

Briefing for Westminster Hall Debate 'Racial Discrimination in Schools'

8th March 2023

About Just for Kids Law and the Children's Rights Alliance for England

[Just for Kids Law](#) (JfKL) works with, and for, children and young people to hold those with power to account, and to fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued. Our work includes legal support for young people through the process of challenging school exclusions. We advise children on their legal rights and entitlements and provide representation in exclusion and SEND reviews and discrimination appeals.

The [Children's Rights Alliance for England](#) (CRAE) merged into Just for Kids Law in 2015 and works with around 100 members to promote children's rights and monitor government implementation of the UN Convention on the Rights of the Child.

About this briefing

This briefing highlights racial discrimination within schools based on our extensive work providing legal support and advice to children and young people challenging school exclusions. It also draws on insights from our School Exclusion campaign, a group of young people with experience of being excluded from school who are working to create change.

Racial disproportionality and discrimination in schools

Black children are disproportionately affected by school exclusions often as a result of racial discrimination and prejudice they experience in school. Racial disproportionality is also evident in how Black children experience the school system and the challenges they face such as child criminal exploitation (CCE) and higher rates of special education needs and disabilities (SEND) and rates of child poverty.¹ The data available and the experiences of Black children within school, is evidence of structural racism within the UK and why a more inclusive education system, dedicated to tackling racism and understanding the intersectional experience of Black children, is needed.

Tackling racial disparities in school exclusions

According to Government statistics, children from Black Caribbean backgrounds are almost 2x more likely to be excluded and² children from mixed White and Black Caribbean backgrounds more than 2x more likely. This trend also persists in fixed-term exclusions.³ In its Inclusive Britain report, the Government says that *"the data shows that Black African pupils are less likely to be excluded from school than White British pupils and Black Caribbean pupils which suggests that other factors play a more significant role in determining different exclusion rates."*⁴

¹ Just for Kids Law (2020) [Race, poverty and school exclusions in London](#) This report provides evidence that living in an area of deprivation increases the odds of being excluded for all children. Children who are eligible for free school meals (FSM) in London are nearly three times as likely to get a fixed-term exclusion and more than three times as likely to be permanently excluded, compared to their peers. There is also a general upward trend that where boroughs have a higher proportion of Black children, there is also a higher proportion of children eligible for free school meals.

² The national rate for permanent exclusions in 2020-2021 was 0.05. The rate for permanent exclusions for each group disproportionately affected is: Gypsy Roma (0.18) Irish Travellers (0.10) Black Caribbean and Mixed White (0.12) and Black Caribbean (0.08). Department for Education (2020-2021) [Permanent exclusions and suspensions in England](#) see *Pupil Characteristics*

³ The national rate for FTE in 2020-2021 was 4.25. The rate for each group disproportionately affected is: Gypsy Roma (15.00) Irish Traveller (11.22) Mixed White & Black Caribbean (8.50) and Black Caribbean (7.41)

⁴ Department for Levelling Up, Housing and Communities Race Equality Unit (2022) [Inclusive Britain: government response to the Commission on Race and Ethnic Disparities](#)

However, in our work at Just for Kids Law we see that children from all Black ethnic backgrounds are also disproportionately excluded from school and that racial discrimination and prejudice regularly plays a part in this. This assumption underplays the role that structural racism plays in exclusions which is often driven by stereotypes and assumptions about Black pupils and their behaviour and can sadly lead to children being excluded from school and denied their right to an education.⁵ Research has found that this disparity in exclusions can be in part due to discipline and behaviour policies, some of which are centred around punishing black hairstyles and pupils kissing their teeth.⁶ Adulthood also plays a role in exclusions and approaches to behaviour, resulting in perceptions about Black children being more aggressive and receiving more punitive sanctions than their peers.⁷

- *"I got excluded for swearing at a teacher. A white girl swore at the teacher like I did, she got sent out. I got sent to the headteacher and got excluded for it."* Young person
- *"There are 6 children of colour in their classroom...when black children spoke loudly, they were shouted at, disciplined and given a sanction. Whilst when the white children were being loud they were not responded to in this way."* Parent

The DfE has recently published revised Statutory Guidance on Exclusions and Behaviour.⁸ Concerningly, the DfE removed a crucial paragraph that lists the groups of children disproportionately affected by exclusions such as GRT, Black Caribbean pupils, pupils on FSMs, boys, and children with SEND.⁹ For schools to adequately monitor fixed-term and permanent exclusion data and address the disproportionate trends they see, they need to be aware of the groups that are likely to be most affected by exclusions and interrogate their own practice.

"In a recent school exclusion hearing, Just for Kids Law successfully argued that a school's permanent exclusion was a disproportionate response to the Black child's behaviour. There were two children involved in an incident, one child was Black Caribbean and the other child White. The Black Caribbean child was permanently excluded, and the White child was given a fixed term exclusion. The school defended themselves by arguing they had no issues regarding disproportionate exclusions and understood its Public Sector Equality Duty. They were aware of the DfE guidance (paragraph 21)¹⁰ and believed they had no issues at the school regarding disproportionate exclusion from ethnic groups. However, the school had disproportionately excluded mixed White and Black Caribbean children according to its own statistics. The school made no correlation to the disproportionate exclusion of the mixed White and Black children and our client (Black Caribbean). Instead, the school argued these groups were different rather than considering that the school had a history of excluding children from Black ethnic groups."

Black children continue to experience racist bullying and abuse in schools. In a recent poll 32% of children had heard someone be racist at school and 50% of parents felt racism is a problem in schools.¹¹ Bullying and being bullied are key causes of school exclusion.¹²

⁵ For a fuller analysis and list of recommendations on tackling the links between race and exclusions, see JfKL (2020) *Race, poverty and school exclusions in London* <https://justforkidslaw.org/news/new-research-reveals-children-poverty-and-black-children-london-are-more-likely-be-excluded-school>

⁶ Eleanor Busby (12 January 2020) Schools unfairly punish black students for hairstyles and for 'kissing teeth' amid racial bias, teachers say *The Independent* <https://www.independent.co.uk/news/education/education-news/school-racial-bias-black-students-kissing-teeth-teachers-a9279056.html>

⁷ Listen Up <http://www.listenupresearch.org/> and Commission on Young Lives (2022) *All together now. Inclusion not exclusion: supporting all young people to succeed in school*

⁸ Department for Education (2022) *Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement*; Department for Education (2022) *Behaviour in schools Advice for headteachers and school staff*

⁹ Department for Education (2022) *Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement* Paragraph 44

¹⁰ The exclusion rates for certain groups of pupils are consistently higher than average. This includes: pupils with SEN; pupils eligible for free school meals; looked after children; and pupils from certain ethnic groups. The ethnic groups with the highest rates of exclusion are: Gypsy/Roma; Travellers of Irish Heritage; and Caribbean pupils. – Paragraph 21. Department for Education (2017) *Exclusion from maintained schools, academies and pupil referral units in England*

¹¹ The Diana Award and Nationwide Building Society (2019)

¹² Department for Education (2019) *School exclusion: a literature review on the continued disproportionate exclusion of certain children*

The ethnic makeup of school staff, including in areas with a high Black population, fails to reflect students and their families.¹³ More needs to be done to improve diversity throughout the teaching profession and Governing Boards who review school exclusions.¹⁴ Children have highlighted that this under-representation means school staff may be more likely to perpetuate the causes of systemic racial disadvantage that contribute to disproportionality in exclusions.

Challenging school exclusions on the basis of race discrimination is extremely difficult¹⁵ so children and families are routinely denied access to justice unlike children with a disability discrimination claim.

Improving support for children with special educational needs

A significant proportion of the children and young people we support with exclusions appeals have unmet SEND and reflects the intersectional nature of these children's experiences. Black Caribbean pupils, along with Travellers of Irish heritage had the highest percentage of pupils with an Education, Health and Care plan (EHCP) in January 2022 (5.4% and 5.7% respectively).¹⁶ However, many parents still face challenges getting the right support for their children despite having an EHCP.

Black Caribbean students are also twice as likely to be identified as having Social, Emotional and Mental Health (SEMH) needs compared to White British pupils.¹⁷ Research by the University of Oxford shows that this disproportionality likely reflects inappropriate interpretation of cultural differences, teacher racism and low expectations.¹⁸ This can result in Black children facing a more narrowed curriculum and have long-term impacts on their educational outcomes.

Data and our case work shows that children with SEND continue to be overrepresented in exclusion figures¹⁹ and within alternative provision (AP)²⁰. Schools have a legal requirement to investigate whether disruptive behaviour may be the result of an unmet need, and to act on what they find. Too often this does not happen. Instead, many children we work with end up caught up in an escalating series of sanctions, leading to permanent exclusion. We find this disproportionately affects Black children due to negative perceptions about their behaviour and adultification. One of the biggest drivers behind this is a lack of funding for specialist SEND support leaving schools unequipped to provide the kind of early help which would mean that more children could thrive in mainstream school.

Protecting victims of child criminal exploitation

Many of the children we work with have been excluded from school because of circumstances beyond their control. This includes children who are victims of child criminal exploitation (CCE), and whose behaviour is directly connected to that exploitation, e.g. automatically excluded for carrying drugs into school, even in circumstances where the police have recognised that they were doing so because they were victims of exploitation. In many of these cases, the pupil's school have simply not taken the time to understand the reasons behind the child's behaviour or the ways in which those children are at risk. Excluding these pupils often makes them even more vulnerable to further exploitation.²¹ From our legal case work, we see how Black children are disproportionately

¹³ Department of Education (2019) *Timpson Review of School Exclusion*. See Recommendation 4

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/807862/Timpson_review.pdf.

¹⁴ Cabinet Office (2018) *Race Disparity Audit*. See paragraph 10.11: "The majority of teachers in England were White British, with fewer than 1 in 7 coming from an ethnic minority group, and 1 in 12 from a non-White ethnic minority group in 2016"

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/686071/Revised_RDA_report_March_2018.pdf.

¹⁵ Discrimination cases for characteristics other than disability are heard by the County Court rather than the First Tier Tribunal and there is a court fee to start a case. The County Court is not set up to accommodate litigants in person like the Tribunal is, and families could be liable for the other side's costs if they lose. This results in very few such cases being brought.

¹⁶ Department for Education (2022) [Special educational needs and disability: an analysis and summary of data sources](#)

¹⁷ University of Oxford (2018) [Ethnic disproportionality in the identification of Special Educational Needs \(SEN\) in England: Extent, causes and consequences](#)

¹⁸ *Ibid.*

¹⁹ Exclusion rates are higher in pupils with special educational needs. The permanent exclusion rate for pupils with an education, health and care (EHC) plan is 0.08, and for pupils with SEND with no EHC plan (SEN support) is 0.15, compared to 0.03 for those without SEND. Department for Education (2020-2021) [Permanent exclusions and suspensions in England](#)

²⁰ Commission on Young Lives (2022) [All together now. Inclusion not exclusion: supporting all young people to succeed in school](#)

²¹ For more detail on this recommendation and links to existing resources on spotting the signs of child criminal exploitation, see JfKL (2020) *Excluded, exploited, forgotten: Childhood criminal exploitation and school exclusions*

https://www.justforkidslaw.org/sites/default/files/fields/download/JfKL%20school%20exclusion%20and%20CCE_2.pdf

impacted by CCE as they are not perceived as vulnerable as their white peers, often due to adultification²² and racist stereotypes and consequently more likely to be excluded for any behaviour linked to their exploitation.

The revised statutory guidance was a crucial opportunity to make sure schools are equipped to spot the signs that a child is being exploited and better protect these pupils. However, there is only one reference to CCE in the behaviour guidance and no reference to this is in the exclusion guidance. It is important that schools recognise the link between school exclusions and CCE, how Black children are disproportionately affected and the role that racism and adultification play in not affording black children appropriate support and protection from exploitation.

Suggested question for the Minister:

- **What action is their Department taking to tackle the well-known racial disparities in school exclusions including recognising the intersectionality between race, poverty, SEND and gender in high rates of school exclusions?**
- **Will their Department put in place a strategy to tackle the disparities in school exclusions, including commitments to increasing the diversity of school leadership teams, and to providing specialist funding for schools to adequately support children at risk of exclusion?**
- **Will the Department consider re-inserting the paragraph in the Statutory Guidance on Exclusions and Behaviour detailing the groups of children that are disproportionately excluded from school?**
- **What consideration has their Department given to allowing racial discrimination cases relating to school exclusions to be heard in the First Tier-Tribunal in order to increase access to justice?**
- **Will their Department commit to making sure that there are greater protections for victims of CCE who are excluded from school?**

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²² Listen Up <http://www.listenupresearch.org/>