) will receive base funding of £8,000 per place, topped up by funding from the commissioning local authority or school for each pupil admitted. The amount of the top up for each child will be for local decision and should be based on services provided to meet the needs of the individual child and any additional overheads not covered by the base funding.

18. Also from April 2013, responsibility for all decisions about the recruitment and management of staff will sit with the management committee, rather than the local authority<sup>21</sup>. As with community schools the local authority will remain the employer of staff in pupil referral units and will continue to be responsible for agreeing pay and conditions. The management committee will, however, have responsibility for making decisions about appointing, managing, appraising, suspending or dismissing members of staff. In carrying out the duties with regard to this, management committees must adhere to the relevant sections of the School Staffing Regulations.

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<sup>16</sup> See regulation 7 of the Education (Short Stay Schools) (Closure) (England) Regulations 2010, as amended by The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012, which came into force on 1 September 2012).

<sup>17</sup> The Education (Pupil Referrals Units) (Management Committees etc.) (England) Regulations 2007 (as amended by The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012).

<sup>18</sup> Section 45 of the School Standards and Framework Act 1998, as amended by section 50 of the Education Act 2011.

<sup>19</sup> The School and Early Years Finance (England) Regulations 2012.

<sup>20</sup> Consistent Financial Reporting (England) Regulations 2012 SI/2012/674.

<sup>21</sup> By virtue of the application of the School Staffing (England) Regulations 2009, with modifications, applying to PRUs but from April 2013.

19. In terms of the composition of management committees, they must contain at least seven, but no more than 20 members. The structure is outlined in the table below. The regulations cited in paragraph 14 provide more information about who may be eligible in the different categories.

Parent members	At least one, but no more than one-fifth of the total committee.
Staff members	At least one, but no more than one-third of the total committee.
Local authority appointed members	At least one, but no more than one-third of the total committee.
Community members	Must outnumber all of the other members combined.
Sponsor members	Sponsor members are entirely optional but where a committee has sponsor members there must be at least one, but no more than two.

20. Changes were made to regulations in 2012, specifically about community members<sup>22</sup>. When appointing community members, local authorities (or the management committee itself where it is already in place) must first seek to appoint representatives from local schools. The regulations also specify that local authority employees, other than persons employed by the local authority to work in a school maintained by them, cannot be community members. Any current community members who are employees of the local authority (and who are not employed to work in a school maintained by that authority) can remain in place until 1 September 2013, when they will have to be replaced by a new community member who must be appointed in accordance with the new requirements.

21. Increasing school representation on management committees will help ensure that the needs of pupils are better met, and help build continuity and raise standards in their educational attainment. This is therefore a priority for management committee membership. Where it is not possible to appoint a school representative and there is difficulty in finding people to appoint as community members, consideration should be given to appointing community members who are involved with the young people, who may typically be in alternative provision in their area. This may include community groups, offending or drug support groups, and other alternative provision and pupil referral units. Local businesses, colleges and others who work with young people could also be considered. Where the local authority or management committee feel it would be valuable to retain the input from other local authority services (who previously sat on the committee as community members) it should be noted that representatives from these services can still attend management committee meetings to offer valuable insights, though they would not have voting rights.

22. Where a pupil referral unit requires special measures or significant improvement, or where a pupil referral unit is judged to be underperforming, the Secretary of State can replace members of the management committee with interim executive members.

<sup>22</sup> The Pupil Referral Units (Miscellaneous Amendments) (England) Regulations 2012, which came into force on 1 September 2012.



## **Power of schools to direct a pupil off-site for education to improve behaviour**

23. Governing bodies of maintained schools have the power to direct a pupil off-site for education to improve his or her behaviour<sup>23</sup>. The Secretary of State has made regulations<sup>24</sup>, as is required by the related primary legislation<sup>25</sup>, concerning schools' use of this power.

24. Under revised off-site regulations<sup>26</sup> the governing body must:

- ensure that parents (and the local authority where the pupil has a statement of special educational needs) are given clear information about the placement: why, when, where, and how it will be reviewed;
- keep the placement under review and involve parents in the review. The regulations specify regular reviews but do not specify how often reviews must take place (that should be decided on a case-by-case basis). Reviews should be frequent enough to provide assurance that the off-site education is achieving its objectives and that the pupil is benefitting from it; and
- have regard to guidance from the Secretary of State on the use of this power – new statutory guidance on this issue can be found below at paragraph 41.

25. This legislation does not apply to Academies. They can arrange off-site provision for similar purposes under their general powers, set out in the Academy Trust's Articles of Association. Though the regulations and guidance do not apply, they can provide Academies with an example of good practice.

## **AP Academies and AP Free Schools**

26. Pupil referral units may now apply to convert to become AP Academies. Independent, voluntary sector or prospective providers may apply to become AP Free Schools<sup>27 28</sup>.

27. Regulations<sup>29</sup> apply the Academies Act 2010 to pupil referral units, with modifications where required. This allows the management committees of pupil referral units to apply for an AP Academy Order, and the Secretary of State to make an AP Academy Order in relation to a pupil referral unit which requires special measures or significant improvement. Regulations<sup>30</sup> also set out the process for transferring any budget surpluses when a pupil referral unit converts into an AP Academy.

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<sup>23</sup> See section 29A of the Education Act 2002, introduced by the Education and Skills Act 2008.

<sup>24</sup> The Education (Educational Provision for Improving Behaviour) Regulations 2010..

<sup>25</sup> Section 29A of the Education Act 2002.

<sup>26</sup> The Education (Educational Provision for Improving Behaviour) (Amendment) Regulations 2012, which came into force on 1 January 2013.

<sup>27</sup> Section 53 of the Education Act 2011 created a new type of institution: the AP Academy (which includes Free Schools).

<sup>28</sup> There is an annual application process for those wishing to establish AP Free Schools.

<sup>29</sup> The Education (Pupil Referral Units) (Application of Enactments) (England) Regulations 2007 (as amended by the Education (Pupil Referral Units) (Application of Enactments) (England) (Amendment) Regulations 2012).

<sup>30</sup> Pupil Referral Units (Miscellaneous Amendments) (No.2) (England) Regulations 2012.

## Statutory duties and powers

28. This part of the guidance is made under the Secretary of State's powers to make guidance to which local authorities and/or schools must have regard.<sup>31</sup>

29. Even where a party is not bound to have regard to statutory guidance – for example Academies arranging off-site provision to improve behaviour – this guidance can provide an indication of good practice.

### Good alternative provision

30. Good alternative provision is that which appropriately meets the needs of pupils which required its use and enables them to achieve good educational attainment on par with their mainstream peers. All pupils must receive a good education, regardless of their circumstances or the settings in which they find themselves. Provision will differ from pupil to pupil, but there are some common elements that alternative provision should aim to achieve, including:

- good academic attainment on par with mainstream schools – particularly in English, maths and science (including IT) – with appropriate accreditation and qualifications;
- that the specific personal, social and academic needs of pupils are properly identified and met in order to help them to overcome any barriers to attainment;
- improved pupil motivation and self-confidence, attendance and engagement with education; and
- clearly defined objectives, including the next steps following the placement such as reintegration into mainstream education, further education, training or employment.

### Planning for alternative provision

31. All pupils should be helped and encouraged to achieve or exceed the standards of a good education. Commissioners should recognise any issues or barriers, and hence a potential requirement for alternative provision, as early as possible, and carry out a thorough assessment of the pupil's needs. Schools should look to have an increased focus on the early assessment and identification of a pupil's needs before his or her behaviour has deteriorated to the extent that exclusion is the only option.

32. All pupils must receive full-time provision in total, whether in one setting or more, unless a pupil's medical condition makes full-time provision inappropriate – see the guidance document '[Ensuring a good education for children who cannot attend school because of health needs](#)' for further information. A personalised plan for intervention should be prepared by the commissioner setting clear objectives for improvement and attainment, timeframes, arrangements for assessment and monitoring progress, and a baseline of the current position against which to measure progress. Plans should also be linked to other relevant information or activities such as 'Education, Health and Care Plans' for children with SEN.

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<sup>31</sup> Section 19(4A) of the Education Act 1996 relates to local authorities' conduct in discharging duties under section 19. Section 100(4) of the Education and Inspections Act 2006 relates to how schools arrange education for pupils on fixed period exclusions. Section 29A relates to maintained schools' use of off-site direction powers.

33. Commissioners should maintain a full record of all placements they make, including a pupil's progress, achievements and destination following the placement. This should also include the pupil's own assessment of their placement.

### **Commissioning good-quality alternative provision**

34. Responsibility for the alternative provision used rests with the commissioner. The nature of the intervention, its objectives and the timeline to achieve these objectives should be agreed and clearly defined. Progress against these objectives should be frequently monitored, appropriate reviews should be built in and continuity into the next stage in the child's life should be considered. Where reintegration to the school is an objective, there should be agreement on how to assess when the pupil is ready to return and the school should provide an appropriate package of support to assist their reintegration. These objectives and plans should be agreed with providers, set out in writing and regularly monitored, including through frequent visits to the provider.

35. All relevant information should be shared with providers and other parties involved. This should be jargon free and include any information on special educational needs, literacy, safeguarding or other issues, as well as any information requested by the provider as appropriate. Information must be provided in accordance with data protection principles but this should not discourage schools from providing information where they can do so.

36. Commissioners should maintain on-going contact with the provider and pupil, with clear procedures in place to exchange information, monitor progress and provide pastoral support. If a pupil is on the roll of their previous or current school they should remain so and encouraged to feel part of the school. Records should be kept on a pupil's progress in the provision, appropriate staff liaison arrangements should be in place, and appropriate mechanisms of challenge should be agreed.

37. Commissioners need the right information to be able to decide which provision is most appropriate for a pupil. Some local authorities or partnerships of schools have developed a local directory of 'approved' provision, which meets clearly defined standards (including registration where necessary, safeguarding, health and safety, quality of accommodation, quality of education etc.). These lists, where they exist, can provide a helpful starting point. However, prior to placement, commissioners should still assess whether the provision offers high quality education and is suitable for the pupil's individual needs.

38. Alternative provision should be good quality, registered where appropriate<sup>32</sup>, and delivered by high quality staff with suitable training, experience and safeguarding checks. It should have clearly defined objectives relating to personal and academic attainment. Where an intervention is part-time or temporary, to help minimise disruption to a pupil's education, it should complement and keep up with the pupil's current curriculum, timetable and qualification route. If a pupil is referred to off-site provision on a part-time basis, they should attend school as usual on the days on which they are not in the alternative provision.

39. Provision should:

- have a clear purpose with a focus on education and achievement as well as meeting

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<sup>32</sup>An AP provider should be registered as an independent school if it meets the criteria for registration (that it provides full-time education to five or more full-time pupils of compulsory school age, or one such pupil who is looked-after or has a statement of SEN). All AP Academies and AP Free Schools must be registered as independent schools whether or not they are full-time or part-time.

the pupil's needs and rigorous assessment of progress;

- offer appropriate and challenging teaching in English, mathematics and science (including IT) on par with mainstream education – unless this is being provided elsewhere within a package of provision;
- be suited to the pupil's capabilities, give pupils the opportunity to take appropriate qualifications and involve suitably qualified staff who can help pupils make excellent progress; and
- have good arrangements for working with other relevant services such as social care, educational psychology, child and adolescent mental health services, youth offending teams and drug support services etc.

## **Referral and admissions policies for alternative provision**

40. Schools and local authorities, working in consultation with management committees and the governing bodies of alternative provision Academies and AP Free Schools, should set an overall policy for referrals or admission to alternative provision. There should be clear criteria for referring and admitting pupils, including those who are dual registered. Pupils should be dual registered from the beginning of the first day of which the school has commissioned the alternative provision. For the purpose of the school census a pupil should be dual main registered at their school and dual subsidiary registered at the alternative provision.

## **Off-site direction by maintained schools**

41. The governing body of a maintained school directing a pupil off-site for education to improve behaviour should have regard to all of the statutory guidance set out in this document. This covers objectives and timeframes with appropriate monitoring of progress and reviews. These should all be agreed and set out at the time a direction is made, and include arrangements for reviews – including how often the placement will be reviewed, when the first review will be and who should be involved in the reviews. Parents and, where the pupil has a statement of special educational needs, the local authority, can request, in writing, that the governing body review the placement. When this happens, governing bodies must comply with the request as soon as reasonably practicable, unless there has already been a review in the previous 10 weeks.

42. Where possible, parents should be engaged in the decision taken by the school to direct a pupil off-site. Once a pupil is directed off-site, information about reviews should be provided to the pupil's parents and to the local authority where it maintains a pupil's statement of SEN. This should include outcomes of the reviews and of the placement.

43. The focus should remain on ensuring that a child continues to receive a good education on par with their mainstream peers whilst the needs which require intervention are being addressed. Therefore, the length of time a pupil spends in alternative provision will depend on what best supports the pupil's needs and potential educational attainment.

## **The end of a placement and reintegration**

44. When the governing body of a school has secured alternative provision for a pupil on a fixed period exclusion, or has directed a pupil off-site to improve behaviour, it should have a plan and processes in place to reintegrate the pupil at the end of the placement when he or

she returns to the school.

45. The governing body of a school should obtain from the provider a final report on the pupil's achievements during the placement including academic attainment and progress, attendance records and evidence of change in behaviour. The governing body should also seek the pupil's views on the success of the placement. Both may assist the school in deciding if and when to use that provider to support other pupils.

46. In light of this placement information, the governing body of a school should plan for the pupil's reintegration into the school as described in paragraph 34 of this guidance. This may include a discussion with the pupil's parents, and/or setting specific objectives (for example on attendance or behaviour).

47. If the placement does not end with reintegration into the school – for example, when a pupil reaches the end of Y11 while still in alternative provision – the school should work with the provider to ensure that the young person can move on into suitable education, or employment alongside part-time study or training. The school should collect and record information about the pupil's next destination as part of its planning for alternative provision intervention. Commissioners may wish to use information about pupils' destinations as one of the indicators of alternative provision quality.

## Further sources of information

School funding reform: Arrangements for 2013-14

<https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DFE-00070-2012>

Funding, staffing and legislation for pupil referral units (PRUs) from 1 April 2013

<http://education.gov.uk/schools/pupilsupport/behaviour/a00216844/fund-staff-leg-prus>

Statutory guidance and regulations on exclusion

<http://www.education.gov.uk/aboutdfe/statutory/g00210521/statutory-guidance-regs-2012>

Advice to schools on attendance:

<http://www.education.gov.uk/schools/pupilsupport/behaviour/attendance>



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