



# Lenham Primary School

## Exclusion Policy

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Signed – Head teacher	Gemma Adams
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# **Exclusion Policy**

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## 1. Introduction

This policy is devised from statutory guidance issued by the Dept of Education in January 2015 (A guide for those with legal responsibilities in relation to exclusion).

The principal legislation that this document relates to is:

- The Education Act 2002 as amended by Education Act 2011
- The School Discipline( pupil exclusions and reviews) (England) Regulations 2012;
- The Education and Inspections Act 2006 and
- The Education (Provision of Full Time Education for excluded pupils) (England) Regulations 2007.

The definition of a parent for the purposes of the Education Act and this policy is broadly drawn. In addition to a child's birth parents, references to parents in this guidance include any person who has parental responsibility ( which includes the local authority where it has a care order in respect of the child) and any person ( e.g. a foster carer) with whom the child lives.

'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time, must be formally recorded.

Lenham Primary School has the power to direct a pupil off-site for education to improve his or her behaviour. A pupil can also transfer to another school as part of a 'managed move' where this occurs with the consent of the parties involved, including the parents. However, the threat of exclusion must never be used to influence parents to remove their child from the school.

## 2. Policy Overview

Lenham Primary School is committed to valuing diversity and to equality of opportunity. We aim to create and promote an environment in which pupils, parents/carers and staff are treated fairly and with respect, and feel able to contribute to the best of their abilities.

The Governing Body recognise the values under the Equality Act 2010 ("the Equality Act") Lenham Primary School will not discriminate against, harass or victimise pupils because of their: sex; race; disability; religion or belief; sexual orientation; because of a pregnancy / maternity; or because of a gender reassignment. For disabled children, this includes a duty to make reasonable adjustments to policies and practices. Lenham Primary School strives to advance equality of opportunity between people who share a protected characteristic and people who do not. Full consideration has been given to this during the formulation of this policy as it is the governors' aim that no-one at Lenham School should suffer discrimination, either directly or indirectly, or harassment on any of these grounds.

We aim to include, not exclude, and we approach all challenging behaviour in a supportive and positive way. We recognise that such behaviour can sometimes be symptomatic of a real, deeper need for our support and understanding. All children can go through times of inappropriate behaviour, and we strive to never "give up" easily on a child as we recognise that each person has a unique contribution to make to school life and we want to support them to achieve this.

It is expected that exclusion would normally take place at the end of a disciplinary process when other sanctions and programmes have failed to modify the undesirable behaviour, or where a pupil commits a serious breach of discipline. However, the Headteacher may exclude as an immediate response, for example when health and safety, welfare or education of another is threatened.

A decision to exclude a pupil, either for a fixed period or permanently is seen as a last resort by the school. The physical and emotional health of our children and staff is our primary concern, and we therefore accept that in some rare situations exclusion may be necessary, if all other strategies have been exhausted.

The school is responsible for communicating to pupils, parents/carers and staff its expectations of standards of conduct. A range of policies and procedures are in place to promote good behaviour and appropriate conduct.

These include:

- Behaviour and Discipline Policy;
- Anti-Bullying Policy.

### **3. Reasons for Exclusion:**

The decision on whether to exclude is for the Headteacher to take. However, where practical, the Headteacher should give pupils an opportunity to present their case before taking the decision to exclude.

Whilst exclusion may still be an appropriate sanction, the Headteacher should take account of any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it comes to light that a pupil has suffered bereavement, has mental health issues or has been subject to bullying.

These are a selection of reasons, but not an exhaustive list, where exclusion may be appropriate:

- Serious breach of the school's rules or policies.
- Risk of harm to the education or welfare of the pupil or others in the school.
- Physical Assault against a pupil (e.g. fighting, violent behaviour, wounding, obstruction, jostling.)
- Physical Assault against an adult (e.g. violent behaviour, wounding, obstruction and jostling.)
- Verbal Abuse or Threatening Behaviour against a pupil (e.g. threatened violence, aggressive behaviour, swearing, homophobic abuse and harassment, verbal intimidation, carrying an offensive weapon.)
- Verbal Abuse or threatening behaviour against an adult (e.g. threatened violence, aggressive behaviour, swearing, homophobic abuse and harassment, verbal intimidation, carrying an offensive weapon)
- Bullying (e.g. verbal, physical, Cyberbullying, homophobic bullying, racist bullying)
- Racist Abuse (e.g. racist taunting and harassment, derogatory racist statements, swearing that can be attributed to racist characteristics, racist bullying, racist graffiti)
- Sexual Misconduct (e.g. sexual abuse, sexual assault, sexual harassment, lewd behaviour, sexual bullying, sexual graffiti)
- Drug and Alcohol Related (e.g. possession of illegal drugs, inappropriate use of prescribed drugs, drug dealing, smoking, alcohol abuse, substance abuse)

- Damage (e.g. vandalism, arson, and graffiti)
- Theft (e.g. stealing school property, stealing personal property (pupil or adult), stealing from local shop on a school outing, selling and dealing in stolen property)
- Persistent Disruptive Behaviour (e.g. challenging behaviour, disobedience, persistent violation of school rules)
- Other (this includes incidents that are not covered by the categories above).

Any exclusion will be the decision of the Headteacher, in consultation with the Governing Body as appropriate

#### **4. Temporary Exclusion**

A temporary exclusion should be for the shortest time necessary. Ofsted evidence suggests that 1-3 days is usually enough to secure benefits without adverse educational consequences.

#### **5. Persistent or cumulative problems**

Exclusion for a period of time from half a day to 5 days for persistent or cumulative problems would be imposed only when the school had already offered and implemented a range of support and management strategies. These strategies are outlined in the Behaviour and Discipline Policy.

#### **6. Single Incident**

Temporary exclusion may be used in response to a serious breach of school rules and policies or a disciplinary offence. In such cases the Headteacher will investigate the incident thoroughly and consider all evidence to support the allegation, taking account of the school's policies. The pupil will be encouraged to give his/her version of events and the Headteacher will check whether the incident may have been provoked, for example by bullying or racial harassment. A discussion with the parents/carers will also be held.

If necessary the Headteacher will consult the Chair of the Governing Body and Deputy Headteacher.

#### **7. The Decision to Exclude**

The exclusion will include discussion with parents/carers, notification to the governors and the preparation of a Pastoral Support Programme (PSP) for the pupil. This PSP would give careful attention to the concern, planned support and appropriate sanctions. Normally a child will be excluded for a fixed period. The PSP would be the main vehicle for planning reintegration. In extreme cases, if there is significant concern about actual or threatened physical violence and/or persistent and malicious disruptive behaviour, permanent exclusion will be considered.

If the Headteacher decides to exclude a pupil they will:

- ensure that there is sufficient recorded evidence to support the decision;
- explain the decision to the pupil;
- contact the parents/carers, explain the decision and ask that the child be collected;

- send a letter to the parents/carers confirming the reasons for the exclusion, whether it is a permanent or temporary exclusion;
- confirm the length of the exclusion and any terms or conditions agreed for the pupil's return;
- in cases of more than a day's exclusion, ensure that appropriate work is set and that arrangements are in place for it to be marked;
- plan how to address the pupil's needs and integration back into their class on his/her return;
- plan a meeting with parents/carers and pupil on his/her return.

Where the governing body is legally required to consider an exclusion they must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.

## **8. Permanent Exclusion**

A permanent exclusion is a very serious decision and the Headteacher will consult with the Deputy Headteacher and Chair of the Governing Body before enforcing it. As with a temporary exclusion, it will follow a range of strategies and be seen as a last resort, or it will be in response to a very serious breach of school rules and policies or a disciplinary offence such as:

- Serious actual or threatened violence against another pupil or a member of staff;
- Possession or use of an illegal drug on school premises;
- Persistent bullying;
- Persistent racial harassment.

In the case of a permanent exclusion where the governing body decide not to reinstate the pupil, the governing body's notification must also include the information below:

- that the exclusion is permanent;
- the parents' right to ask for the decision to be reviewed by an independent review panel: if parents believe that the exclusion has occurred as a result of discrimination then they may make a claim under the Equality Act 2010 to the First-tier Tribunal (Special Educational Needs and Disability), in the case of disability discrimination, or the County Court, in the case of other forms of discrimination.
- That a claim alleging discrimination under the Equality Act 2010 should be lodged within six months of the date on which the discrimination is alleged to have taken place, e.g. the day on which the pupil was excluded.
- The date by which an application for a review must be received (i.e. 15 school days from the date on which notice in writing of the governing body's decision was given to parents. Where relevant, the school confirm the details of where the parents' application for an independent review panel should be sent. This is normally to the clerk of the independent review panel.
- where and to whom an application for a review (and any written evidence) should be submitted;
- that any application should set out the grounds on which it is being made;

- Parents should be informed that, if they believe it to be appropriate, they should include a reference about how they consider their child's special educational to be relevant to the exclusion.
- That, regardless of whether the excluded pupil has recognised special educational needs, parents have a right to require the local authority to appoint an SEN expert to attend the review at no cost to the parent.
- details of the role of the SEN expert;
- that parents must make clear if they wish a SEN expert to be appointed in any application for a review; and
- that parents may, at their own expense, appoint someone to make written and / or oral representations to the panel and that parents may also bring a friend to the review.

The governing body may provide this information by: delivering it directly to parents; leaving it at their last known address; or by sending it by first-class post to this address.

Notice is deemed to have been given on the same day if it is delivered directly or on the second working day after posting by first class mail.

The governing body should set out the reasons for its decision in sufficient detail to enable all parties to understand why the decision was made.

In providing details of the role of the SEN expert, the governing body should clarify that there would be no cost to parents for this appointment.

The Headteacher must remove a pupil from the school admission register if:

- 15 school days have passed since the parents were notified of the governing body's decision to uphold a permanent exclusion and no application has been made for an independent review panel; or
- the parents have stated in writing that they will not be applying for an independent review panel.

For a permanent exclusion, if the pupil lives outside the local authority in which the school is located, the head teacher must also advise the pupil's 'home authority' of the exclusion without delay.

## **9. The Headteacher's power to exclude**

Only the Headteacher can exclude a pupil and this must be on disciplinary grounds. A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in a single academic year), or permanently. A fixed period exclusion does not have to be for a continuous period. In exceptional cases, usually where further evidence has come to light, a fixed period exclusion may be extended or converted to a permanent exclusion. It is however unlawful to impose a fixed period exclusion for an indefinite period.

Pupils whose behaviour at lunchtime is disruptive may be excluded from the school premises for the duration of the lunchtime period. In such cases the legal requirements in relation to exclusion, such as the head teacher's duty to notify parents, still apply. Lunchtime exclusions are counted as half a school day for statistical purposes and in determining whether a governing body meeting is triggered.

The behaviour of pupils outside school can be considered as grounds for exclusion. This will be a matter of judgement for the Head teacher in accordance with the school's published behaviour policy.

The Headteacher must take account of the public sector equality duty in regard to discrimination and protected characteristics under the Equality Act 2010 when deciding whether to exclude a pupil.

The Headteacher and the governing body must take account of their statutory duties in relation to Special Educational Needs when administering the exclusion process. This includes having regard to the SEN code of practice.

The Headteacher must take account of their legal duty of care when sending a pupil home following exclusion.

When establishing the facts in relation to an exclusion decision the head teacher must apply the civil standard of proof, i.e. 'on the balance of probabilities' it is more likely than not that a fact is true, rather than the criminal standard of 'beyond reasonable doubt'.

## **10. The Headteacher's duty to inform parents**

Whenever the Headteacher makes the decision to exclude a pupil they must, without delay, notify parents of the period of the exclusion and the reasons for it.

They must also, without delay, provide parents with the following information in writing:

- The reasons for the exclusion;
- The period of a fixed period exclusion or, for a permanent exclusion, the fact that it is permanent;
- Parents' right to make representations about the exclusion to the governing body and how the pupil may be involved in this;
- How any representations should be made; and
- where there is a legal requirement for the governing body to consider the exclusion, that parents have a right to attend a meeting, be represented at this meeting (at their own expense) and to bring a friend.
- that for the first five school days of an exclusion (or until the start date of any alternative provision where this is earlier) parents are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parents may be given a fixed penalty notice or prosecuted if they fail to do so.

Parents must be informed where a fixed period exclusion has been extended or converted to a permanent exclusion. In such cases the head teacher will write again to the parents explaining the reasons for the change and providing any additional information required.



If alternative provision is being arranged then the following information must be included with this notice where it can reasonably be found out within the timescale:

- the start date for any full-time educational provision that has been arranged for the pupil during the exclusion;
- the start and finish times of any such provision, including the times for morning and afternoon sessions where relevant;
- the address at which the provision will take place; and
- any information required by the pupil to identify the person that he / she should report to on the first day.

Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session it may be provided in a subsequent notice, but it must be provided without delay and no later than 48 hours before the provision is due to start. The only exception to this is where alternative provision is to be provided before the sixth day of an exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.

When notifying parents about an exclusion, the headteacher will set out what arrangements have been made to enable the pupil to continue his / her education prior to the start of any alternative provision or the pupil's return to school, in line with the legal requirements.

The Headteacher will draw attention to relevant sources of free and impartial information when notifying parents about an exclusion. This information should include:

- a link to this statutory guidance on exclusions ([www.gov.uk/government/publications/school-exclusion](http://www.gov.uk/government/publications/school-exclusion));
- a link to the Coram Children's Legal Centre ([www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)), 08088 020 008; and
- where considered relevant by the headteacher, links to other information, advice and support services, such as Traveller Education Services or the local parent partnership ([www.iassnetwork.org.uk](http://www.iassnetwork.org.uk)).

The Headteacher, where appropriate will ensure that information provided to parents is clear and easily understood. Where the parents' first language is not English consideration should be given, where practical, to translating the letter or taking additional steps to ensure that the details of the exclusion and parents' right to make representations to the governing body have been understood.

## **11. The Headteacher's duty to inform the Governing Body**

The Head teacher must, without delay, notify the governing body and the local authority of:

- A permanent exclusion (including where a fixed period exclusion is made permanent);

- Exclusions which would result in the pupil being excluded for more than five school days (or more than ten lunchtimes) in a term; and
- Exclusions which would result in the pupil missing a public examination or national curriculum test.

Notifications must include the reasons for the exclusion and the duration of any fixed period exclusion

For all exclusions (except permanent) the headteacher must notify the local authority and governing body once a term.

## **12. The Role of the Governing Body**

For a fixed period exclusion of more than five school days, the governing body must arrange suitable full-time education for any pupil of compulsory school age. This provision must begin no later than the sixth day of the exclusion. Where a child receives consecutive fixed period exclusions these are regarded as a cumulative period of absence for the purposes of this duty.

Where an exclusion would result in a pupil missing a public examination or national curriculum test there is a further requirement for a governing body, so far as is reasonably practicable, to consider the exclusion before the date of the examination or test. If this is not practicable, the chair of governors may consider the exclusion independently and decide whether or not to reinstate the pupil. These are the only circumstances in which the chair can review an exclusion decision alone. In such cases parents still have the right to make representations to the governing body and must be made aware of this right. Whilst there is no automatic right for an excluded pupil to take an examination or test on the excluding school's premises, the governing body should consider whether it would be appropriate to exercise their discretion to allow an excluded pupil on the premises for the sole purpose of taking the examination or test.

Where the governing body is legally required to consider an exclusion they must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school

Within 15 school days of receiving notice of the exclusion, the governing body must consider whether an excluded pupil should be reinstated in the case of:

- all permanent exclusions;
- all fixed period exclusions of pupils who have been excluded for more than 15 school days in the term, or who will have been as a result of the exclusion; and
- all fixed period exclusions that would result in a pupil missing a public examination or national curriculum test.

For all other fixed period exclusions where a pupil would be excluded for more than five school days in the term and their parents have made representations, the governing body must consider within 50 school days of receiving notice of the exclusion whether the excluded

pupil should be reinstated. In the absence of any representations from the excluded child's parents, the governing body is not required to meet and cannot direct the reinstatement of the pupil.

Where a fixed period exclusion would not bring a pupil's total number of days of exclusion to more than five in the term, the governing body must consider any representations made by parents, but it cannot direct reinstatement and is not required to meet the parents.

The governing body has a duty to consider parents' representations about exclusion. The governing body may delegate their functions with respect to the consideration of an exclusion decision to a designated sub-committee consisting of at least three governors.

### **13. Calling an Exclusion Meeting**

Where the governing body is legally required to consider the decision of a Headteacher to exclude a pupil they should:

- not discuss the exclusion with any party outside of the meeting;
- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school, such as those relating to a pupil's SEN).
- where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting;
- allow parents and pupils to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the governing body should first seek parental consent and invite the parents to accompany their child to the meeting);
- have regard to their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that impacts upon their ability to attend the meeting or to make representations); and
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on his / her own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding<sup>18</sup>; or how the excluded pupil may feed in his / her views by other means if attending the exclusion meeting is not possible.

The following parties must be invited to a meeting of the governing body and allowed to make representations:

- Parents;
- The Headteacher; and
- A representative of the local authority

The governing body must make reasonable endeavors to arrange the meeting for a date and time that is convenient to all parties, but in compliance with the relevant statutory time limits

set out above. However, its decision will not be invalid simply on the grounds that it was not made within these time limits.

The governing body should identify the steps they will take to ensure all parties will be supported to participate in their consideration and have their views properly heard. This is particularly important where pupils under 18 are speaking about their own exclusion or giving evidence to the governing body.

When establishing the facts in relation to an exclusion decision the governing body must apply the civil standard of proof; i.e. 'on the balance of probabilities' it is more likely than not that a fact is true rather than the criminal standard of 'beyond reasonable doubt'. In the light of their consideration, the governing body can either:

- uphold an exclusion; or
- direct reinstatement of the pupil immediately or on a particular date.

The governing body should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by governing body. These minutes should be made available to all parties on request

The governing body should ask all parties to withdraw before making a decision. Where present a clerk may stay to help the governing body by reference to his / her notes of the meeting and with the wording of the decision letter.

Where the governing body is legally required to consider an exclusion they must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school

The governing body has a duty to consider parents' representations about exclusion. The governing body may delegate their functions with respect to the consideration of an exclusion decision to a designated sub-committee consisting of at least three governors.

The governing body's consideration should only be delayed where there are exceptional circumstances that prevent it from considering the exclusion within the statutory time limits. In these circumstances, the consideration should take place as soon as is practicable.

In reaching a decision on whether or not to reinstate a pupil, the governing body should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the Headteacher's legal duties and the evidence that was presented to the governing body in relation to the decision to exclude.

The governing body should note the outcome of its consideration on the pupil's educational record, along with copies of relevant papers for future reference.

In cases where the governing body considers parents' representations but does not have the power to direct a pupil's reinstatement, it should consider whether it would be appropriate to place a note of its findings on the pupil's educational record.

Where legally required to consider an exclusion decision, the governing body must notify parents, the headteacher and the local authority of its decision, and the reasons for it, in

writing and without delay. Where the pupil resides in a different local authority from the one in which the school is located, the governing body must also inform the pupil's "home authority".

Where the governing body decides to uphold an exclusion it should draw the attention of parents to relevant sources of free and impartial information that will allow them to make an informed decision on whether to seek a review of the decision and the process to be followed. Schools should ensure that these sources of information are checked regularly and updated as required. This information should be included in the letter notifying parents of a decision to uphold an exclusion and should include:

- a link to this statutory guidance on exclusions ([www.gov.uk/government/publications/school-exclusion](http://www.gov.uk/government/publications/school-exclusion));
- a link to guidance on making a claim of discrimination to the First-tier Tribunal ([www.justice.gov.uk/tribunals/send/appeals](http://www.justice.gov.uk/tribunals/send/appeals));
- a link to the Coram Children's Legal Centre ([www.childrenslegalcentre.com](http://www.childrenslegalcentre.com)), 08088 020 008; and
- where considered relevant by the governing body, links to other information, advice and support services, such as Traveller Education Services or the local parent partnership ([www.iassnetwork.org.uk](http://www.iassnetwork.org.uk)).

#### **14. Safeguarding**

Exclusion will not be enforced if doing so may put the safety of the pupil at risk. In cases where parents/carers will not comply by, for example, refusing to collect the child, the child's welfare is the priority. In this situation, depending on the reason for exclusion, the school may consider an internal exclusion until the end of the day, implementing the original exclusion decision from the time the child is collected from school, or, in more severe circumstances the school may contact Social Services and/or the Police to take the pupil off site safely.

#### **15. Behaviour outside school**

Pupils' behaviour outside school on school business e.g. on school trips, at sports fixtures, is subject to the school's behaviour policy. Unacceptable behaviour in such circumstances will be dealt with as if it had taken place in school.

#### **16. Pupils with Special Educational Needs(SEN) and disabled pupils**

The school must take account of any special educational needs when considering whether or not to exclude a pupil. We have a legal duty under the Disability Discrimination Act 2005 as amended not to discriminate against disabled pupils by excluding them from school for behaviour related to their disability. The Headteacher should ensure that reasonable steps have been taken by the school to respond to a pupil's disability so the pupil is not treated less favourably for reasons related to the disability. This includes having regard to the SEN Code of Practice.

Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have. Head teachers should also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up

unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems.

As well as having disproportionately high rates of exclusion, there are certain groups of pupils with additional needs who are particularly vulnerable to the impacts of exclusion. This includes pupils with statements of special educational needs (SEN) and looked after children. Head teachers should, as far as possible, avoid excluding permanently any pupil with a statement of SEN or a looked after child.

Schools should engage proactively with parents in supporting the behaviour of pupils with additional needs. In relation to looked after children, schools should co-operate proactively with foster carers or children's home workers and the local authority that looks after the child.

Where a school has concerns about the behaviour, or risk of exclusion, of a child with additional needs, a pupil with a statement of SEN or a looked after child it should, in partnership with others (including the local authority as necessary), consider what additional support or alternative placement may be required. This should involve assessing the suitability of provision for a pupil's SEN. Where a pupil has a statement of SEN, schools should consider requesting an early annual review or interim / emergency review

Whether or not a school recognises that a pupil has special educational needs all parents have the rights to request the presence of an SEN expert at an independent review panel. The SEN role is to provide impartial advice to the panel about how SEN could be relevant to exclusion.

## **17. Marking attendance registers following exclusion**

When a pupil is excluded temporarily, they should be marked as absent using Code E.

Where alternative provision has been made that meets the requirements of pupil registration Code B ( offsite) Code D ( dual registration) should be applied

Where an application for an independent review panel has been made within 15 school days, the head teacher must wait until the review has been determined, or abandoned, before removing a pupil's name from the register.

## **18. Managed move**

In cases where the Headteacher and parents/carers agree that the progress of the pupil has been unsatisfactory and the pupil is unwilling or unable to profit from the educational opportunities offered, or if a parent/carer has treated the school or members of its staff unreasonably, the Headteacher may require the parents/carers to remove the pupil at the end of a term. This is not exclusion and in such cases the Headteacher may assist the parents/carers in placing the pupil in another school.

## **19. Removal from the school for other reasons**

The Headteacher may send a pupil home, after consultation with that pupil's parents/carers and a health professional as appropriate, if the pupil poses an immediate and serious risk to the health and safety of other pupils and staff, for example because of a diagnosed illness such as a notifiable disease. This is not exclusion and should be for the shortest possible time.

## **20. Criminal Proceedings**

The Headteacher need not postpone taking a decision on an exclusion solely because a police investigation is underway and / or any criminal proceedings may be brought. In such circumstances, the Head teacher will need to take a decision on the evidence available to them at the time.

Where the evidence is limited by a police investigation or criminal proceedings, the Head teacher should give particular consideration to ensuring that the decision to exclude is fair. However, the final decision on whether to exclude is for the head teacher to make.

Where the governing body is required to consider a head teacher's decision in these circumstances they cannot postpone their meeting and must decide whether or not to reinstate the pupil on the evidence available.

The fact that parallel criminal proceedings are in progress should also not directly determine whether an independent review panel should be adjourned. Relevant factors for the panel to consider will include:

- whether any charge has been brought against the pupil and, if so, what the charge is;
- whether relevant witnesses and documents are available;
- the likelihood of delay if the hearing were adjourned and the effect it may have on the excluded pupil, the parents, any victim or the school; and
- whether an adjournment or declining to adjourn, might result in injustice.

Where a panel decides to adjourn, the clerk will be responsible for monitoring the progress of any police investigation and / or criminal proceedings, as well as for reconvening the panel at the earliest opportunity. If necessary the panel may adjourn more than once.

## **21. Procedure for appeal**

Claims of discrimination to the First-tier Tribunal or County Court can be made up to six months after the discrimination is alleged to have occurred. Where practicable, schools should retain records and evidence relating to an exclusion for at least six months in case such a claim is made.

If parents/carers wish to appeal the decision to exclude, the matter will be referred to the Governing Body and handled through the Local Authority appeal procedure.

If a parent disputes the decision not to reinstate a permanently excluded pupil they can ask for this decision to be reviewed by an independent review panel.

## **22. Independent Review panel**

Parents may request an independent review panel even if they did not make a case to, or attend, the meeting at which the governing body considered the exclusion.

Parents should be informed that, if they believe it to be appropriate, they should include a reference about how they consider their child's special educational to be relevant to the exclusion.

Where an application for an independent review panel has been made within 15 school days, the head teacher must wait until the review has been determined, or abandoned, before removing a pupil's name from the register.

Where a pupil's name is to be deleted from the school admission register because of a permanent exclusion the school must make a return to the local authority. The return must give the full name of the pupil, the address of any parents with whom the pupil normally resides and the ground upon which their name is to be deleted from the admission register (i.e. permanent exclusion). This return must be made as soon as the ground for deletion is met and no later than the deletion of the pupil's name.

The legal time frame for an application is:

- within 15 school days of notice being given to the parents by the governing body of their decision to uphold a permanent exclusion; or
- where an application has not been made within this time frame, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion.

Any application made outside of the legal time frame will be rejected by the local authority.

An independent review panel does not have the power to direct a governing body to reinstate an excluded pupil. However, where a panel decides that a governing body's decision is flawed when considered in the light of the principles applicable on an application for judicial review, it can direct a governing body to reconsider its decision.

Where the panel directs or recommends that the governing body reconsiders their decision, the governing body must reconvene to do so within 10 school days of being given notice of the panel's decision. Notice is deemed to have been given on the same day if it is delivered directly or on the second working day after posting if it is sent by first class mail.

In the case of either a recommended or directed reconsideration, the governing body must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:

- the parents;
- the head teacher;
- the local authority and, where relevant, the 'home authority'.

### **23. Consideration to reinstate a Pupil**

In reaching a decision on whether or not to reinstate a pupil, the governing body should consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of the head teacher's legal duties.



The governing body should note the outcome of their consideration on the pupil's educational record, along with copies of relevant papers for future reference.

In cases where the governing body considers parents' representations but does not have the power to direct a pupil's reinstatement, they should consider whether it would be appropriate to place a note of their findings on the pupil's educational record.

The governing body should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by governing body. These minutes should be made available to all parties on request.

The governing body must consider the reinstatement of an excluded pupil within 15 school days of receiving notice of the exclusion if:

- the exclusion is permanent;
- it is a fixed period exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term; or
- it would result in a pupil missing a public examination or national curriculum test.

Where reinstatement is not practical or not required, the governing body must, in any event, consider whether the head teacher's decision to exclude the child was justified based on the evidence.

#### **24. Consideration following a review.**

Where the panel directs or recommends that the governing body reconsiders its decision, the governing body must reconvene to do so within 10 school days of being given notice of the panel's decision. Notice is deemed to have been given on the same day if it is delivered directly or on the second working day after posting if it is sent by first class mail.

It is important that the governing body reconsiders its decision conscientiously, whether the panel has directed or recommended it to do so. Whilst the governing body may still reach the same conclusion as it first did, it may face challenge in the courts if it refuses to reconsider its original decision without strong justification.

Any stated intention that the excluded pupil does not wish to return to the school has no bearing on the duty of the governing to reconvene and reconsider its decision.

It is for the governing body to decide which governors should meet to reconsider its decision. These could be governors involved in the original decision; those not involved in the decision; or a combination of both.

If, following a direction to reconsider, the governing body does not offer to reinstate the pupil within 10 school days of being notified of the panel's decision; an adjustment may be made to the school's budget in the sum of £4,000. If the governing body offers to reinstate the pupil within the specified timescale but this is declined by the parents, no adjustment or payment should be made.

The governing body must comply with any direction of the panel to place a note on the pupil's educational record

In the case of either a recommended or directed reconsideration, the governing body must notify the following people of its reconsidered decision, and the reasons for it, in writing and without delay:

- the parents
- the Headteacher;
- the local authority and, where relevant, the “home authority”.

## **25. Policy Review**

This policy will be reviewed after any school exclusion to ensure that the procedures and guidelines contained within this policy are robust and fit for purpose. If there are no exclusions this policy will be reviewed as a matter of routine review every 3 years, unless further statutory guidance is issued.

This Policy is based on a KCC model policy for Exclusion and Dept. of Education statutory Guidance (Jan 2015).