



## **Exclusion of Pupils Policy**

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## The Acorn Federation Exclusion of Pupils Policy

### **What is Exclusion?**

The circumstance in which a pupil may be removed from the school site because there is sufficient evidence that he/she has committed a disciplinary offence. Exclusion from school is a formal sanction and is governed by statutory regulations and Acts of Parliament.

There are 3 main types of exclusion

- a) Fixed Period Exclusion (from school)
- b) Permanent Exclusion (from school)
- c) Lunchtime Exclusion (from school)

All three types of exclusion are formal sanctions that a head teacher can use for a pupil who breaches the school's discipline policy and should usually be used as a final resort when other sanctions have failed.

### **Behaviour Outside of School**

Pupils' behaviour outside of school on school business (school trips etc.) is subject to the school's behaviour policy. It should be dealt with as if it had taken place in school. Behaviour outside of school, but not on school business, a head teacher may exclude a pupil if there is a clear link between that behaviour and maintaining good behaviour and discipline among the pupil body as a whole.

### **Unofficial Exclusions**

If the head teacher is satisfied that, on the balance of probabilities, a pupil has committed a disciplinary offence and s/he wants the pupil removed from the school site for that reason formal exclusion is the only legal method of removal. The Acorn Federation does not exclude pupils informally or unofficially, even if a parent consents to it. The Head teacher should formally record and specify the length of the exclusion. The parent must be notified immediately, ideally by telephone followed up by a letter within one school day. The Head teacher should ensure that:

- they are meeting the legal duty of care towards pupils, ensuring parents are formally notified if a pupil needs to be removed from site,
- child protection issues are taken into account; and
- pupils' legal entitlement to education is not contravened.

### **Length of Exclusion**

The head teacher can exclude a pupil permanently or on a fixed period basis for up to 45 days in a school year - applies to the pupil and NOT the institution.

"Ofsted inspection evidence suggests that 1-3 days are often long enough to secure the benefits of exclusion without adverse educational consequences." We seek to avoid or minimise exclusions as far as possible. Improving Behaviour and Attendance: Guidance on Exclusion from Schools and Pupil referral provision.

### **For All Exclusions**

The Acorn Federation is responsible for providing and marking work for all exclusions (up to the 5th day) for the pupil to do at home. Where a pupil is given a fixed period exclusion of a duration of six 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. Schools and governing bodies need to plan how they will provide this.

During the initial period of up to five days the parents of the excluded pupil must ensure that he/she is not found in a public place during normal school hours without reasonable justification.

## **For Permanent Exclusions**

The Local Authority is responsible for providing full time provision from day 6 of the exclusion. The pupil remains on roll of the school until informed otherwise by the Local Authority. It is the responsibility of the school during the first five days of a permanent exclusion to ensure that work is sent home for the pupil to complete.

During these initial five days of exclusion parents must ensure that their children are not found in a public place during normal school hours without reasonable justification.

When the pupil lives in another Local Authority to that which maintains the school, then the responsibility for full time provision is with the pupil's home Local Authority.

## **Police Involvement and Criminal Proceedings**

A school-related incident may also be the subject of a police investigation which may result in criminal proceedings. In such circumstances the head teacher, the governing body and the Independent Appeal Panel may not have all relevant evidence available to them (e.g. witness statements etc). The head teacher should not postpone his/her decision to permanently exclude. The governing body have no power to postpone their meeting (they must make a judgement based on the evidence available). Only the Independent Appeal Panel can adjourn (and can adjourn more than once).

## **Parental Co-operation**

If a parent sends an excluded child to school, or refuses to collect him/her at lunchtime, a school must have due regard for the pupil's safety in deciding what action to take. An exclusion should not be enforced if doing so may put the safety of the pupil at risk.

## **Reintegration Meetings**

The head teacher must arrange a reintegration interview with parents following the expiry of any fixed period exclusion of the pupil. In this circumstance a delayed re-integration meeting should not prevent the child returning to school. The interview should normally be conducted by the head teacher or a senior member of staff. The interview should normally be held on the day the pupil returns to school. If that is not possible it must be held at a mutually convenient time between three days prior to the pupil's return and fifteen days following the day on which he/she returns to school. However, a fixed period exclusion should not be extended if such an interview cannot be arranged in time or the parents do not attend.

## **The Role of the Governors**

The governing body should be:

- Proactive in preventing exclusion and
- Reactive in considering those who have been excluded.

## **Reviewing an Exclusion**

### **What Does the Governing Body Do?**

The Governing Body meets to consider fixed-period and permanent exclusions. The governing body can delegate some or all of its functions in respect of exclusions to a committee consisting of at least three governors and such a committee may be called the Discipline Committee.

### **When Must the Governing Body Convene a Meeting?**

- For all fixed period exclusions OVER 15 days cumulatively in a term.
- For ALL permanent exclusions.
- For ALL exclusions over 5 days and not more than 15 days if the parents request a meeting.

The governing body must also make arrangements to consider representations (usually written) from parents where an exclusion is 5 days or fewer in one term.

## Who should attend a Governing Body Meeting?

Parents should be invited and informed of their entitlement to bring a friend or legal representative. The Local Authority should be invited. Both the parents and Local Authority can make written representations which should be circulated to the clerk prior to the meeting. Someone should represent the school who has knowledge of the incident that led to exclusion. For permanent exclusions, this should be the head teacher. The pupil can attend (there should be good reasons for refusing and greater emphasis has been placed on encouraging the pupil to have a voice in the exclusion process).

## What the Governing Body Should Do:

ASK QUESTIONS - Get all the information you need to know

1) Did the head teacher follow the correct procedure?

- Did the HT comply with the law?
- Were the correct policies followed?
- How have other pupils been treated?

2) Did the pupil do what s/he is being accused of?

- On the balance of probabilities

3) Was exclusion a reasonable response?

- Are there any mitigating factors?

Generate a 'pool' of information THEN make a decision based upon that information.

## Conduct of a Governing Body Meeting

The Governing Body meeting should follow the same principles of an Independent Appeal hearing:

- The Clerk or Chair should explain the order in which the parties will state their case and that there will be an opportunity for questioning by the other parties after each presentation.
- The Chair should lead the panel in establishing the relevant facts
- Panel members may wish to ask questions to clarify an issue or elicit more information
- Questions from the panel should generally be taken at the end of each party's statement and following questioning by other parties
- Sufficient time must be given to each party to present their case

## Governing Body Meeting Paperwork

### The School's Case

The school should provide all parties with paperwork that is relevant to the exclusion. This may include documents such as:

- Behaviour logs and details of previous incidents – *only if relevant*
- Academic reports– *only if relevant*
- Attendance printouts – *only if relevant*
- Details of support provided to pupil (Pastoral Support Plan/Individual Education Plan etc) – *only if relevant*
- Details of any Special Educational Needs the pupil may have– *only if relevant*
- Reports from professionals supporting pupil – *only if relevant*
- Witness accounts (including excluded pupil's) – for all cases
- Details of the incident(s) which led up to exclusion – for all cases

If the governing body are reviewing an exclusion for a one-off incident (for which there is no history) then details of previous behaviour should not be provided.

## **Etiquette**

It is important that all parties feel that the governing body is unbiased and that the hearing has been fair. For this reason, governors should:

- Be familiar with the law
- Only a headteacher (or TiC of a Pupil Referral Unit) can exclude a pupil. A deputy head can only exclude if the headteacher is absent.

A decision to exclude a pupil should only be taken:

a) In response to serious breaches of the school's discipline policy

AND

b) If allowing the pupil to remain in the school would seriously harm the education or welfare of the pupil or others in the school.

Exclusion, whether fixed period or permanent, should be used as a last resort when all alternatives have been exhausted. Early intervention and alternatives to exclusion should be actively explored. There will be a few cases when it is not possible to exhaust all alternatives before resorting to exclusion.

- Ensure no parties are alone with them at any time during the proceedings
- Always act courteously to all parties
- Be careful about body language and behaviour
- Question the evidence that is put before them
- Act impartially at all times

NEVER reprimand pupils or parents (if they attend)

## **Question 1**

Did the head teacher follow the correct procedure?

## **When Can a Pupil be excluded?**

### **Before Excluding a Pupil**

The head teacher should keep a written record of the actions taken and copies of written records made by other staff.

### **One Off Exclusions**

The decision to permanently exclude a pupil will *“usually be the final step in a process for dealing with disciplinary offences following a wide range of other strategies, which have been tried without success...and should normally be used as a last resort.”*

However, there may be *“exceptional circumstances”* where a head teacher may permanently exclude for a one off offence:

- 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

*“These instances are not exhaustive.”*

### **Drug-Related Exclusions**

- When deciding whether to exclude for a drug-related incident *“the head teacher should have regard to the school's drugs policy and should consult the designated senior member of staff responsible for managing drug incidents.”*
- In some cases fixed period exclusion will be more appropriate than permanent exclusion (NB previous slides)

- In more serious cases, an assessment of the incident should be made against criteria set out in the school's policy
- Factors to consider in determining an appropriate response to a drug-related incident have been set out in the DFE's revised guidance on drugs in schools - [www.teachernet.gov.uk/wholeschool/behaviour/drugs](http://www.teachernet.gov.uk/wholeschool/behaviour/drugs)

### **Exclusion Should NOT be used for...**

- Minor incidents (e.g. failure to do homework)
- Poor academic performance
- Lateness or truancy
- Pregnancy
- Breaches of school uniform rules or rules on appearance (including jewellery and hairstyle), except where these are persistent and in open defiance of such rules
- Protecting victims of bullying by sending them home
- Punishing pupils for the behaviour of parents

### **Question 2**

Did the pupil do what is accused of them?

#### **Did They Do It?**

##### **What if they deny doing it?**

- A head teacher must ensure there is evidence to show a pupil was responsible for an incident **before** excluding them for it. Investigations need to be carried out quickly and effectively.
- The governing body must be sure that the pupil DID do what is accused of them, **before** upholding an exclusion. If the governing body is not sure, the pupil should be re-instated.

#### **How can we make our mind up?**

- Pupil's statement (they must be given the chance to make one)
- Witness statements - do they concur/conflict?
- Incident reports - do they support/refute allegations?

#### **How sure do we have to be that they have done it?**

Governing body needs to be able to say "**on the balance of probabilities**" they DID do it. A teacher's word cannot be taken above that of a pupil's without other supporting evidence. The laws of natural justice MUST be applied.

***R v Head Teacher and Independent Appeal Committee of Dunraven School ex p B [2000] ELR 156 (CA)***: "It must be shown that the pupil has done what is alleged to a high degree of probability, or put another way, that it is distinctly more probable than not that the pupil did what is alleged".

### **Question 3**

Was exclusion a reasonable response?

#### **Vulnerable Pupils**

##### **Pupils with Special Educational Needs**

Other than in the most exceptional circumstances, schools should avoid permanently excluding pupils with statements

Schools should make every effort to avoid excluding pupils who are being supported at School Action and at School Action Plus (esp. those who are undergoing Statutory Assessment)

If a school has exhausted all the resources in supporting a pupil with a statement, they should initiate an interim review of the statement.

Where a child is permanently excluded, the headteacher should use the period between his or her initial decision and the meeting of the Governing Body to work with the LA to see whether more support can be made available or whether the statement can be changed to name a new school. If either of these options is possible, the head teacher should normally withdraw the exclusion

### **Children in Public Care**

Looked after Children are especially at risk of low attainment in school. Schools should try every practicable means to maintain the child in school and seek Local Authority and other professional advice as appropriate

### **Pupils with Disabilities**

Under the Disability Discrimination Act 1995, schools have a duty not to discriminate against pupils with disabilities by excluding them from school because of behaviour related to their disability. This applies to both permanent and fixed period exclusions.

### **DISCRIMINATION =**

- 1) Treating disabled pupils less favourably than others without justification
- 2) Failing to take reasonable steps to ensure that disabled pupils are not placed at substantial disadvantage compared to non-disabled pupils

### **The governing body needs to question whether the exclusion could have been avoided**

2 types of disruptive behaviour can lead to exclusion:

- 1) Persistent disruptive behaviour for which the pupil has a history
- 2) One off incidents, which cannot be predicted

If the pupil falls into the first category, the governing body should question what strategies the school has used to prevent an exclusion. This is especially important in the case of permanent exclusions where the GB needs to be convinced that, in most cases, a wide range of alternative strategies have been tried and failed.

### **School Support Strategies**

#### **PASTORAL SUPPORT PROGRAMME (PSP)**

- Should automatically be put in place if it is considered that a pupil is at risk of permanent exclusion (e.g. a pupil who has had several fixed period exclusions).
- The PSP should be regarded as a working plan - a list of strategies tried is insufficient.

Aside from setting up a PSP, there are numerous other strategies that schools can employ, e.g.:

- Changing teaching classes
- Use of seating plans
- Dedicated Teaching Assistant
- Disapply the National Curriculum
- In school Learning Support Unit
- Looked After Link Teacher
- Learning Mentors

### **Other Support Available**

In addition to 'in-house' support that can be offered, the LA can also provide extra support. For example:

- Multi-Agency Team
- Parent Partnership
- Speech & Language Therapy
- Education Psychology Service
- Education Welfare Service

- Inclusion Support Team
- Connexions
- Pupil Referral Units

- a) Restorative Justice Process -enables the offender to redress the harm that has been done to a 'victim'
- b) Internal Exclusion -requires a pupil to be removed from class (may continue during break periods) but not exclusion from the school premises
- c) A Managed Move (Section 9 of the Education (Pupil Registration) Regulations 1995)
- d) Mediation

### **Outside Support**

Aside from the support which can be provided through the LA, there are other agencies which can also offer help:

- Child and Adolescent Mental Health Service (CAHM's)
- GP
- Children and Young Adult Service (CAYA)
- The M.A.T

### **Alternatives to Exclusion**

Exclusion should not be used if there are possible alternative solutions available. For example:

### **Mitigating Factors**

The panel must establish if there are any factors surrounding an incident which would mean that the exclusion given to the pupil is inappropriate

- Two different pupils can be given different sanctions for doing the same thing in certain circumstances (e.g. one may have been provoked by bullying or by racial or sexual harassment - Paragraph 21 Improving Behaviour and Attendance September 2007)
- A governing body could validly reinstate a pupil, who had been permanently excluded for a 'one off' serious incident, if the circumstances surrounding them were out of the norm.

### **Uphold or Re-instate?**

#### **Has the governing body answered the three questions?**

- a) Did the head teacher follow the correct procedure?
- b) Did the pupil do what they are accused of?
- c) Was exclusion a reasonable response?

If the answer to any of these questions is "NO" then the governing body should re-instate the pupil

### **Local Authority Role**

#### **What does the Local Authority have to say?**

- The Local Authority can make a statement about how other schools have responded to similar incidents
- The Local Authority can draw the attention of governors to issues...
  - where there is lack of clarity
  - where more information may be needed
  - where guidance appears to have been ignored
- The Local Authority representative's role is not to give their view on the merits (or otherwise) of individual cases.

### **Natural Justice**

- Must know what they're accused of (and the source of it)

- Must be given the chance to give their own version of events
- No one involved in the incident must be involved in the decision-making

### **Points of Law: The Panel Must**

- Demonstrate the DfE guidance on exclusion has been taken into account
- Make findings on **all** of the significant disputed facts
- Make sure everyone at the meeting is clear about what misconduct represents the reason for exclusion
- **Not** be in possession of any material that the parent or any other party does not have
- Be directed towards the standard of proof (i.e. highly probable...)

### **Other Factors to Consider**

- How severe is the incident? Does it warrant an exclusion?
- Were there any mitigating circumstances? Was the pupil provoked by sexual or racial harassment?
- Does the pupil have a history of disruptive behaviour? What support has been offered?
- What previous sanctions have been used? Does the exclusion take these into account?
- Is the pupil at particular risk (i.e. are they Looked After Children or on the Special Educational Need register)?
- Have the parents received a copy of the school's behaviour policy

### **What options do the governing body have?**

- Only 2 options are available: **uphold** the head teacher's decision or **re-instate** the pupil (either immediately or by a particular date).
- A pupil's school record should be annotated with the governor's findings when they have considered an exclusion of 5 days or fewer or when the governing body cannot direct reinstatement because the exclusion has expired and the pupil has returned to school.

### **The governing body CANNOT:**

- Increase or decrease the length of a fixed period exclusion
- Convert a fixed period exclusion to a permanent one (or vice versa)
- Put conditions on a re-instatement

A governing body doing any of the above is acting outside the powers given to them by statute.

### **After the Governing Body Meeting**

The clerk to the Committee must write to the parent **within one school day** to advise them of the decision of the Committee. This letter must contain:

#### A) For ALL exclusions

- The reasons as to why they came to that decision

#### B) For PERMANENT exclusions that are upheld

- A reminder to the parent of their right to an independent appeal. Give the date by which they should notify the clerk to the Independent Appeal Panel and the name, address and telephone number of the Local Authority Officer

A template letter is provided in the DfE guidance.

### **A copy of this letter must be sent to the Local Authority**

## **What If the Governing Body Uphold?**

If the governing body decide that the head teacher's decision was correct, that the pupil did do what they were accused of and that exclusion was an appropriate response...

...**Fixed Period Exclusion** - if the pupil is still away from school, they will return on the allotted date and that exclusion is closed

...**Permanent Exclusion** - the pupil will still stay away from school, but the parent has **15 school days** to decide whether they wish to appeal against the decision.

## **What if the Parents Appeal?**

### **How will the school find out?**

The clerk to the Independent Appeal Panel will contact the school to let them know and obtain some possible dates for the appeal as soon as parents lodge their appeal.

The appeal process is co-ordinated by DCC Legal Services, who will write to the school to confirm the date and time of the appeal and to give a cut-off date for the receipt of the school's case

Appeals must be held within 15 school days after the day on which the appeal was lodged

- **Parents can appeal even if they do not want their child to return to the school or did not attend the governing body Meeting.**

## **The Appeal Process**

### **What should be in the school's 'case'?**

The school's case is by far the largest of all those presented. It should contain:

- All the documentation used in the governing body meeting e.g. witness statements, incident reports etc.
- A summary of events that led to the decision to uphold
- Attendance and behaviour logs (if relevant)
- Academic reports (if relevant)
- Previous exclusion history (if relevant)
- Previous plans put in place e.g. Pastoral Support Plan
- Educational Psychologist and/or Education Welfare Officer reports
- A copy of the school's behaviour policy
- Representations from the head teacher and the governing body
- Any info not covered in statements or representations

## **Evidence & Witnesses**

### **Evidence**

- Where the school's case rests largely or solely on physical evidence, then this evidence (where practicable) should be retained and be available to the panel
- All parties may put forward new evidence about the incident, however the school may **not** introduce new reasons for exclusion

### **Witnesses**

- The clerk should ascertain whether an alleged victim wishes to be given a voice at the hearing (either in person or via a statement)
- The governing body may wish to call witnesses who saw the incident that gave rise to the exclusion
- Written statements are appropriate in most cases. Pupils may appear as witnesses if they do so voluntarily and with their parent's consent
- All witness statements must be attributed and signed (unless there is good reason to protect anonymity)

## **The Independent Appeal Hearing**

### **In reaching a decision, the panel should:**

- 1) Decide whether the pupil did what is alleged, on the balance of probabilities (if more than one misconduct is alleged, the panel should decide in relation to each one)
- 2) Consider whether the head teacher and the governing body complied with the law and the guidance (procedural issues are relevant if there is evidence that the process was so flawed that important factors were not considered or justice was clearly not done)
- 3) Consider the school's published behaviour policy, equal opportunities policy and, if appropriate, anti-bullying policy, SEND policy and race equality policy
- 4) Consider the fairness of the exclusion in relation to the treatment of any other pupils involved in the same incident
- 5) Consider whether permanent exclusion was a reasonable response and whether it is an exceptional case where reinstatement is impractical

In deciding on whether or not to direct reinstatement, the panel must balance the interests of the excluded pupil against the interests of all the other members of the school community including the risk of undermining the head teacher's authority and the general climate of discipline within the school.

### **The Outcome**

The Independent Appeal Panel may:

- Uphold the decision to exclude
- Direct immediate reinstatement
- Direct reinstatement at some future date
- Decide, because of exceptional circumstances, it is not practical to give a direction requiring reinstatement, but it would otherwise have been appropriate to give such a direction
- The panel cannot attach conditions to a reinstatement
- There may be exceptional cases where the panel consider that the permanent exclusion should not have taken place but that reinstatement in the excluding school is not a practical way forward in the best interests of all concerned
- All reasons for the panel's decision should be indicated in their decision letter

The panel must let all parties know their decision by the end of the second working day after the hearing. The decision of the panel is binding on the parent, the governing body, the head teacher and the Local Authority.

### **Remedies after the Hearing**

- A parent can complain to the Local Government Ombudsman about maladministration by the appeal panel.
- The parent or the governing body may apply for a judicial review if they think the panel's decision is perverse (must be done within 3 months of the decision).