
Title of Policy/Procedure

Exclusions

Reviewer(s):

Behaviour and Safeguarding Board

To be read in conjunction with the following policies:

School Behaviour Policy

Consultation Process

N/a

Policy Date:

18 March 2022

Review Date:

March 2024

This policy has been ratified by (please delete as appropriate):

- Education Standards and Strategy Committee

1. Introduction

- 1.1. This Policy sets out the Framework for how Exclusions are managed within schools in the Blue Kite Trust.

2. Legislation

2.1. The principal legislation to which this policy relates is:

- a. The Education Act 2002, as amended by the Education Act 2011;
- b. The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012;
- c. The Education and Inspections Act 2006; and
- d. The Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007.

Section 51A of the Education Act 2002 as amended by the Education Act 2011

The School Discipline (pupil exclusions and reviews) (England) Regulation 2012

Sections 100 to 108 of the Education and Inspections Act 2006

The Education (provision of full-time education for excluded pupils) (England) Regulations 2007

Equality Act 2010 (discrimination claims)

The Human Rights Act 1998 – cases relating to the European Convention On Human Rights can be brought in British courts

2017 DFE Exclusion Guidance - it is noted that within the 2017 Exclusion Guidance there is a guide for parents/carers at Annex C

Timpson Review's May 2019

As a Trust, under the background of the Timpson Review, we support our schools to put in place positive behaviour policies and practise to develop the 4 key pillars to ensure exclusion is a last resort.

Timpson Review 4 Key Pillars:

- 1) **Ambitious leadership: setting high expectations for every child**
- 2) **Equipping: giving schools the skills and capacity to deliver**
- 3) **Incentivising: creating the best conditions for every child**
- 4) **Safeguarding: ensuring no child misses out on education**

3. Decision to Exclude a Pupil

Exclusion may be used for:

- Persistent disruptive behaviour when all strategies have been exhausted and permanent exclusion is the last resort
- A serious "one off" offence such as:
 - Violence to another pupil or member of staff
 - Sexual abuse or assault;
 - Selling illegal drugs,
 - Carrying an offensive weapon

- 3.1. Each Academy within the Trust will endeavour to avoid exclusion wherever possible. A decision to exclude a pupil for a fixed period is taken only in response to very serious breaches of the school's behaviour policy, including persistent disruptive behaviour, where these are not serious enough to merit permanent exclusion nor minor enough for detention to be appropriate.
- 3.2. Fixed term exclusion is likely to be the minimum sanction for a malicious allegation against a member of staff. Repeated malicious allegations are likely to result in Permanent Exclusion.
- 3.3. Pupils may be excluded permanently or for one or more fixed periods of time up to a maximum of 45 days in one academic year.
- 3.4. Fixed term exclusions do not have to be continuous and in exceptional circumstances may be converted into permanent exclusions.
- 3.5. Unofficial exclusions, are unlawful even with parental consent.
- 3.6. A decision to exclude a pupil permanently will only be taken:
 - a. in response to a serious breach, or persistent breaches, of the school's behaviour policy; and
 - b. where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.
- 3.7. The school will follow the latest DfE guidance regarding exclusions from schools for both fixed term and permanent exclusions to ensure that students are treated fairly and not discriminated against.
 - a. Statutory Guidance: Exclusion from maintained schools, academies and student referral units in England
<https://www.gov.uk/government/publications/school-exclusion>
- 3.8. The decision on whether to exclude is for the head teacher in the individual school within the Trust to take. However, where practical, head teachers should talk the situation with the CEO.
- 3.9. Whilst an exclusion may still be an appropriate sanction, head teachers will take account of any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it comes to light that a pupil has suffered trauma such as bereavement or has mental health issues. How these contributing factors have been considered needs to be recorded as part of the exclusion report held on the pupil's file.
- 3.10. The exclusion will be recorded in writing and held on the pupil's file.

4. Early Intervention

- 4.1. Early intervention to address underlying causes of disruptive behaviour will include an assessment of whether appropriate provision is in place to support any SEND or vulnerabilities that a pupil may have. Head teachers will also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems. All early intervention work needs to be appropriately evidenced on the pupil's file. We would expect the Lighthouse Team to have had involvement before any move to exclusion is made.
- 4.2. Where a pupil has received multiple exclusions, or is approaching the legal limit of 45 school days of fixed period exclusion in an academic year, head teachers will consider whether exclusion is providing an effective sanction.
- 4.3. An 'internal exclusion' could mean being excluded for a fixed period from their classroom and the pupil works elsewhere in the school.

5. Informing Parents

- 5.1. Whenever a head teacher excludes a pupil they will, without delay, notify parents of the period of the exclusion and the reasons for it.
- 5.2. They will also, without delay, provide parents with the following information in writing:
 - a. the reasons for the exclusion;
 - b. the period of a fixed period exclusion or, for a permanent exclusion, the fact that it is permanent;
 - c. that for the first five school days of an exclusion (or until the start date of any alternative provision where this is earlier) parents are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parents may be given a fixed penalty notice or prosecuted if they fail to do so.
 - d. parents' right to make representations about the exclusion to the Local Governing Body and how the pupil may be involved in this;
 - e. how any representations should be made; and
 - f. where there is a legal requirement for the local governing body to consider the exclusion, that parents have a right to attend a meeting, be represented at this meeting (at their own expense) and to bring a friend.

6. Alternative Provision

- 6.1. The school will take reasonable steps to set work for the pupil during the first five days of the exclusion.

- 6.2. Alternative provision will be arranged for exclusions of more than five days, arranged by the local governing body for fixed term exclusions and arranged by the Local Authority for permanent exclusions.

7. Informing the Local Governing Body

- 7.1. The head teacher must, without delay, notify the local governing body, the CEO of the Trust and the local authority of:
- a. a permanent exclusion (including where a fixed period exclusion is made permanent);
 - b. exclusions which would result in the pupil being excluded for more than five school days (or more than ten lunchtimes) in a term; and
 - c. exclusions which would result in the pupil missing a public examination or national curriculum test.
- 7.2. Notifications must include the reasons for the exclusion and the duration of any fixed period exclusion
- 7.3. For a permanent exclusion, if the pupil lives outside the local authority in which the school is located, the head teacher must also advise the pupil's 'home authority' of the exclusion without delay.

8. The requirements on a local governing body to consider an exclusion

- 8.1. The local governing body must consider the reinstatement of an excluded pupil within 15 school days if:
- a. the exclusion is permanent;
 - b. it is a fixed period exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term; or
 - c. it would result in a pupil missing a public examination or statutory test.
- 8.2. If requested to do so by the parents, the local governing body must consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion if a pupil would be excluded from school for more than five schooldays, but not more than 15, in a single term.
- 8.3. Where an exclusion would result in a pupil missing a public examination or national curriculum test there is a further requirement for a local governing body, so far as is reasonably practicable, to consider the exclusion before the date of the examination or test.
- 8.4. In the case of a fixed period exclusion which does not bring the pupil's total number of days of exclusion to more than five in a term, the local governing body must consider any representations made by parents, but it cannot direct reinstatement and is not required to arrange a meeting with parents.

- 8.5. The process the local governing body follows when considering an exclusion will follow the statutory guidance: Exclusion from maintained schools, academies and student referral units in England.

<https://www.gov.uk/government/publications/school-exclusion>

9. The requirements on a local governing body in preparing for the consideration of a permanent exclusion decision

- 9.1. The Governors' Panel will comprise a minimum of three members of the Local Governing Body; they should not be Staff Governors. No Governor should serve if they have knowledge of the incident, or have a connection with the pupil which could affect his/her ability to act impartially. If necessary governors from other LGBs within the Trust or Trustees may be used to form the panel. The panel can decide if they would like an LA representative with the relevant expertise to be on the panel.
- 9.2. They should have had sufficient training to be able to effectively challenge the Headteacher's decision and ensure all necessary evidence is considered appropriately. One member of the Panel should be elected to chair the hearing
- 9.3. Prior to the hearing, the school will also provide a body of evidence which should contain the following reports/statements, circulated to all parties at least 5 days prior to the hearing, which should include but not limited to:
- A log of behaviour incidents and associated sanctions
 - The letter from Headteacher to parent/s confirming exclusion and stating the reason/s for exclusion.
 - Written evidence where the head teachers has given the pupil an opportunity to present their case
 - Written evidence of contributory factors that have been taken into account
 - Written evidence of early intervention that has taken place
 - Details of any previous exclusions
 - Previous correspondence between school, parents and other agencies (if involved)
 - Staff and any other witness statements regarding the incident/s which led to the permanent exclusion. (The school will anonymise or summarise student statements to protect the identity of those providing statements.)
 - Reports of counselling undertaken
 - Details of the support provided the student prior to the decision to exclude.
 - A statement from the SENDCo detailing the student's needs and the school's adjustments to meet these needs, and any additional reports from other professionals such as Educational Psychologists.

- A copy of the school's policies on behaviour and up-to-date DfE guidelines.
 - A record of the student's attendance/absence
 - A copy of any external or other reports by other agencies e.g. social care, EWO, that may be appropriate.
 - A report of action taken against other students who may have been involved in the incident/s
- 9.4. Before the packs are sent out, they must be checked and signed off confirming that:
- The information is fully complete
 - Only information associated with the exclusion has been included
 - All sensitive and personal information about other individuals has been blacked out and independently checked by another person.
- 9.5. The local governing body should:
- not discuss the exclusion with any party outside of the meeting;
 - allow parents and pupils to be accompanied by a friend or representative (where a pupil under 18 is to be invited as a witness, the local governing body should first seek parental consent and invite the parents to accompany their child to the meeting);
 - have regard to their duty to make reasonable adjustments for people who use the school and consider what reasonable adjustments should be made to support the attendance and contribution of parties at the meeting (for example where a parent or pupil has a disability in relation to mobility or communication that impacts upon their ability to attend the meeting or to make representations); and
 - identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on his / her own behalf (such as providing accessible information or allowing them to bring a friend), taking into account the pupil's age and understanding.

10. The requirements on a local governing body when considering the reinstatement of an excluded pupil

- 10.1. Where the local governing body is legally required to consider an exclusion, they must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.
- 10.2. The local governing body must also consider any representations made by:
- parents;
 - the head teacher; and
 - a parent may invite a representative of the local authority to attend a meeting

of an Academy's local governing body as an observer; that representative may only make representations with the local governing body's consent.

10.3 A typical structure for the hearing is set out below:

- Introductions and initial questions
- Headteacher's report and presentation of school evidence
- Questions of the Headteacher from the panel members
- Questions of the Headteacher from the others represented at the hearing
- Presentation from the parents/carers
- Questions of parents/carers from the panel
- Questions of the parents or carers from others represented at the hearing
- A short final statement from the Headteacher
- A short final statement from the parents or carers
- The hearing will then be suspended to allow the governors to make a decision.
- Once a decision has been agreed, the governors will reconvene the hearing and inform all parties of their decision.
- At the Governors Review Hearing the Panel will decide whether to uphold the exclusion or direct reinstatement of the student immediately or on a particular date.
- Should further information be required to make the decision the Panel may adjourn the meeting to a later date agreed by all parties.

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

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

10.5 Where reinstatement is not practical because for example, the pupil has already returned to school following the expiry of a fixed period exclusion or the parents make clear they do not want their child reinstated, the local governing body must, in any event, consider whether the head teacher's decision to exclude the child was justified based on the evidence.

11. The requirements on a local governing body to notify people after their consideration of an exclusion

- 11.1. Where legally required to consider an exclusion, the local governing body must notify parents, the head teacher and the local authority of their decision, and the reasons for their decision, in writing and without delay.
- 11.2. Where the pupil resides in a different local authority from the one that maintains the school, the local governing body must also inform the pupil's 'home authority'.
- 11.3. In the case of a permanent exclusion the local governing body's notification must also include the information below.
- The fact that it is permanent.
 - Notice of parents' right to ask for the decision to be reviewed by an independent review panel and the following information:
 - a. the date by which an application for a review must be made (i.e. 15 school days from the date on which notice in writing of the local governing body's decision was given to parents;
 - b. the name and address to whom an application for a review (and any written evidence) should be submitted;
 - c. that any application should set out the grounds on which it is being made and that, where appropriate, this should include a reference to how the pupil's special educational needs are considered to be relevant to the exclusion;
 - d. that, regardless of whether the excluded pupil has recognised special educational needs, parents have a right to require the Academy Trust to appoint an SEN expert to attend the review;
 - e. details of the role of the SEN expert and that there would be no cost to parents for this appointment;
 - f. that parents must make clear if they wish for a SEN expert to be appointed in any application for a review;
 - g. that parents may, at their own expense, appoint someone to make written and / or oral representations to the panel and that parents may also bring a friend to the review.

12. Independent Review Panel

- 12.1. An appeal must be submitted to the Clerk to the Trust, The Blue Kite Trust, Ferndale School, Wiltshire Ave, Swindon, SN21NX , email: Richardsona@bluekitetrust.org.uk
- 12.2. The Trust will be using Swindon - School Exclusion Reviews Clerking Service – to support this process
- 12.3. If applied for by parents within the legal time frame, the Academy Trust will, at their own expense, arrange for an independent review panel hearing to review the decision of a local governing body not to reinstate a permanently excluded pupil.
- 12.4. The legal time frame for an application is:
 - a. within 15 school days of notice being given to the parents by the local governingbody of their decision to uphold a permanent exclusion; or
 - b. where an application has not been made within this time frame, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion.
- 12.5. Any application made outside of the legal time frame must be rejected by the Academy Trust.
- 12.6. The Academy Trust must not delay or postpone arranging an independent review panel where parents also make a claim of discrimination in relation to the exclusion to the First-tier Tribunal (Special Educational Needs and Disability) or the County Court
- 12.7. The Academy Trust must take reasonable steps to identify a date for the review that all parties are able to attend. However, the review must begin within 15 school days of the day on which the School received the parent’s application for a review (panels have the power to adjourn a hearing if required).
- 12.8. The Academy Trust must arrange a venue for hearing the review, which must be in private unless the independent review panel directs otherwise and must take all reasonable steps to ensure the venue for the review is appropriate, accessible to the parties, and has a suitable area for the parties to wait separately from the panel before the review.
- 12.9. Whether or not the school recognises whether a pupil has SEND needs, all parents have the right to request the presence of an SEND expert at the meeting of the independent review panel.

12.10. The independent review panel does not have the right to reinstate a permanently excluded pupil:

- a. Where the panel finds that the local governing body decision is flawed on judicial grounds it may direct that the decision is reconsidered – if this recommendation is made, the local governing body must reconvene within 10 school days of being notified.
- b. Where the panel finds that the local governing body decision is flawed on judicial grounds and the local governing body does not overturn the decision, then the independent review panel will be expected to order that the Trust makes an additional payment of £4,000 towards the cost of the alternative provision.

13. Appointing independent review panel members – Swindon Clerking Service will:

13.1 Provide a fully trained and experienced Panel Clerk who will operate in accordance with the latest version of the Department for Education guidance on exclusion reviews, with access to advice from a Council Solicitor.

13.2 Perform clerking services in a skilful and competent manner.

13.3 Provide access to a pool of trained Review Panel Chairs and members.

13.4 Negotiate dates for the hearings that are agreeable to all parties and within the statutory timeframe.

13.5 Provide impartial independent advice to the Academy and the appellants on the process.

13.6 Arrange review hearings at the Civic Offices within the statutory time limit.

13.7 Arrange for three trained Panel members to attend to hear and determine the review.

13.8 Issue the necessary notices and paperwork to the relevant parties.

13.9 Arrange for interpreting or signing as required (costs met separately by the Academy).

13.10 Arrange for a Special Education Needs (SEN) advisor to be available at the meeting if requested by the Parent / Appellant (costs to be met separately by the Academy).

13.11 Respond to applications for Judicial Review, insofar as they relate to the matters referred to above (cost to be met separately by the Academy).

13.12 Arrange for further legal advice for the panel where necessary (cost to be met separately by the Academy).

13.13 Attend the hearing to record the proceedings, voting outcomes, Panel decisions and to provide independent advice to the Panel as necessary.

13.14 Notify all parties of the decision in writing and by phone.

13.15 Invoice the Academy for the standard cost of each appeal plus any agreed additional costs as referred to in paragraphs 1.9 – 1.12 above.

13.16 Comply with the Appeals Code at all times, and work in a positive way endeavouring to respond to requests for help as soon as possible.

13.17 Produce relevant notes to inform the decision-making process and retain them for five years. However, the Team will not produce minutes.

14 Independent Review Panel - The Academy Trust will:

14.1 Operate within the latest version of the Department for Education guidance on exclusions and follow its own policies and procedures on exclusions.

14.2 Advise the parent in the Governor's decision letter of the right to have a SEN representative at the review hearing, the right to request a Local Authority representative to attend as an observer and information on who can attend the hearing and what support the parent can have at the hearing.

14.3 Provide the Review Clerk with the necessary documentation 6 school days before the hearing, in accordance with instructions given by the Clerk, which will include:

- The local governing body's decision;
- The minutes of the local governing body's meeting;
- The Head teacher's letter of exclusion;
- Documents relied on in reaching the decision to exclude, such as witness statements and teacher reports, which should all be signed and dated;
- The appropriate pupil records – for example behaviour, attendance, reward/success;
- Details of any personal support plan and any other support documents;
- Letters to and from the parents regarding behaviour, if relevant;
- A copy of the behaviour policy, school rules and any other policy relevant to the exclusion;
- A copy of the Form sent to the Local Authority by the Academy showing the reason for the permanent exclusion.
- Any other information the Council may reasonably require in connection with undertaking the review.

14.4 Provide a contact at the Academy who will liaise with the Clerk.

14.5 Negotiate dates for hearings that are agreeable to all parties, for the Review to be held within the required 15 schools days of receipt.

14.6 Arrange for a Representative and appropriate witnesses to attend the hearing who will present the School's case and respond to questions from the Panel.

14.7 Indemnify the Panel members, any SEN Advisor, and Council officers against any reasonable legal costs and expenses they may incur in connection with any decision or action taken in good faith whilst acting as administrators or members of the Review Panel.

14.8 Act on the decisions of the Review Panel. Failure to do so without due cause may also result in the termination of the service.

14.9 Pay the agreed invoice within the required timeframe.

15 Ensuring that independent review panel members and clerks are trained

A person may not serve as a member of an independent review panel if they:

- 15.1.1 are a member or trustee of the Academy Trust or local governing body of the excluding school;
- 15.1.2 are the head teacher of the excluding school or anyone who has held this position in the last five years;
- 15.1.3 are an employee of the Academy Trust, or the local governing body, of the excluding school (unless they are employed as a head teacher at another school);
- 15.1.4 have, or at any time have had, any connection with the Academy Trust; school; parents or pupil; or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality (though an individual must not be taken to have such a connection simply because they are a head teacher at another school); or
- 15.1.5 have not had the required training within the last two years
- 15.1.6 where possible, panel members who are local governors or head teachers should reflect the phase of education (primary / secondary) and type of school from which the pupil was excluded.

The Academy Trust via Swindon Clerking Service must ensure that all independent review panel members and clerks have received training within the two years prior to the date of the review.

This training must have covered:

- 15.1.7 the requirements of the primary legislation, regulations and statutory guidance governing exclusions (which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision making);
- 15.1.8 the need for the panel to observe procedural fairness and the rules of natural justice;
- 15.1.9 the role of the chair of an independent review panel;
- 15.1.10 the role of the clerk of an independent review panel;
- 15.1.11 the duties of head teachers, local governing bodies and the panel under the Equality Act 2010; and
- 15.1.12 the effect of section 6 of the Human Rights Act 1998 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act in a manner compatible with human rights protected by that Act.

16. School registers

16.1 A pupil's name will be removed from the school admissions register if:

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

16.2 Where an application for an independent review has been made, the governor panel will wait until that review has concluded before removing a pupil's name from the register. Where alternative provision has been made for an excluded pupil and they attend it, code B (education off-site) or code D (dual registration) will be used on the attendance register. Where excluded pupils are not attending alternative provision, code E (absent) will be used.

Appendix A - A summary of the local governing body's duties to review the headteacher's exclusion decision

