

# WOOD FOLD PRIMARY SCHOOL

## SUSPENSION & EXCLUSION POLICY



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#### **Statement of intent**

At Wood Fold Primary School, we understand that good behaviour and discipline is essential for promoting a high quality education.

Amongst other disciplinary sanctions, the school recognises that suspension or exclusion of pupils may be necessary where there has been a serious breach, or consistent breaches, of the school's Behavioural Policy. Suspending or excluding a pupil may also be required in instances where allowing the pupil to remain in school would be damaging to the education and welfare of themselves or others; in all cases, suspending or excluding pupils should only be used as a means of last resort.

The school has created this policy to clearly define the legal responsibilities of the headteacher, governing board and LA when responding to pupil suspensions / exclusions, to ensure that they are dealt with both fairly and lawfully, and in line with DfE statutory guidance.

This policy also aims to secure a pupil's right to an education despite having been suspended / excluded, by ensuring that appropriate arrangements are in place.

Signed By:

Headteacher: \_\_\_\_\_ Date: \_\_\_\_\_

Chair of Governors: \_\_\_\_\_ Date: \_\_\_\_\_

#### **Monitoring and review**

This policy will be reviewed on an annual basis by the headteacher in conjunction with the governing board. The next scheduled review date for this policy is January 2025.

## **Legal framework**

This policy has due regard to the related statutory legislation including, but not limited to, the following:

The Education Act 2002

The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012

The Education and Inspections Act 2006

The Education Act 1996

The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007

The European Convention on Human Rights (ECHR)

The Equality Act 2010

This policy also has due regard to statutory and non-statutory guidance, including, but not limited to, the following:

DfE (2022) Suspension and Permanent Exclusion from maintained schools, academies and pupil referral units in England, including pupil movement Guidance for maintained schools, academies, and pupil referral units in England September 2022.

DfE (2016) 'Behaviour and discipline in schools'

DfE (2015) 'Special educational needs and disability code of practice: 0 to 25 years'

DfE (2018) 'Mental health and behaviour in schools'

This policy will be implemented in conjunction with the following school policies and procedures:

Behavioural Policy

Anti-Bullying Policy

Special Educational Needs and Disability (SEND) Policy

Child Protection and Safeguarding Policy

## **Roles and responsibilities**

The LA is responsible for:

- Having due regard to the relevant statutory guidance when carrying out its duties in relation to the education of LAC.

- Arranging suitable full-time education for any pupil of compulsory school age excluded permanently, in coordination with the school.
- Reviewing and reassessing pupils' needs in consultation with their parents where they have an EHC plan and are excluded permanently, with a view to identifying a new placement.
- Arranging for an independent review panel hearing to review the decision of the governing board not to reinstate a permanently excluded pupil where required.
- Arranging the hearing without delay at a time, date and venue convenient for all parties.
- Ensuring the independent review panel consists of three or five members as appropriate, which represent the required categories.
- Appointing a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions.
- Ensuring the majority of panel members and the clerk have received training within the two years prior to the date of the review.
- If requested by parents, appointing a SEND expert to attend the panel and covering the associated costs of this appointment.(TESS)

The governing board is responsible for:

- Providing information to the Secretary of State and LA about any suspensions / exclusions within the last 12 months within 14 days of a request.
- Arranging suitable full-time education for any pupil of compulsory school age suspended on a fixed-term basis.
- Considering parents' representations about suspensions / exclusions within 15 school days of receiving notice if the appropriate requirements are met.
- Where a suspension / exclusion would result in a pupil missing a public examination or test, considering the suspension / exclusion before this date.
- Considering whether it would be appropriate for a pupil to be permitted onto the school premises to sit the public examination or test.
- Arranging the representation meeting at a time and date convenient to all parties, but in compliance with the statutory time limits.
- Adhering to its responsibilities to consider the reinstatement of pupils.
- Considering the interests and circumstances of the suspended / excluded pupil, including the circumstances in which they were suspended / excluded, and have due regard to the interests of others at the school.
- Using the civil standard of proof (based on the 'balance of probabilities', it is more than likely that the fact is true) when establishing the facts relating to a suspension / exclusion.
- Ensuring clear minutes are taken of the representation meeting.
- Noting the outcome of the representation meeting on the pupil's education record, along with copies of relevant papers for future reference.
- Notifying the pupil's parents, the headteacher and LA of its decision and the reasons for it, without delay.

- Where appropriate, informing parents of where to apply for an independent review panel.
- Informing parents of relevant sources of information.
- Ensuring a pupil's name is removed from the school admissions register, where appropriate.
- Reconvening within 10 school days to reconsider reinstatement of a pupil where directed to do so by the suspensions / exclusions review panel.
- Reviewing the data on exclusions. Governing boards should review suspensions and permanent exclusions, those taken off roll and those on roll but attending education off-site. It is important to consider both the cost implications of directing children to be educated off-site in AP and whether there are any patterns to the reasons or timing of moves.
- Governing Boards should carefully consider the level of pupil moves and the characteristics of pupils who are moving on any permanent exclusions to ensure the sanction is only used when necessary, as a last resort.

The clerk to the suspensions / exclusions review panel is responsible for:

- Making reasonable efforts to inform the appropriate individuals that they are entitled to:
- Make written representations to the panel.
- Attend the hearing and make oral representations to the panel.
- Be represented.
- Making reasonable efforts to circulate copies of relevant papers at least five school days before the review to all parties.
- Giving all parties details of those attending and their role, once the position is clear.
- Attending the review and ensuring that minutes are produced in accordance with instructions from the panel.

The headteacher is responsible for:

- Implementing good levels of discipline to ensure all pupils can benefit from the opportunities provided by education and to minimise potential suspensions / exclusions.
- Applying the civil standard of proof when establishing the facts in relation to a suspension / exclusion.
- Complying with their statutory duties in relation to pupils with SEND when administering the suspension / exclusion process, as outlined in the Special Educational Needs and Disability (SEND) Policy.
- Considering any contributing factors that are identified after an incident of poor behaviour has occurred, e.g. if a pupil has suffered bereavement, bullying or has a mental health issue.
- Considering the use of a multi-agency assessment for a pupil who demonstrates persistent disruptive behaviour.

- Reviewing the effectiveness of suspensions / exclusions as a sanction, e.g. if a pupil has received multiple suspensions or is approaching the legal limit for suspensions in an academic year.
- Considering what extra support may be needed to identify and address the needs of individual pupils, particularly those with SEND, eligible for FSM, LAC and those from certain ethnic groups.
- Engaging effectively with parents in supporting the behaviour of pupils with additional needs.
- Determining whether a pupil will be suspended / excluded on disciplinary grounds.
- Withdrawing any suspensions / exclusions that have not been reviewed by the governing board, where appropriate.
- Ensuring any decision to exclude is lawful, rational, reasonable, fair and proportionate.
- Complying with the requirements of the Equality Act 2010 when deciding whether to suspend / exclude a pupil.
- Ensuring they have considered their legal duty of care when sending a pupil home following a suspension / exclusion.
- Making the decision to suspend / exclude based on the evidence available at the time, regardless of any police investigation and/or criminal proceedings.
- Notifying a pupil's parents without delay where the decision is taken to suspend / exclude the pupil, including the days on which the parents must ensure the pupil is not present in a public place at any time during school hours, as well as any other necessary information statutorily required.
- without delay notify the social worker, if a pupil has one, and the VSH, if the pupil is a LAC37, after their decision, of the period of the suspension or permanent exclusion and the reason(s) for it.
- Ensuring that all information provided to parents is clear and easily understood.
- Notifying the governing board and LA of their decision to suspend / exclude a pupil where appropriate, as well as the pupil's home authority if required.
- Notifying the governing board once per term of any suspensions / exclusions not already notified.
- Organising suitable work for suspended / excluded pupils where alternative provision cannot be arranged.

## **Grounds for suspension / exclusion**

The school will only suspend / exclude a pupil where it is absolutely necessary, and where all other possible disciplinary sanctions, as detailed in the school's Behavioural Policy, have failed to be successful.

The following examples of behaviour may underline the school's decision to suspend / exclude a pupil:

- Any incident which poses a risk to the pupil, other pupils or staff members
- Any incidents which breach the law
- Persistent and severe bullying
- Verbal and physical abuse
- Constant disruption
- A single, serious and major incident, e.g. serious assault on another individual leading to injury

Pupils can be suspended on a fixed-period basis, i.e. up to 45 school days within a year. Similarly, pupils can be permanently excluded following a fixed-period suspension, where further evidence is presented.

In all cases, the headteacher will decide which suspension / exclusion period a pupil will be subject to, depending on what the circumstances warrant.

### **The headteacher's power to suspend / exclude**

Only the headteacher has the power to suspend / exclude a pupil from the school, and is able to decide whether this is on a fixed-period or permanent basis. All suspensions / exclusions will only be issued on disciplinary grounds.

The headteacher is able to suspend pupils from the premises where their behaviour is disruptive during lunchtime. All lunchtime suspensions will be counted as half of a school day.

The headteacher is able to consider a pupil's disruptive behaviour outside of the school premises as grounds for suspension / exclusion, in accordance with the school's Behavioural Policy.

Any decision made to suspend / exclude a pupil will be lawful, proportionate and fair, with respect to legislation relating directly to suspensions / exclusions and the school's wider legal duties, including the ECHR.

All suspensions / exclusions will be formally recorded on the pupil information system (SIMS).

When sending a pupil home following any suspension / exclusion, the headteacher will ensure that they exercise their duty of care at all times and will always inform the parents.

The headteacher will apply the civil standard of proof when responding to the facts relating to a suspension / exclusion, i.e. that 'on the balance of probabilities' it is more likely than not that the facts are true.

The headteacher may withdraw any suspension / exclusion that has not already been reviewed by the governing board.

At all times, the headteacher will take into account their legal duties under the Equality Act 2010 and the 'Special educational needs and disability code of practice: 0 to 25 years',



ensuring that they do not discriminate on any grounds, e.g. race, sex, disability, and will not increase the severity of a pupil's exclusion on these grounds.

The headteacher will not issue any 'informal' or 'unofficial' suspensions / exclusions, such as sending a pupil home to 'cool-off', regardless of whether or not the parents have agreed to this.

The headteacher will not use the threat of suspension / exclusion as a means of instructing parents to remove their child from the premises.

## **Factors to consider when suspending / excluding a pupil**

When considering the suspension / exclusion of a pupil, the headteacher will:

- Allow the pupil the opportunity to present their case.
- Take into account any contributing factors that are identified after a case of poor behaviour has occurred, e.g. if the pupil's wellbeing has been compromised, or they have been subjected to bullying.
- Take into consideration whether the pupil has received multiple suspensions or is approaching the legal limit of 45 suspended days per school year, and whether suspension is serving as an effective sanction.
- Consider early intervention to address underlying causes of disruptive behaviour, including liaising with external agencies, to assess pupils who demonstrate consistently poor behaviour.
- Consider the use of internal suspensions where they feel it may be more appropriate in addressing the consequences of the behaviour. This will be at the Headteacher's discretion taking into account any previous behaviour records.

The headteacher will consider what extra support may be available for vulnerable pupil groups whose suspension / exclusion rates are higher, to reduce their risk of suspension / exclusion, including the following:

- LAC
- Pupils eligible for FSM
- Pupils with SEND
- Certain ethnic groups

The headteacher will consider avoiding permanently excluding LAC pupils, those with social, emotional and mental health (SEMH) issues or pupils with an EHC plan.

Where any member of staff has concerns about vulnerable pupil groups and their behaviour, they will report this to the headteacher who will instigate a multi-agency assessment to determine whether the behavioural issues might be as a result of educational, mental health or other needs and vulnerabilities.

Where SEND or SEMH issues are identified, an individual behaviour plan will be created using the graduated response outlined in the school's Behavioural Policy. If the pupil

continues to endanger the physical or emotional wellbeing of other pupils or staff, despite exhausting the graduated response process, then suspension / exclusion may be considered.

In accordance with the Equality Act 2010, under no circumstances will a pupil with identified SEND or SEMH issues be suspended / excluded before the graduated response process has been completed.

Where a pupil with SEND or SEMH issues is permanently excluded because of a SEND or SEMH-related need that could not be met at the school, detailed records will be kept highlighting that these pupils are closely tracked and show that the school has a close relationship with the pupil's next destination.

The headteacher will work in conjunction with the parents of any pupil with additional needs, to establish the most effective support mechanisms.

### **Off Site Direction**

Off-site direction is when a governing board of a maintained school requires a pupil to attend another education setting to improve their behaviour.

Where interventions or targeted support have not been successful in improving a pupil's behaviour, off-site direction should be used to arrange time-limited placements at an Alternative Provision or another mainstream school. During the off-site direction to another school, pupils must be dual registered. Code B should be used for any off-site educational activity, if the provision is an approved educational activity that does not involve the pupil being registered at any other school.

When possible, in-school interventions or targeted support from Alternative Provision schools should be used to meet a pupil's individual needs and circumstances – whether behavioural or special educational.

Depending on the individual needs and circumstances of the pupil, off-site direction into AP can be full-time or a combination of part-time support in AP and continued mainstream education. A proposed maximum period of time should be discussed and agreed upon as part of the planning phase for an off-site direction. As part of planning, alternative options should be considered once the time limit has been reached, including a managed move on a permanent basis (if a pupil is in a mainstream school) upon review of the time-limited placement. 38.

The governing board must comply with the Education (Educational Provision for Improving Behaviour) Regulations 201022 and must show regard to the Alternative Provision: Statutory guidance for local authorities, headteachers and governing bodies.

The statutory guidance covers objectives and timeframes with appropriate monitoring of progress. For maintained schools, the governing board must ensure that parents, and the local authority if the pupil has an Education, Health and Care (EHC) plan are notified in writing and provided with information about the placement as soon as practicable after the direction has been made and no later than two school days before the relevant day.

Parents, and, where the pupil has an EHC plan, the local authority, can request, in writing, that the governing board hold a review meeting. When this happens, governing boards must comply with the request as soon as reasonably practicable, unless there has already been a review meeting in the previous 10 weeks.

The length of time a pupil spends in another mainstream school or AP and the reintegration plan must be kept under review by the governing body, who must hold review meetings at such intervals as they, having regard to the needs of the pupil, consider appropriate, for as long as the requirement remains in effect. Not later than six days before the date of any review meeting, a governing body must give a written invitation to parents (and the local authority if the pupil has an EHC plan) to attend the review meeting, or to submit in writing before the date of the meeting their views as to whether off-site direction should continue to have effect.

The governing body must ensure, insofar as is practicable, that any review meeting is convened on a date, and at a time, that is suitable for the parent.

The governing body must keep the placement under review for as long as the requirement remains in effect and must decide following each review meeting as to whether the requirement should continue to have effect and, if so, for what period of time. The meeting should include arrangements for reviews, including how often the placement will be reviewed, when the first review will be and who should be involved in the reviews.

The governing body must give written notification of their decision as to whether the requirement to continue the placement should continue and if so, for what period of time including the reasons for it to the parent no later than six days after the date of the review meeting.

To support a pupil with reintegration into their referring school, the focus of intervention whilst off-site should remain on ensuring that a pupil continues to receive a broad and balanced curriculum whilst any inappropriate behaviours which require intervention are being addressed. If a pupil with a disability or SEN has been moved off-site, the duties under the Equality Act 2010 and the Children and Families Act 2014 continue to apply (for example, to make reasonable adjustments or to put support in place to meet SEN).

The length of time a pupil spends in another mainstream school or AP will depend on what best supports the pupil's needs and potential improvement in behaviour.

## **Managed Move**

A managed move is used to initiate a process which leads to the transfer of a pupil to another mainstream school permanently. Managed moves should be voluntary and agreed with all parties involved, including the parents and the admission authority of the new school. If a temporary move needs to occur to improve a pupil's behaviour, then off-site direction should be used. Managed moves should only occur when it is in the pupil's best interests.

Where a pupil has an EHC plan, the relevant statutory duties on the new school and local authority will apply. If the current school is contemplating a managed move, it should contact the authority prior to the managed move. If the local authority, both schools and parents are in agreement that there should be a managed move, the local authority will need to follow the statutory procedures for amending a plan.

Managed moves should be offered as part of a planned intervention. The original school should be able to evidence that appropriate initial intervention has been carried out, including, where relevant, multi-agency support, or any statutory assessments were done or explored prior to a managed move.

The managed move should be preceded by information sharing between the original school and the new school, including data on prior and current attainment, academic potential, a risk assessment and advice on effective risk management strategies. It is also important for the new school to ensure that the pupil is provided with an effective integration strategy.

If a parent believes that they are being pressured into a managed move or is unhappy with a managed move, they can take up the issue through the school's formal complaints procedure with the governing board and, where appropriate, the local authority.

## **Duty to inform parents**

Following the headteacher's decision to suspend / exclude a pupil, they will immediately inform the parents, in person or by telephone, of the period of the suspension / exclusion and the reasons behind this.

The headteacher will inform the parents in writing (electronically if written permission has been received from the parents for notices to be sent this way) of the following:

- The reason(s) for the suspension / exclusion
- The length of the fixed-period suspension or, for a permanent exclusion, the fact that it is permanent
- Their right to raise any representations about the suspension / exclusion to the governing board, including how the pupil will be involved in this and how the representations will be made
- Their right to attend a meeting where there is a legal requirement for the governing board to consider the suspension / exclusion, and the fact that they are able to bring an accompanying individual
- The arrangements that have been made for the pupil to continue their education prior to the organisation of any alternative provision, or the pupil's return to school
- Relevant sources of free, impartial information

Where the pupil is of compulsory school age, the headteacher will inform the parents by the end of the afternoon session that:

For the first five days of the suspension (or until the start date of any alternative provision or the end of the suspension where this is earlier), parents are legally required to ensure that their child is not present in a public place during school hours without justification, and that parents may receive a penalty fine if they fail to do so.

Where the headteacher has arranged alternative provision, they will also inform the parents of the following:

- The start and end date for any provision of full-time education
- The address at which the provision will take place
- Any information necessary for the pupil to identify the person they should report to on the starting date

Where the headteacher is unable to provide information on alternative provision by the end of the afternoon session, they will provide the information in a subsequent written notice without further delay, and within 48 hours of the pupil beginning the provision.

If the alternative provision is due to begin before the sixth day of the suspension, the headteacher is able to give less than 48 hours of notice, with parental consent.

If the headteacher has decided to suspend the pupil for a further fixed period following their original suspension, or to permanently exclude them, they will notify the parents without delay and issue a new suspension / exclusion notice to parents.

### **Duty to inform the governing board and LA**

The headteacher will inform the governing board and LA, without delay, of the following:

- Any permanent exclusions (including where a fixed-period suspension is followed by a decision to permanently exclude the pupil)
- Any suspensions which would result in the pupil being suspended for more than five school days in a term (or more than 10 lunchtimes)
- Any suspensions / exclusions which would result in the pupil being absent from an examination or national curriculum test

For any suspensions / exclusions, other than those above, the headteacher will notify the governing board and LA once per term.

All notifications to the governing board and LA will include the reasons for suspension / exclusion and the duration of any fixed-period suspension.

If the pupil who is suspended / excluded lives outside the LA in which the school is located, the headteacher will notify the pupil's 'home authority'.

### **Arranging education for suspended / excluded pupils**

For any fixed-period suspensions of more than five school days, the governing board will arrange suitable full-time education for the pupil, which will begin no later than the sixth day of suspension.

Where a pupil receives consecutive fixed-period suspensions, these will be regarded as cumulative, and full-time education will still have to be provided from the sixth day of suspension.

For permanent exclusions, full-time education will also be provided for the pupil from the sixth day of exclusion.

The governing board will not arrange full-time education for any pupil who is currently in their final year of compulsory education, and who does not have any further public examinations to sit.

The governing board is aware that it is beneficial to suspend pupils to begin their alternative education arrangements before the sixth day of suspension. The governing board will always attempt to arrange alternative provision before the sixth day of suspension.

Where it is not possible to arrange alternative provision during the first five days of suspension, the school will ensure that they take reasonable steps to set and mark work for the suspended pupil.

If a pupil with SEND has been suspended / excluded, the governing board will ensure that:

Any alternative provision is arranged in consultation with the pupil's parents, who are able to request preferences.

When identifying alternative provision, any EHC plan is reviewed/the pupil's needs are reassessed, also in consultation with the pupil's parents.

### Cancelling exclusions

The headteacher may cancel any exclusion that has already begun, but this should only be done where it has not yet been reviewed by the governing board. Where an exclusion is cancelled, then:

- Parents, the governing board, and the LA should be notified without delay and, if relevant, the social worker and VSH;
- Parents should be offered the opportunity to meet with the headteacher to discuss the circumstances that led to the exclusion being cancelled;
- Schools should report to the governing board once per term on the number of exclusions which have been cancelled. This should include the circumstances and reasons for the cancellation enabling governing boards to have appropriate oversight and;
- The pupil should be allowed back into school.

## **Considering suspensions / exclusions**

The governing board will consider any representations made by parents in regard to suspensions / exclusions.

Parents and, where requested, a friend or representative, the headteacher and a member of the LA will be invited to attend any consideration of suspensions / exclusions and will be able to make representations.

Any meeting to consider reinstatement of a pupil will be arranged at a date and time convenient for all parties, and in compliance with any statutory time limits.

The governing board will consider the reinstatement of a suspended / excluded pupil, where:

- The exclusion is permanent.
- The suspension is a fixed-period, and would bring the pupil's total number of suspended school days to more than 15 in any given term.
- The suspension / exclusion would result in the pupil missing a public examination.

In the case of a fixed-period suspension where the pupil's total number of suspended days is more than five but less than 15 school days within a term, if requested by the parents, the governing board will consider suspensions within 50 school days of receiving notification.

In the case of a fixed period suspension, where the pupil's total number of suspended school days does not amount to more than five, in the absence of any such representations, the governing board is not required to meet and cannot direct the reinstatement of the pupil.

Where suspension / exclusion would result in a pupil missing a public examination, the governing board will consider the suspension / exclusion before the test to decide whether the pupil should be reinstated in time to take the examination.

In light of the above, the governing board will also consider whether it would be appropriate to allow the suspended / excluded pupil to enter the premises to take the examination.

When considering the reinstatement of a suspended / excluded pupil, the governing board will:

- Only discuss the suspension / exclusion with the parties present at the meeting.
- Ask for any written evidence prior to the meeting.
- Circulate any written evidence and information to all parties, at least five school days in advance of the meeting.
- Allow pupils and parents to be accompanied by a person of their choice at the meeting.
- Consider what reasonable adjustments need to be made to support the attendance and contribution of parties at the meeting.
- Identify the steps needed to enable and encourage the excluded pupil to attend the meeting and speak on their behalf, or how they may contribute personal views by other means if attendance is not possible.
- Consider the interests and circumstances of the suspended / excluded pupil, including the grounds for suspension / exclusion.

## **Reaching a decision**

After considering exclusions, the governing board will either:

- Decline to reinstate the pupil.
- Direct the reinstatement of the pupil immediately, or on a specified date.

If reinstatement would make no practical difference, e.g. if the pupil has already returned to school following a fixed-period suspension or the parents make clear they do not want their child reinstated, the governing board will still consider whether the pupil should be officially reinstated, and whether the headteacher's decision to exclude the pupil was fair, lawful and proportionate, based on the evidence presented.

The governing board will apply the civil standard of proof when responding to the facts relating to an exclusion, it is more likely than not that the facts are true.

To reach a decision, the governing board will:

- Identify the steps they intend to take to ensure that all parties involved will have the opportunity to participate and present their views.
- Ensure that minutes are taken of the meeting as a record of the evidence that was considered.
- Ask all parties to withdraw from the meeting before concluding their decision.
- Consider whether the exclusion of the pupil was lawful, proportionate and fair, taking into account the headteacher's legal duties and any evidence that was presented to the governing board in relation to the decision to exclude.
- Record the outcome of the decision on the pupil's educational records, along with copies, which will be kept for at least six months.
- Make a note of their findings, where they have considered a suspension but cannot reinstate the pupil.

## **Notification of considered suspensions / exclusions**

The governing board will notify the parents of the suspended / excluded pupil, the headteacher and the LA of their decision following the consideration of a suspension / exclusion, in writing and without delay.

In the case of a permanent exclusion, where the governing board decides not to reinstate the pupil, they will notify the parents:

- That it is permanent, and their right for it to be reviewed by an independent review panel.
- Of the date by which an application for review must be made.
- Of the name and address of whom the review application should be submitted to.



- That any application should set out the grounds on which it is being made and that, where appropriate, this should include reference to how a pupil's SEND are considered relevant to the suspension / exclusion.
- That, regardless of whether a pupil has been identified as having SEND, the parents have a right to require the governing board to ensure a SEND expert attends the review.
- Of the role of the SEND expert that will attend the review, and that the parents will not be charged for this.
- That they are required to make it clear if they wish for a SEND expert to attend the review.
- That they may appoint someone at their own expense to make representations to the panel.

The governing board will also notify parents that, if they believe a suspension / exclusion has been issued as a result of discrimination, then they are required to make a claim under the Equality Act 2010 to the First-tier Tribunal (SEND), and that this should be within six months of when the discrimination allegedly took place.

After any conclusion, the governing board will notify the parents, and all other parties involved, of the decision that was made and the reasoning for this, in sufficient detail.

### **Removing permanently excluded pupils from the school register**

The headteacher will remove pupils from the school register if:

- 15 school days have passed since the parents were notified of the governing board's decision not to reinstate the pupil and no application for an independent panel review has been received.
- The parents have stated in writing that they will not be applying for an independent panel review following a permanent exclusion.
- If an application for an independent panel review has been made within 15 school days, the headteacher will wait until the review has been determined, or abandoned, and until the governing board has completed any reconsideration that the panel recommended or directed it to carry out, before removing the pupil from the school register.

If a pupil's name is to be removed from the register, the headteacher will make a return to the LA, which will include:

- All the particulars which were entered in the register.
- The address of any parent with whom the pupil normally resides.
- The grounds upon which the pupil's name is to be removed from the register.

Any return to the LA will be made as soon as the grounds for removal are met and no later than the date in which the pupil's name was removed.

If a pupil's name has been removed from the register and a discrimination claim is made, the pupil may be reinstated following a decision made by the First-tier Tribunal (SEND) or County Court.

Whilst a pupil's name remains on the admissions register, the appropriate code will be used to mark the pupil's attendance:

- Code B: Education off-site
- Code D: Dual registration
- Code E: Absent and not attending alternative provision

## **Independent review panel**

The LA will review the governing board's decision not to reinstate a permanently excluded pupil, if the parents submit their application for this within the required time frame.

The LA will constitute an independent review panel of three or five members that represent the following categories:

- A lay member to chair the panel. This individual will not have worked in any school in a paid capacity.
- A current or former school governor who has served for at least 12 consecutive months in the last five years.
- A headteacher or individual who has been a headteacher within the last five years.

Parents are required to submit their applications within:

- 15 school days of the governing board's notification of their decision.
- 15 school days of the final determination of a discriminatory claim made under the Equality Act 2010.

Any application made outside of this timeframe will not be reviewed.

Parents are able to request an independent panel review even if they did not make a case to, or attend, the governing board's initial consideration of the exclusion.

The LA will adhere to all statutory guidelines when conducting an independent panel review, as outlined in the DfE's statutory guidance document 'Exclusion from maintained schools, academies and pupil referral units in England' 2017.

## **Appointing a SEND expert**

If requested by parents in their application for an independent review panel, the LA will appoint a SEND expert to attend the panel and cover the associated costs of this appointment.

The LA will make arrangements to indemnify the SEND expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.

Parents have a right to request the attendance of a SEND expert at a review, regardless of whether the school recognises that their child has SEND.

The SEND expert's role is set out in [section 15](#) of this policy.

Individuals will not serve as a SEND expert if they have, or at any time have had, any connection with the LA, school, parents or pupil, or the incident leading to the suspension / exclusion, which might reasonably be taken to raise doubts about their ability to act impartially; however, an individual is not taken to have such a connection solely because they are an employee of the LA.

The SEND expert will be a professional with first-hand experience of the assessment and support of SEND, as well as an understanding of the legal requirements on schools in relation to SEND. Examples of suitable individuals might include educational psychologists; specialist SEND teachers; SENCOs; and behaviour support teachers.

Recently retired individuals are not precluded from fulfilling this role; however, the LA will, during interview, assess the knowledge of such individuals in order to ensure that they have a good understanding of current practice and the legal requirements on schools in relation to SEND.

Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, the LA, they will not have had any previous involvement in the assessment or support of SEND for the suspended / excluded pupil, or siblings of the suspended / excluded pupil. The LA will request that prospective SEND experts declare any conflict of interest at the earliest opportunity.

The final decision on the appointment of a SEND expert is for the LA to make, but it will take reasonable steps to ensure that parents have confidence in the impartiality and capability of the SEND expert. Where possible, this will include offering parents a choice of SEND expert. In order to meet its duties within the statutory time frame, the LA will consider maintaining a list of individuals capable of performing the role of SEND expert in advance of a request.

The LA will determine the amount of any payment in relation to the appointment of the SEND expert, such as financial loss, travel and subsistence allowances.

## **The role of a SEND expert**

The SEND expert's role is analogous to an expert witness, providing (orally and/or written) impartial advice to the panel on how SEND might be relevant to the suspension / exclusion. The SEND expert will base their advice on the evidence provided to the panel. The SEND expert's role does not include making an assessment of the pupil's SEND.

The focus of the SEND expert's advice will be on whether the school's policies which relate to SEND, or the application of these policies in relation to the suspended / excluded pupil,

were legal, reasonable and procedurally fair. If the SEND expert believes that this was not the case, they will, where possible, advise the panel on the possible contribution this could have made to the circumstances of the pupil's suspension / exclusion.

Where the school does not recognise that a pupil has SEND, the SEND expert will advise the panel on whether they believe the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEND that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's suspension / exclusion.

The SEND expert will not criticise a school's policies or actions simply because they believe a different approach should have been followed or because another school might have taken a different approach.

### **Appointing a clerk**

The LA will decide whether to appoint a clerk to the independent review panel, or to make alternative arrangements to administer the panel.

The LA will ensure that the clerk did not serve as clerk to the governing board when the decision was made not to reinstate the pupil.

### **The role of a clerk**

The clerk's role is to provide advice to the panel and parties to the review on procedure, law and statutory guidance on suspensions / exclusions.

The clerk will:

- identify in advance of the meeting whether the pupil will be attending. Where a permanently excluded pupil is attending the hearing, consideration should be given in advance as to the steps that will be taken to support their participation. If the permanently excluded pupil is not attending, it should be made clear that they may feed in their views through a representative or by submitting a written statement
- Identify, in advance of the meeting, whether any alleged victims of the incident(s) leading up to the suspension / exclusion wish to attend the panel hearing, taking reasonable steps to enable them to feedback their views, irrespective of their attendance.
- Ensure that the panel is able to hear from any witnesses to the incident(s) leading to the suspension / exclusion, taking into account the fact that some of these people may be pupils at the school (Pupils under 18-years-old will not be allowed to appear in person without parental consent).

Ensure that all parties are:

- Provided with copies of relevant papers at least five school days before the review, notifying the panel if any requested documents have not been provided in case the panel wishes to adjourn until a later date.

- Informed about who is attending the meeting, and what their roles are.
- Attend the review and ensure that minutes are produced in accordance with instructions from the independent review panel.
- Where a clerk is not appointed, the LA will undertake the functions outlined in paragraphs 16.1 and 16.2 of this policy.

## **The duties of independent review panel members in the conduct of a review panel**

The role of the panel is to review the governing board's decision not to reinstate a permanently excluded pupil. In reviewing the decision, the panel will 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 will apply the civil standard of proof, rather than the criminal standard of 'beyond reasonable doubt'.

Following the review, the panel will do one of the following:

- Uphold the decision.
- Recommend that the governing board reconsiders reinstatement.
- Quash the decision and direct that the governing board reconsiders reinstatement.

The panel's decision does not have to be unanimous and can be decided by a majority vote. It is binding on the pupil, parents, the governing board, headteacher and the LA.

Where a social worker is present, the panel must have regard to any representation made by the social worker of how the pupil's experiences, needs, safeguarding risks and/or welfare may be relevant to the pupil's permanent exclusion.

Where a VSH is present, the panel must have regard to any representation made by the social worker of how any of the child's background, education and safeguarding needs were considered by the headteacher in the lead up to the permanent exclusion or relevant to the pupil's permanent exclusion.

## **Reconsidering reinstatement following a review**

Where the independent review panel instructs the governing board to reconsider their decision not to reinstate a pupil, they will do so within 10 school days of being given notice of the review panel's decision.

If, following reconsideration, the governing board offers to reinstate the pupil but the parents decline, no adjustment will be made to the school's budget.

Following reconsideration, the governing board will notify the parents, the headteacher and the LA of their reconsidered decision and the reasons for this.

## **Criminal investigations**

The headteacher will not postpone taking a decision to suspend / exclude a pupil due to a police investigation being underway, or any criminal proceedings that are in place.

The headteacher will give particular consideration when deciding to suspend / exclude a pupil where evidence is limited by a police investigation, to ensure that any decision made is fair and reasonable.

If the governing board is required to consider the headteacher's decision in these circumstances, they will not postpone the meeting and will make a decision based on the evidence available.

## **Training requirements**

The LA will ensure that all independent review panel members and clerks have received training within the two years prior to the date of the review.

Training will cover:

- The requirements of the legislation, regulations and statutory guidance governing suspensions / exclusions.
- The need for the panel to observe procedural fairness and the rules of natural justice.
- The role of the chair of a review panel.
- The role of the clerk to a review panel.
- The duties of headteachers, governing boards and the panel under the Equality Act 2010.
- The effect of section 6 of the Human Rights Act 1998 and the need to act in a manner compatible with human rights protected by that Act.

Clerks will also have an up-to-date understanding on developments in case law which are relevant to exclusion.

## Reviewing the Headteacher's Suspension / Exclusion Decision

