



# Christ Church

## Church of England Primary School

Being Thankful, Celebration, Fairness, Forgiveness, Honesty, Love for All

### **Exclusion Procedures**

Based on “Improving behaviour and attendance: guidance on exclusion from schools and Pupil Referral Units” (September 2007), Education Act 2002 (as amended by the Education Act 2011) and Statutory Instruments and reviewed to incorporate changes publicised in the (September 2008) version of the guidance and in “Exclusion from maintained school, Academies and pupil referral units in England” guide (September 2017)

#### **Our Vision**

**Successful and outstanding in all we do.**

***“I can do all things through Christ who strengthens me.” Phil 4:13***

#### **Our mission statement is:**

##### **Have Faith, Take Responsibility, Show Respect and Achieve.**

Have Faith – to believe in yourself, if you have a religion, strengthen your own faith

Take Responsibility – for yourself, your actions, the environment

Show Respect – towards everyone

Achieve – work hard, persevere, be resilient and strive to be the best you can be

#### **The ethos of our school is embedded in our Christian values:**

Honesty, Forgiveness, Love for all, Celebration, Fairness’ Being Thankful, Ambition and Resilience

***“God is spirit, and his worshippers must worship in the Spirit and in truth”.***

John 4:24

**This school is committed to safeguarding and promoting the welfare of children and this policy supports this commitment.**

*Approved at the FGB on 24/09/2020 Review Date: September 2023*

## Table of Contents

Types of exclusion.....	1
Permanent exclusion .....	1
Fixed term exclusion .....	2
Reintegration meeting.....	2
Lunchtime exclusion .....	3
Who can decide to exclude a pupil? .....	3
When is exclusion appropriate? .....	3
When is exclusion not appropriate? .....	3
Exclusion procedures .....	4
Decision .....	4
Head teacher’s exclusion checklist .....	5
Notification of parents .....	6
Marking attendance registers following exclusion .....	6
Groups with above average rates of exclusion .....	6
Pupils with special educational needs.....	6
Head teacher’s checklist for pupils with SEN / disability.....	8
Disabled pupils .....	9
Children in public care/Looked after Children (LAC).....	9
Race Relations .....	9
Drug related incidents .....	10
EXCLUSION PROCEDURE TABLE.....	11
Providing full-time education from day six of a permanent exclusion [Secondary School pupils] .....	<b>Error!</b>
<b>Bookmark not defined.</b>	
Providing full-time education from day six of a permanent exclusion [Primary School pupils] .....	<b>Error!</b>
<b>Bookmark not defined.</b>	
The Governors Review Meeting .....	12
Purpose .....	12
The governing body .....	12
Clerk to the Governors Review Meeting.....	12
Format .....	13
LA CHECKLIST FOR THE GOVERNORS REVIEW MEETING .....	15
(For permanent and long fixed-term exclusions).....	15
<b>GRM DECISION LETTER CHECKLIST .....</b>	<b>17</b>
The Independent Review Panel.....	18
Purpose .....	18
Membership .....	18
Clerk to the Independent Review Panel .....	18
SEN Expert.....	19
Procedure .....	19
The decision .....	20
Governors being asked / directed to reconsider .....	21

This document is a summary of that in the DfE guide “Exclusion from maintained schools, Academies and pupil referral units in England” guide (September 2017) and of “Improving behaviour and attendance: Guidance on Exclusion from Schools and Pupil Referral Units” (2008). It is intended to outline exclusion procedures for school staff and any governors who may serve as members of the meeting to consider exclusions. The LA has also

indicated details of its role and recommendations for good practice (shown in italics). The full text of the DfE's guidance can be obtained via the DfE website.

## **Embedding Pupil Safeguarding Awareness in the Curriculum**

All teachers incorporate elements of safeguarding into their lessons where appropriate.

This involves:

- Informal conversations;
- Teacher/pupil discussions;
- Briefings for outings and trips (road safety/stranger danger etc) ;
- The implementing of our e-Safety Policy regarding ICT usage;
- An awareness of any potential hazards in lessons – identifying risks and dangers.

Safeguarding is also about pupils' emotional well-being. Teachers encourage pupils to speak out if there is something worrying them, or if they are aware of, or witness something unacceptable, untoward or disturbing. Teachers promote tolerance and respect for each other and acceptance of individual differences. Teachers help pupils develop confidence and resilience and discuss what to do if things go wrong. They are approachable and show their willingness to help pupils at all times.

## **British Values**

At Christ Church C of E Primary School we promote the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

This includes:

- paired and group work as sharing and working together
- making choices with an understanding that the freedom to choose and have other views is respected and tolerated
- debating social issues with an understanding of how people can influence decision-making through the democratic process
- an appreciation that school rules protect individual children and is essential for their wellbeing and safety
- an acceptance that other people having different faiths or beliefs to oneself (or having none) are accepted and tolerated without discrimination through school council elections, persuasive writing, and by promoting our Christian school values and Fruits of the Spirit as guidelines for behaviour choices.

## Types of exclusion

There are three types of exclusion that a school may use:

- Permanent – The pupil will not return to the school.
- Fixed term – This is a temporary exclusion of between 1 and 45 school days in length. No pupil may be excluded for more than a total of 45 school days in any one academic year.
- Lunchtime – This is a form of fixed-term exclusion where the pupil is excluded from the school premises for one or more lunchtimes.

**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.

### Permanent exclusion

Permanent exclusion should usually only be used as a final step when a wide range of other strategies has been tried and failed. It is an acknowledgement by the school that it has exhausted all available strategies for dealing with the child.

There may be exceptional circumstances where, in the head teacher’s judgement, it is appropriate to permanently exclude a child for a first or ‘one off’ offence. These might include:

- Serious actual or threatened violence against another pupil or a member of staff.
- Sexual abuse or assault.
- Supplying an illegal drug.
- Carrying an offensive weapon.

Schools should consider whether or not to inform the police where such a criminal offence has taken place. They should also consider whether or not to inform other agencies, e.g. the Youth Offending Service, social workers etc.

These instances are not exhaustive but indicate the severity of such offences and the fact that behaviour can affect the discipline and wellbeing of the school community.

The LA must be informed of the exclusion within one school day (*Form EXP*), see also 6<sup>th</sup> school day provision flowchart on page 12/13. If the pupil lives outside the LA in which the school is located, the head teacher must also advise the ‘home’ LA of the exclusion so that they can make arrangements for the pupil’s full time education from the 6<sup>th</sup> school day of the exclusion.

#### **Days 1 to 5**

The school must ensure that the parent is fully informed of their duties in the first five days of an exclusion and of the school day from which the pupil will be provided with suitable alternative education by the LA. During the first five school days, the school should send work home for the pupil to complete.

During the first 5 school days of a permanent exclusion, parents must ensure that the pupil is not present in a public place during school hours without reasonable justification. Parents can be prosecuted, or given a fixed penalty notice of £50 if they fail to do this. The pupil may also be removed from the public place by the police and taken to designated premises.

#### **Day 6**

The LA is statutorily responsible for ensuring that full-time provision is made for all permanently excluded Kingston resident pupils from the 6<sup>th</sup> school day of the exclusion. Schools must follow the procedure set out in the 6<sup>th</sup> school day provision flowchart on page 11/12 to enable the LA to perform its statutory duty.

## **Fixed term exclusion**

Although the law allows for a head teacher to exclude a pupil for up to 45 days in a school year, exclusions should be for the shortest time necessary. Ofsted inspection evidence suggests that 1-3 days is often long enough to secure the benefits of exclusion without adverse educational consequences. Where it is clear that fixed-term exclusions are not being effective in deterring poor behaviour, for example if they are being repeatedly imposed on a pupil in response to the same behaviour, head teachers should consider alternative strategies for addressing that behaviour.

The limit of 45 school days applies to the pupil not the institution therefore any days of fixed-term exclusion served by the pupil in any school or PRU in the same school year will count towards the total. If a pupil transfers to a new school during the academic year, records of the fixed-term exclusions should therefore be transferred promptly to the new school.

### **Days 1 to 5**

The school must ensure that the parent is fully informed of their duties in the first five days of a fixed-term exclusion (and for exclusions of more than 5 school days, given details of the alternative provision to be provided by the school from day 6, along with details of any sanctions that may be imposed for non-attendance).

During the initial period of up to five school days, the parents of the excluded pupil must ensure that he or she is not present in a public place during normal school hours without reasonable justification. Parents are committing an offence and can be prosecuted, or given a fixed penalty notice of £50 if they fail to do this. The pupil may also be removed from the public place by the police and taken to designated premises. If the LA is advised that a parent has failed to comply with supervision requirements during the first 5 school days of an exclusion, our School Attendance Service will take further action if, after enquiries / evidence gathering, the relevant officer decides that there are sufficient grounds on which to proceed.

The school must ensure that work is set for the pupil to complete during the first five school days of exclusion and that it is marked, unless during that time the pupil will be attending alternative provision (arranged on a voluntary basis by the school).

### **Day 6**

Where a pupil is given a fixed-term exclusion of six school days or longer, the school has a duty to arrange suitable full-time educational provision from and including the sixth school day of the exclusion.

The LA must be informed of the exclusion within one school day where the exclusion totals > 5 days in a term. The LA should be informed as soon as possible of exclusions of 5 days or fewer in a term. (Form EXF). The notification form includes a space to inform the venue for and nature of provision arranged from day 6 of a fixed-term exclusion.

## **Reintegration meeting**

Whilst the Statutory Instrument requiring a reintegration meeting was revoked as part of the September 2012 revisions to the guidance, schools can still arrange such meetings with the parent(s) during or following the expiry of any fixed-term exclusion of a pupil if they wish. The purpose of the reintegration meeting should be to support the pupil's reintegration and promote the improvement of his or her behaviour. The pupil should normally attend all or part of the meeting with at least one of his/her parents.

A fixed-term exclusion must not be extended if such a meeting cannot be arranged in time or the parents do not attend.

## Lunchtime exclusion

Pupils whose behaviour at lunchtime is disruptive may be excluded from the school premises for the duration of the lunchtime period, this is a fixed-term exclusion counted as one half of a school day (1 session). The Secretary of State does not expect to see lunchtime exclusion used for longer than a week, in the long run another strategy for dealing with the problem should be worked out. A lunchtime exclusion for an indefinite period, like any other indefinite exclusion, would not be lawful.

Taking into account the child's age and vulnerability, the head teacher should ensure that a parent/carer has been contacted and is available, if appropriate, to arrange collection and supervision of the pupil during the lunchtime exclusion. Arrangements should be made for pupils who are entitled to free school meals, which may mean providing a packed lunch. The LA must be informed of the exclusion within one school day where the exclusion totals > 10 lunchtimes in a term. The LA should be informed as soon as possible of exclusions of 10 lunchtimes or fewer in a term. (Form EXL).

### **6<sup>th</sup> day provision**

Schools are not required to provide full-time education from day six of a lunchtime exclusion.

## **Who can decide to exclude a pupil?**

Only a head teacher can exclude a pupil. If the head teacher is absent the power rests with the most senior teacher who should make it clear that they are acting in the head teacher's absence.

## When is exclusion appropriate?

A decision to exclude a pupil permanently should only be taken in response to a situation that meets both parts of what is known as the 'two-fold test':

- in response to a serious breach or serious breaches of the school's behaviour policy; **and**
- if allowing the pupil to remain in the school would seriously harm the education or welfare of the pupil or others in the school.

## When is exclusion not appropriate?

It would not be appropriate to exclude a pupil for minor incidents, poor academic performance, lateness/truancy or pregnancy or to protect victims of bullying by sending them home. Exclusion should also not be used for breaches of school rules on uniform/appearance, unless these are persistent and in open defiance of such rules. Neither would it be appropriate to punish a pupil for the behaviour of their parents, for example, where parents refuse or are unable to attend a meeting.

Exclusion should not be used if there are possible alternative solutions available. These could include:

- **Restorative justice**, enabling the offender to redress the harm that has been done to a 'victim'.
- **Mediation**, which may lead to a satisfactory outcome, particularly where there has been conflict between two parties.
- **Internal exclusion**, where the pupil is removed from class but not from the school premises. [Used for the shortest time possible and subject to review].
- A **managed move**, whereby the school could ask another school to admit the pupil, if there is full knowledge and co-operation of all the parties involved.

Parents should never be pressured into removing their child from a school under threat of a permanent exclusion, nor should the pupil be removed from the school roll to encourage them to find another school place.

## **Exclusion procedures**

Head teachers should carefully follow the procedures set out in law and statutory guidance, which are designed to ensure fairness and openness in the handling of exclusions.

### **Decision**

A decision to exclude should not be taken in the heat of the moment, unless there is an immediate threat to the safety of others in the school or the pupil themselves. Before reaching a decision as to whether to exclude the head teacher should:

- Ensure that a thorough investigation has been carried out.
- Consider all the evidence available to support the allegations, taking into account the school's behaviour and equal opportunities policies, and where applicable the Equality Act 2010 as amended.
- Be satisfied that, \*on the balance of probabilities, the pupil did what he/she is alleged to have done.
- Allow and encourage the pupil to give their version of events.
- Check whether an incident may have been provoked, for example by bullying (including homophobic bullying) or by racial/sexual harassment.
- Consider whether the proposed sanction is proportionate in itself and in light of the treatment of any others involved in the incident.
- Consult others if necessary (being careful not to involve anyone who may later take part in the statutory review of their decision e.g. a member of the Governors Review Meeting).
- Keep a written record of the actions taken (and copies of written records made by other members of staff), including any interview with the pupil concerned. Witness statements must be dated and should be signed, wherever possible.
- Be satisfied that the decision to exclude the pupil was lawful, reasonable and procedurally fair, taking account of their legal duties.

\*The standard of proof to be applied is the balance of probabilities, i.e. is it more probable than not that the pupil did what he or she is alleged to have done. The 2012 guidance removed the need for there to be more convincing evidence the more serious the allegation, the 2017 guidance further clarifies the definition of 'balance of probabilities' "the head teacher should accept that something happened if it is more likely that it happened than that it did not happen".

A head teacher may choose to withdraw the exclusion at any time prior to it being reviewed by the governors.

## Head teacher's exclusion checklist

	Yes	No
On the balance of probabilities, did the pupil do it?		
Does the incident represent a serious breach of the school behaviour policy / the final straw incident in a series of persistent breaches of the behaviour policy?		
Does the pupil's presence seriously harm the education/welfare of the pupil or others in the school community?		
Is exclusion the appropriate response? Factors to Consider <ul style="list-style-type: none"> <li>• Decision to exclude not taken in the heat of the moment</li> <li>• A thorough investigation has been carried out</li> <li>• Evidence has been considered in the light of policies and discrimination</li> <li>• The pupil's views have been encouraged, heard and recorded</li> <li>• Mitigating circumstances and provocation (bullying etc.) have been considered</li> <li>• Appropriate wider consultation has been considered</li> </ul>		
Has there been involvement from specialist teachers (SEND) or (primary schools only) Primary Behaviour Service or an Educational Psychologist?		
Has a pastoral support programme been tried?		
Have alternatives to exclusion been considered (e.g. restorative justice, mediation, internal exclusion, school to school managed move)?		
<b>Special Considerations</b>		
Does this pupil have an Education Health Care Plan [EHCP] (statement of special educational needs)? If so: <ul style="list-style-type: none"> <li>➤ Have you contacted the special needs officer?</li> <li>➤ Has an emergency annual review been called?</li> </ul>		
Is this pupil currently a child in the care of the Local Authority? If so: <ul style="list-style-type: none"> <li>➤ Have you contacted the Head of the Virtual School and Social Worker?</li> </ul>		
Is this pupil subject to Child Protection procedures or a Child In Need? If so: <ul style="list-style-type: none"> <li>➤ Have you spoken to the Social Worker?</li> </ul>		
Have issues of SEN, disability, race and care been fully considered? <i>See separate check list for considerations around the exclusion of children with SEN/disability</i>		
<b>Has the appropriate length of exclusion been considered?</b>		

## **Notification of parents**

Whenever a head teacher excludes a pupil, they must notify the parent without delay, ideally by telephone followed up by a letter.

All exclusion cases should be treated in the strictest confidence, only those who need to know the details should be informed of them.

Where a parent does not speak or have a good understanding of English, the school should arrange for all correspondence and documentation to be translated. If required, the school should arrange for an interpreter to be present at any meetings with the parent about the exclusion, including the Governors Review Meeting.

In exceptional cases, usually where further evidence has come to light, a fixed-term exclusion [given 'pending further investigation'] may be extended, or converted to a permanent exclusion, a second letter should be sent to the parents explaining the reasons for the extension/change.

### **Day 6**

In the case of an exclusion of >5 days, the parent must be informed of arrangements for 6<sup>th</sup> day provision, in writing at least 48 hours before the provision is to commence.

## **Marking attendance registers following exclusion**

Where pupils are excluded for a fixed-term and no alternative provision is made before the sixth day of exclusion for them to continue their education, they should be marked absent in the attendance register using Code E. Where alternative provision is made, and it meets the requirements of the pupil registration regulations and pupils attend it, they should be marked using the appropriate attendance code, such as Code B (Education Off-site) or Code D (Dual Registration). Pupils who are permanently excluded and for whom no alternative provision is made before the sixth day, should be marked by the school as absent using Code E, the pupil may not be taken off-roll until the review process has been completed (or the parent has written to confirm no review will be requested, whichever date is the sooner).

## **Groups with above average rates of exclusion**

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 highlighted are: Gypsy / Roma; Travellers of Irish Heritage; and Black Caribbean communities.

In addition to the approaches on early intervention set out above, head teachers should consider what extra support might be needed to identify and address the needs of pupils from these groups in order to reduce their risk of exclusion. For example, schools might draw on the support of Traveller Education Services, or other professionals, to help build trust when engaging with families from Traveller communities.

## **Pupils with special educational needs**

Pupils with an Education Health and Care Plan should not be permanently excluded except in the most exceptional circumstances. Head teachers/teachers will usually be aware of increasing problems before the situation has escalated and should try every practicable means to maintain placements, including seeking LA and other professional advice and support. Where this process has been exhausted the school

should liaise with the LA to arrange an interim annual review of the statement and seek advice from the relevant agencies.

If a head teacher decides to permanently exclude a pupil with an EHCP, they should use the period between their initial decision and the Governors Review Meeting to work with the LA to see whether more support could be made available, or whether the statement could be changed to name a new school/interim provision. If either of these two options is possible, the head teacher should normally withdraw the exclusion.

It is extremely important that parents of children with SEN who are excluded from school receive advice on the options available for their child's future education.

## Head teacher's checklist for pupils with SEN / disability

	Yes	No
<p><b>Does the pupil have an EHC Plan?</b></p> <ul style="list-style-type: none"> <li>• Has the Special Needs Officer been contacted?</li> <li>• Has an emergency annual review been called?</li> </ul> <p>Not all pupils with EHC Plans will have a disability but there is a significant overlap.</p>		
<p><b>Is this pupil on the register as SEN K (school support)?</b></p> <ul style="list-style-type: none"> <li>• Has extra assistance from the LA been explored?</li> </ul>		
<p><b>Does the pupil have a disability</b></p> <p>For example, do they have a mental or physical impairment which has a substantial, adverse effect on their ability to carry out normal day to day activities?</p> <p>In law "substantial" means more than minor or trivial</p> <p>In law "long term" means at least a year</p> <p>"Disability" includes physical disabilities, speech and language needs, memory and ability to concentrate, perception of the risk of danger when these are adverse, long term and substantial.</p>		
<p>Has the pupil been treated less favourably?</p> <p>Would a pupil without a disability have been dealt with in the same way?</p> <p>You will need to consider:</p> <ul style="list-style-type: none"> <li>• What is less favourable treatment?</li> <li>• What is the reason for less favourable treatment?</li> <li>• Is the reason directly related to their disability?</li> <li>• Can less favourable treatment be justified?</li> <li>• Is the justification material and substantial?</li> </ul>		
<p>Have reasonable adjustments been made for this pupil?</p> <p>You will need to consider:</p> <ul style="list-style-type: none"> <li>• Would failure to make reasonable adjustments place the pupil at a substantial disadvantage?</li> <li>• Could the need to make reasonable adjustments have been anticipated?</li> <li>• Has the school reviewed policies, practices and procedures (continuing responsibility)?</li> <li>• Does reasonable adjustment involve removal/alteration of physical features?</li> <li>• Does reasonable adjustment involve provision of auxiliary aids/services (SEN framework)?</li> <li>• Have relevant factors been explored and balanced? <ul style="list-style-type: none"> <li>➤ Need to maintain standards?</li> <li>➤ Financial resources available?</li> <li>➤ Cost of taking particular step?</li> <li>➤ Extent to which it is practical to take particular step?</li> <li>➤ Extent to which auxiliary aid/services will be provided under SEN framework?</li> <li>➤ Health and safety requirements?</li> <li>➤ Interests of other pupils/prospective pupils?</li> <li>➤ Could the school have been reasonably expected to know about the disability (confidentiality; lack of knowledge)?</li> <li>➤ Can actions or omissions be materially and substantially justified?</li> </ul> </li> </ul>		

## **Disabled pupils**

Schools have a legal duty under the Equality Act 2010, not to discriminate against disabled pupils by excluding them from school because of their disability. The Disability Rights Commission has published a Code of Practice, which explains and illustrates the school's duties to disabled pupils, including in relation to exclusions. Schools and governors are strongly recommended to read the Code of Practice. Further information is available at [www.equalityhumanrights.com/](http://www.equalityhumanrights.com/).

It is unlawful to exclude a pupil for a reason related to their disability without justification. When considering whether or not it is appropriate to exclude a pupil who may be disabled within the meaning of the Equality Act 2010, head teachers should consider the following 4 questions:

1. Is the pupil disabled? (the Act covers pupils with physical or mental impairment including sensory impairments and learning difficulties).
2. Is the exclusion for a reason related to the pupil's disability? (i.e. if there is any connection between the behaviour resulting in the exclusion and the pupil's disability this is considered less favourable treatment for a reason related to a pupil's disability).
3. Would another pupil to whom the reason did not apply be treated in the same way? (If the reason for the exclusion is the pupil's "behaviour" then it is necessary to consider whether or not another pupil who did not behave in that way would be excluded. It is not correct to compare the treatment of the disabled pupil with a non-disabled pupil. Instead the treatment of the disabled pupil should be compared with a pupil who did not behave in the same way).
4. Can the exclusion be justified? (An exclusion of a disabled pupil for a reason related to their disability can only be justified if there is a "material" and a "substantial" reason for it and the head teacher can show that there were no reasonable steps that could have been made to avoid the exclusion).

Further guidance on the definition of disability can be found at:

[http://www.direct.gov.uk/en/DisabledPeople/RightsAndObligations/DisabilityRights/DG\\_4001068](http://www.direct.gov.uk/en/DisabledPeople/RightsAndObligations/DisabilityRights/DG_4001068)

## **Children in public care/Looked after Children (LAC)**

Schools should be especially sensitive to exclusion issues where children in public care are concerned. Schools should try every practicable means to maintain the child in school and should seek LA and other professional advice as appropriate. Social Services should in all cases be involved at the earliest opportunity in working with the school to avoid the need to exclude the pupil.

If a child in public care is excluded, the school may have to inform more people than usual about the exclusion and their right to make representations and appeal. The definition of a parent for the purposes of the Education Acts includes a person who has parental responsibility (which includes the Local Authority where they have a care order in respect of the child) and any person (for example, a foster parent) with whom the pupil lives. These are in addition to the child's birth parents. Even where the Local Authority does not have parental responsibility, the child's social worker should be informed about any exclusion.

### **Day 6**

Although the Education and Inspections Act 2006 only requires full-time education to be provided from the sixth day of any exclusion; the Government recommends that schools and LAs arrange alternative provision from the first day of the exclusion where a pupil in care is excluded.

## **Race Relations**

The law places a general duty on all maintained schools to have due regard to the need to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between people of different racial groups. The law also places a number of specific duties on schools, including duties to assess the impact of policies and to monitor the operation of those policies on pupils, parents and staff from different racial groups.

As mentioned above, schools are required to assess whether policies that lead to sanctions including exclusion, have a disproportionately adverse impact on pupils from particular racial groups. It is recommended that schools and governors involved in the review of exclusions read the Code of Practice on the Duty to Promote Race Equality and a non-statutory guide The Duty to Promote Race Equality: A Guide for Schools. Further information available via: [www.cre.gov.uk](http://www.cre.gov.uk)

### **Drug related incidents**

It is for head teachers to decide whether or not to exclude for a drug-related offence, having regard to their published policy and following consultation with their drugs co-ordinator.

In more serious cases an assessment of the incident should be made against the criteria set out in the school's policy and this should be a key factor in determining whether permanent exclusion is an appropriate course of action. Fixed-term exclusions may in some cases be more appropriate than permanent exclusion. The Department has issued revised guidance on drugs and this can be accessed via:

<https://www.gov.uk/government/publications/drugs-advice-for-schools>

## EXCLUSION PROCEDURE TABLE

Type	Notify parent/carer	Notify LA & governors	Governors to meet	Decisions open to the governors	Notification of outcome of GRM
Permanent	Immediately by phone, followed by a letter within one school day. <b>Model Letter 4</b>	*Within one school day. <i>Form EXP</i>	Between 6 <sup>th</sup> & 15 <sup>th</sup> school day after receiving notice of the exclusion.	Direct reinstatement immediately or by a particular date, or decline to reinstate.	In writing within 1 school day of the hearing. Relevant paperwork should be recorded in the pupil's file for future reference. <b>Model Letter 8</b>
Exclusion resulting in a pupil missing a public examination	Immediately by phone, followed by a letter within one school day. <b>Model Letter 2</b>	Within one school day. <i>Relevant LA Form to be used.</i>	**Governors should try to meet before the date of the exam and by the 15 <sup>th</sup> school day after receiving notice of the exclusion.	Direct reinstatement immediately or by a particular date (where practical), or decline to reinstate.	In writing within 1 school day of the hearing. Relevant paperwork should be recorded in the pupil's file for future reference.
Fixed Term: > 15 days in a term	Immediately by phone, followed by a letter within one school day. <b>Model Letter 3</b>	Within one school day. <i>Form EXP</i>	Between 6 <sup>th</sup> & 15 <sup>th</sup> school day after receiving notice of the exclusion.	Direct reinstatement immediately or by a particular date (where practical), or decline to reinstate.	In writing within 1 school day of the hearing. Relevant paperwork should be recorded in the pupil's file for future reference.
Fixed Term: > 5 but not more than 15 days in a term	Immediately by phone, followed by a letter within one school day. <b>Model Letter 2</b>	Within one school day. <i>Form EXP</i>	Only if the parent/carer requests a meeting must the governors then meet to consider representations within 50 school days of receiving notice of the exclusion.	Direct reinstatement immediately or by a particular date (where practical), or decline to reinstate.	In writing within 1 school day of the hearing. Relevant paperwork should be recorded in the pupil's file for future reference.
Fixed Term: 5 days or fewer in a term	Immediately by phone, followed by a letter within one school day. <b>Model Letter 1</b>	As soon as possible. <i>Form EXP</i>	If the parent submits representations, the governors must consider them. Governors can agree to a meeting if the parent/carer wants to meet but no meeting is required.	Governors cannot direct reinstatement.	Although no time limit applies, governors should respond promptly to any representations from the parent. Relevant paperwork and response should be recorded in the pupil's file for future reference.
Fixed Term: Pending investigation	<b>Model letter 6</b>	As above	As above	As above	As above
Lunchtime	<b>Model letter 7</b>	<i>Form EXL</i>	Please refer to the relevant Fixed-term section depending on the number of sessions.		

\*Where the pupil resides out borough, the 'home' LA must also be informed (see model letter 5)

**\*\*If the Chair decides it is impractical for the governors to meet before the pupil is due to sit the examination, the Chair can consider the exclusion alone (or in the case of an academy, a smaller sub-committee if the trust's articles of association allow them to do so. This is the only circumstance in which a Chair can sit alone to review exclusions.**

# **The Governors Review Meeting**

## **Purpose**

The governing board is responsible for reviewing the head teacher's decision to exclude a pupil permanently or for a long fixed-term and deciding whether to direct re-instatement, where that is a practical option. The governing board is also responsible for considering any representations made by the parents of excluded pupils following shorter fixed-term exclusions.

## **The governing body**

The governing board can delegate some or all of its functions in respect of exclusions to a sub group of governors who would be available to participate in Governors Review Meetings. A minimum of three governors are required for a Governors Review Meeting to take place.

The governing board may wish to nominate a larger pool of governors to draw from in view of the strict deadlines within which Governors Review Meetings must be held.

Any governor with a connection to the pupil, or knowledge of the incident that led to the exclusion that could affect their ability to act impartially, should not serve at the hearing.

It is very important that governors called upon to review exclusions receive training reflecting the most recent guidance, to equip them to discharge their duties properly.

## **Clerk to the Governors Review Meeting**

The governing body should appoint a Clerk to provide advice on the exclusions process and cover the administrative arrangements of the meeting. This could be the Clerk to the whole governing body or a member of the school's administration team.

It is the duty of the Clerk to set up the Governors Review Meeting when notification of a permanent exclusion or any exclusion totalling over 15 days in a term is received from the head teacher or when representations are received from the parent. The Clerk is required to set up the meeting within the prescribed timescales. Governors must invite the parents, head teacher and an LA Officer to the meeting at a time and place convenient to all parties

Papers circulated should include any written statements and a list of those who will be present at the meeting.

### **Attendees:**

- At least 3 governors nominated to conduct Governors Review Meetings, one of whom must act as Chair.
- The pupil (if he/she wishes and their parent agrees).
- The parent (and possibly a friend or legal representative).
- The head teacher (and sometimes another member of school staff).
- The LA representative (the *LA representative will endeavour to attend Review meetings for all permanent exclusions*).
- The Clerk to the Governors Review Meeting.

*The meeting should be as informal as possible* and the Chair should ensure that all parties are given sufficient time to fully state their case.

### **The LA representative:**

The Local Authority representative advises the governors on the LA's view of the appropriateness of the exclusion, *in particular relating to the guidance as set out by the DfE and to the local practices and support available* and reminds governors of areas to consider during their deliberations. The governors can ask the LA representative for advice and guidance, but they must make their decision alone.

## **Format**

Chair introduces all parties, explaining the purpose and format of the meeting and possible outcomes. Detailed minutes must be taken by the Clerk, including during the decision making phase.

### **School's case**

- Head teacher and other school staff explain why the decision to exclude was taken, the reasons, the investigation of the incident and any pupil support strategies, if relevant.
- Parent/Carer can ask questions of the school.
- The governors can ask questions of the school.

### **Parent/Carer's case**

- Parent/Carer states their views on the exclusion and outlines any issues they feel the governors need to be aware of.
- The school can ask questions of the parent.
- The governors can ask questions of the parent.
- (The LA representative can ask questions to clarify facts at any stage).

### **LA advice**

- The LA representative will present their advice and information.

### **Summing up**

- The school sums up their case.
- The parent/carer sums up their case.
- The Chair of the Review meeting should establish with the head teacher and the parent/carer that they have had the opportunity to say all that they wanted to say.

### **Reaching a decision**

Governors should not get drawn into commenting during the hearing on the appropriateness or otherwise of actions taken by the school, pupil or parent/carer. They must be seen to view the case fully and impartially and consider their position in private once the other parties have withdrawn.

All except the governors and the Clerk withdraw whilst the governors make their decision. The Clerk minutes the decision making process.

Thought needs to be given as to whether the parents are asked to wait for a decision or to return home for notification by telephone. In any event the parents, school and LA should be informed of the decision either in person or by telephone on the day of the meeting, followed by a detailed 'outcome' letter as soon as possible after the meeting, clearly stating the reasons for the decision.

Please refer to the checklist on page 20/21 for detailed information on areas to consider when reaching a decision.

**Next steps:**

Where reinstatement is not practical, i.e. where the pupil has already returned to school at the end of a fixed-term exclusion, the outcome of the Governors Review Meeting should be added to the pupil's school record for future reference.

If the governors direct re-instatement the school should consider what additional support could be made available to help to ensure that the pupil is successfully re-integrated.

The governors cannot attach conditions to the re-instatement of a pupil, *when considering the date of reintegration, the LA recommends governors allow time for a reintegration plan to be put in place to support the pupil's return to school.*

In the case of permanent exclusions the pupil remains on the school's roll until any Independent Review procedures have been completed, the deadline for Independent Review has passed or the parent has waived their right to such a review and informed the LA accordingly (whichever date is the sooner).

When reviewing an exclusion, governors should not interpret a parent's acceptance of full-time education off-site as signalling agreement with the head teacher's decision to exclude their child. Parents still have the right to make representations to the governing body and this right is not affected in any way by the requirement for suitable full-time provision to be made from the 6<sup>th</sup> school day of the exclusion.

# LA CHECKLIST FOR THE GOVERNORS REVIEW MEETING

## (For permanent and long fixed-term exclusions)

The governors have to decide whether to re-instate or decline to re-instate the pupil. The meeting should be conducted and the decision made in line with the procedures set out in the September 2017 version of the DfE exclusions guidance (“Exclusion from maintained schools, Academies and pupil referral units in England” 2017).

Firstly, governors should consider whether the situation meets both parts of the ‘two-fold test’: did the pupil do as is alleged **and** would allowing the pupil to remain in the school harm his/her education/welfare or that of others in the school community?

The governors are reminded that if they do not decide to re-instate the pupil and the parent later requests an Independent Review Panel, the Panel will require the governors to justify their decision. Governors must:

- be able to clarify the grounds for the decision,
- have considered whether the head teacher’s decision to exclude was legal, reasonable and procedurally fair,
- be clear as to having considered relevant evidence, disregarded irrelevant evidence and properly applied the law.

The following is a checklist of areas for the governors to consider when reaching their decision. (Not all areas will be applicable to every case).

### The incident/s leading to exclusion

Governors should be clear that:

1. The exclusion is in response to a serious breach, or persistent breaches, of the school's behaviour policy **and** allowing the pupil to remain in school would seriously harm his/her education or welfare or that of others in the school (Paragraph 16, DfE Guidance 2017)
2. Any incident relating to the exclusion has been investigated thoroughly by the head teacher and witness statements circulated.
3. The allegations were established against the pupil “on the balance of probabilities”, i.e. governors should accept that an incident happened if it was more likely than not that the incident took place (rather than the criminal standard of ‘beyond reasonable doubt’).
4. The severity of the incident warrants a permanent exclusion / this length of fixed-term exclusion.
5. They considered whether the exclusion is a fair and proportional response in itself and in relation to the treatment of any other pupils involved.

### About the pupil

Governors should consider the pupil's background:

- Are there extenuating circumstances such as family situation, mental health concerns, bereavement, bullying etc?
- Does the pupil belong to a group with disproportionately high levels of exclusion:
  - Special Educational Needs (SEN)
  - Looked After Child (LAC)
  - Certain ethnic groups, such as Gypsy/Roma, Travellers of Irish heritage and Black Caribbean communities
  - Free School Meals (FSM)

If so, governors should carefully consider what specific strategies and support the school has put in place.

### **About the school's previous strategies**

- What other strategies and sanctions has the school tried before exclusion?
- Have they consulted other professionals and agencies in providing support (if appropriate)?
- Has the school kept the parent/carer fully informed of any concerns and involved them in any support strategies? Are the parents/carers aware of the school's expectation of pupil's behaviour?

### **In addition, for long fixed-term exclusions:**

- Why did the head teacher decide on this particular number of days, and is it justified?
- How is the school using the time during the exclusion to address the pupil's problems?
- What educational arrangements have the school set up to support the pupil's re-integration?

## GRM DECISION LETTER CHECKLIST

The Clerk must take detailed minutes of the governor's review meeting (GRM) and must remain with the governors and minute the decision-making process. The minutes must be made available to all parties on request and should form part of the school's paperwork if the parent requests a review of the decision.

The LA has provided a template (see appendix 1) the Clerk should work with the Chair to prepare the outcome letter. The letter must give detailed reasons for the decision so that the parent can make an informed choice whether or not to request a review. The letter must also include a summary of all the factors considered and of points submitted by each party. If a review is requested, the panel will expect the governors, to explain how and why the decision was reached. It is important that the reasons for the decision are clear and comprehensively stated because the governors are not allowed to introduce new reasons for their decision at the Independent Review Panel. The decision making process must be clearly documented not least because the guidance allows the Independent Review Panel to direct / ask governors to reconsider the decision in certain circumstances.

The letter must clearly demonstrate what the governors considered, debated and concluded when reviewing the exclusion and in particular in each of the following areas:

- **The governors decision**

Ensure that the outcome of the meeting is clearly stated and that the letter makes clear and detailed reference to each item of evidence governors considered and the decision(s) reached in relation to each, covering submissions from all parties.

- **Paragraph 16 of the DfE guidance**

Has the two-fold test been met?

Was the permanent exclusion in response to a serious breach, or persistent breaches, of the school's behaviour policy; **and** will allowing the pupil to remain in school seriously harm his/her education or that of others in the school"?

- **The incident**

Have the governors established whether it is more likely than not that the incident took place as described by the school i.e. 'on the balance of probabilities' (rather than the criminal standard of 'beyond reasonable doubt')?

Does the severity of the incident or the nature of the pupil's behaviour, warrant a permanent exclusion?

Did the governors consider proportionality and fairness of the exclusion in itself and in relation to the treatment of any other pupils involved in the same incident?

- **Pupil's background**

Were there any extenuating circumstances such as family difficulties, mental health concerns, bereavement, bullying etc.?

Does the pupil fall in to one or more of the groups highlighted as having disproportionately high levels of exclusion?

- Special Educational Needs (SEN)
- Looked After Child (LAC)
- Certain ethnic groups, such as Gypsy/Roma, Travellers of Irish heritage and Black Caribbean communities
- Free School Meals (FSM)

If so, was appropriate and sufficient support in place? Were all relevant policies available for consideration and did the school apply those policies legally, appropriately and fairly in relation to the pupil concerned?

We appreciate that the above may be seen to add considerably to the time taken to conduct the meeting and document the outcome but clarity at this stage is in the best interests of all parties.

## **The Independent Review Panel**

### **Purpose**

If the parents of a permanently excluded pupil wish to challenge the decision of the governors, they may request an independent hearing. Details of how to do this and relevant timescales will have been included in the governors' letter to parents following the Governors Review Meeting. Requests for review received after the deadline cannot be accepted.

The purpose of the Independent Review Panel is to review the governing body's decision not to reinstate a permanently excluded pupil. In reviewing the decision the panel 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 panel should apply the following tests

- Whether the head teacher / governors acted outside their legal powers
- Whether the governing body's decision was not one a sensible person would make
- Was the exclusion process so unfair / flawed that justice was not done
- Where these tests have not been met the panel can quash the decision and direct governors to reconsider
- Where they have been met but where evidential / procedural flaws are identified, the panel can ask governors to reconsider
- In all other cases the panel should uphold the exclusion

### **Membership**

The Council is responsible for maintaining a list of suitable Review Panel members and ensuring that they receive training. There will be 3 members on each Review Panel, made up of:

- The Chair, who must be a lay member (someone who has not worked in a school in a paid capacity).
- One member, who must be or have been, a governor of a maintained school for at least 12 consecutive months in the last 6 years (they must not be or have been in the last 5 years a teacher or head teacher).
- One member, who must be or have been within the last 5 years a head teacher of a maintained school.

Where possible, governor and head teacher panel members should have experience of the relevant phase of education e.g. secondary education for those considering secondary school exclusions.

### **Clerk to the Independent Review Panel**

The Review Panel is set up by the Council but is independent from the Education Department and the school. The Democratic Services team makes all the arrangements for Review Panels.

Once notified of a request for a Review Panel by the parents the Clerk will arrange for the Panel to meet within 15 school days, taking reasonable steps to find out when the parents and other parties are available

to ensure that all parties are able to attend. The Clerk serves as an independent source of advice on procedures for all parties. If necessary, the Panel may meet and then decide to adjourn the hearing, having regard to the particular circumstances of the case.

The Clerk will make all written evidence available to all parties five working days before the hearing. Taking account of the circumstances of each case, the Clerk will notify all parties of the deadline for submission of written representations.

### **SEN Expert**

The guidance allows the parents to request that an SEN expert be present at the Independent Review Panel meeting (such a request must be made at the same time as the parent requests the review), regardless of whether the pupil is recognised as having special educational needs. The SEN expert's role is analogous to that of an 'expert witness' in a court setting, providing impartial advice to the panel on how special educational needs might be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel.

The SEN expert's role does not include making an assessment of the pupil's special educational needs. The focus of the SEN expert's advice should be on whether the school's policies which relate to SEN, or the application of these policies in relation to the excluded pupil, were legal, reasonable and procedurally fair. If the SEN expert believes that this was not the case he / she should, where possible, advise the panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.

Where the school does not recognise that a pupil has SEN, the SEN expert should advise the panel on whether he / she believes the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any special educational needs that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion. The SEN expert should not criticise a school's policies or actions simply because he / she believes a different approach should have been followed or because another school might have taken a different approach.

### **Procedure**

The following people are entitled to attend the Review Panel:

- The parents, who may be represented or accompanied by a legal or other representative (if more than one friend or representative wishes to attend, the Clerk should seek the Panel's agreement in advance, having regard to reasonable limit on numbers attending the hearing).
- The pupil should normally be allowed to attend the hearing and speak on their own behalf (if he or she wishes to do so and the parent agrees). If the pupil does attend, the Panel should be sensitive to their needs and ensure that their view is properly heard. (If the pupil is under 18, they cannot present their own case).
- The head teacher.
- A governor, who may be represented by a legal or other representative.
- A representative of the LA.
- SEN expert.

Witnesses may be called if they have witnessed the incident or behaviour or investigated the incident and interviewed the pupil but they cannot be compelled to attend. It is not usual for pupil witnesses to attend and they should usually submit their written statements instead.

The Clerk must give all parties details of those attending and their role, and notify them of the order of the hearing. (Further details will be sent to the parties involved by the Clerk to the Review Panel when a hearing is arranged).

All parties may put forward new evidence about the event that led to the exclusion, including evidence that was not available to the head teacher or the governors. However, the school cannot introduce new reasons for the exclusion nor can the governors introduce new reasons for their decision not to reinstate the pupil. Where the school's case rests largely or solely on physical evidence and the facts are in dispute, the school should make any physical evidence available. Where this is not possible, photographs or signed witness statements are acceptable.

In exceptional cases the Review Panel may decide to adjourn an appeal. The Clerk will ensure that no part of the proceedings takes place unless all Panel members and interested parties are present.

### The decision

The Clerk may remain with the Panel members when the parties withdraw to offer advice on the procedure or law, helping by reference to notes of evidence and recording decisions and the reasons for them.

The Review Panel must decide, on the balance of probabilities (i.e. the civil standard of proof rather than the criminal standard of 'beyond reasonable doubt'), whether the pupil did what he or she is alleged to have done. If more than one incident of misconduct is alleged, the panel should decide in relation to each one. The IRP can only take into account any evidence that was available to the governors at the time of their decision not to reinstate – the 2017 guidance clarifies that this would include any evidence that the panel considers would, or should, have been available to the governors and that they ought to have taken into account had they been acting reasonably.

The panel should consider the basis of the head teacher's decision and the procedures followed having regard to:

- Whether the head teacher and governors complied with the law and had regard to the Secretary of State's guidance and in particular the two-fold test in paragraph 16, which states that the exclusion must be in response to a serious breach, or persistent breaches, of the school's behaviour policy **and** that allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.
- The school's published policies on behaviour, equal opportunities, Special Educational Needs, race equality and, if appropriate, anti-bullying policy.
- The fairness of the exclusion in relation to the treatment of any other pupil involved in the same incident.

Following its review the panel can decide to:

- uphold the exclusion decision;
- recommend that the governing body reconsiders their decision, or
- quash the decision and direct that the governing body considers the exclusion again

The panel should apply the following tests

- Whether the head teacher / governors acted outside their legal powers
- Whether the governing body's decision was not one a sensible person would make
- Was the exclusion process so unfair / flawed that justice was not done
  - Where these tests have not been met the panel can quash the decision and direct governors to reconsider
  - Where they have been met but where evidence / procedural flaws are identified, the panel can ask governors to reconsider
  - In all other cases the panel should uphold the exclusion

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.

The decision of the Review Panel (and the grounds on which it is made) will be communicated in writing to all parties involved as soon as is practicable, and usually by telephone within one day of the meeting.

### **Governors being asked / directed to reconsider**

In the event that the Review Panel either asks or directs the governors to reconsider their decision, the 3 governors must meet to reconsider within 10 school days of such notification. It is important that the governing body conscientiously reconsiders whether the pupil should be reinstated, whether the panel has directed or merely 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 reinstate the pupil without strong justification. The governors must notify all parties of their reconsidered decision and the reasons for it, in writing and without delay.

The reconsideration provides an opportunity for the governing body to look afresh at the question of reinstating the pupil, in light of the findings of the independent review panel. There is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting. The governing board is not prevented from taking into account other matters that it considers relevant. It should, however, take care to ensure that any additional information does not make the decision unlawful. This could be the case, for example, where new evidence is presented or information is considered that is irrelevant to the decision at hand.

The governing body should base its reconsideration on the presumption that a pupil will return to the school if reinstated, regardless of any stated intentions by the parents or pupil. Any decision of a governing body to offer reinstatement which is subsequently turned down by the parents should be recorded on the pupil's educational record. The governing body's decision should demonstrate how they have addressed the concerns raised by the independent review panel; this should be communicated in plain English for all parties to understand.

