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## **Exclusion Policy**

**Review By:** September 2018  
**Revised:** September 2017

This policy sets out the arrangement in respect of the exclusion of pupils from the school under the Education Act (No. 2) 1986 as amended by the Education Act 1993, as amended by the Education Act 1997. It has been brought up to date on 5/1/15 –and includes Section 51A of the Education Act 2002, as inserted by the Education Act 2011, the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012, section 100-108 of Education and Inspection Act 2006 and the Education Provision of full-time education for excluded pupils in England Regulations 2007.

At all times the policy will be administered to the most up to date DfE guidance document – Exclusion from maintained schools, academies and pupil referral units in England, January 2015. Reference will be made to Calderdale’s and National guidance. This is kept with this policy for reference.

## **1. The Role of the Principal**

1.1 The Principal has the sole responsibility for the exercise of the power to exclude a pupil from the school.

1.2 Although the law requires notification of only those exclusions in excess of five days in aggregate in any one term, the Principal must notify the Local Governing Body of all exclusions regardless of their duration.

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

2.1 The Governing Body needs to keep under review the use of exclusion from the school, in the wider context of the school’s Policy for Discipline.

2.2 For each individual exclusion of more than five days or involving the loss of opportunity to take a public examination, the Governing Body has the power to direct the Principal to reinstate. The Governing Body should make arrangements to ensure that they know what is happening about the case throughout the process once exclusion has taken place and to keep the position under review.

## **3. Permanent Exclusions and Notifications**

3.1 The Principal must inform the pupil’s parents of the exclusion and the specific reasons for it.

3.2 The Principal must inform the parents of their right to make a written and oral representation to the Governing Body.

3.3 The Principal must inform the Governing Body of the School.

3.4 The Principal must immediately notify the LA of all permanent exclusions under section 23 of the 1986 Education Act.

## **4. Fixed Period Exclusion**

4.1 If the exclusion is for more than five days or involves the loss of opportunity to take a public examination, the Principal must immediately inform the Local Governing Body. Work will be sent home with each excluded child and every effort will be made to reintegrate the child as smoothly as possible after the term of their exclusion elapses.

4.2 The Principal must inform the Local Governing Body of each period of exclusion. Once forty-five days has been reached during the academic year then the pupil would be permanently excluded and parents must be notified of their rights. Should parents appeal then we will follow Calderdale Children's and Young People's Services guidelines.

**NOTICE OF APPEAL AGAINST DECISION TO EXCLUDE A PUPIL PERMANENTLY**

BEFORE COMPLETING THIS NOTICE YOU ARE ADVISED TO READ THE ACCOMPANYING NOTES

Name and address of the parent appealing. Please state a telephone number where you may be contacted if necessary.	
Name of pupil and address (if different from above)	
Date of birth of pupil	
School	
Date of decision	
Do you wish to have your evidence presented in writing only or by oral submissions also? (please see notes for guidance)	
If you want to present oral evidence are there any dates on which you could not attend?	
Do you wish the Academy to arrange for an interpreter to be present and, if so, what language?	Yes <input type="checkbox"/> No <input type="checkbox"/> (please tick) Language_____
If you have a disability and wish the Academy to provide assistance, what are your needs	Needs:

## **GROUNDS FOR REVIEW**

Please state as fully as you can why you are applying for a review of the School Governors' decision not to reinstate your child following permanent exclusion. If you need more room, please continue on a separate sheet.

Please return this form to: Clerk to Governors, Abbey Park Primary Academy, Keighley  
Close, Illingworth, Halifax HX2 9DG

Date: .....

Signed .....

## **INDEPENDENT EDUCATION APPEALS SERVICE**

### **GUIDE TO EXCLUSION REVIEWS**

*PLEASE DETACH THIS SECTION AND KEEP IT FOR REFERENCE*

It is important that you read these notes before completing the Application for Review form. They should help you understand how the review process operates. They are only a summary guide to the law and procedure and do not purport to cover all possible eventualities.

If you have any queries or problems relating to the Review, you should ask the Clerk to the Independent Review Panel (the Panel).

### **1. RIGHT OF REVIEW**

If your child has been permanently excluded from any maintained School and has not been reinstated by the Governing Body, you have a legal right to apply for a review of that decision. If your child has been permanently excluded from an Academy Trust, as you read through this Guide, please substitute the word "Academy" where you see "School"; and "Principal" for "Head Teacher".

Regulations made under the Education Act 2002 provide for the local authority to make arrangements to constitute an Independent Review Panel to review the Governors' decision not to reinstate a pupil and, if requested in writing by the parent or a pupil who is over the age of 18, to appoint a Special Educational Needs (SEN) expert to provide impartial advice on how special educational needs may be relevant to the decision to exclude the pupil permanently. If you believe the exclusion has occurred as a result of discrimination, in addition to requesting a review by the Panel, you may make a claim under the Equality Act 2010 to the First-tier Tribunal (Special Educational Needs and Disability), in the case of disability discrimination.

**PLEASE NOTE THAT YOUR APPLICATION FOR A REVIEW MUST BE SUBMITTED BY THE DEADLINE OF 15 SCHOOL DAYS AFTER THE DAY ON WHICH YOU ARE GIVEN NOTICE IN WRITING OF THE GOVERNING BODY'S DECISION. ANY APPLICATION MADE OUTSIDE OF THE LEGAL TIME FRAME MUST BE REJECTED.**

### **2. THE REVIEW PANEL**

The Panel is composed of people who are independent of the Council. Councillors and employees of the local authority or the relevant school and anyone who has had any involvement that may raise doubts about their impartiality may not serve as panel members. When you attend the Review hearing you can expect to see a Panel with three members consisting of a lay member who has not worked in any school in a paid capacity, a person who is or has been a Head Teacher of a school and a person who has served as a school governor in the last five years. The hearing will be chaired by the lay member. There will also be a Clerk present to provide the Panel with advice on the law, statutory guidance and procedure. The decision reached at the end of the Review hearing is the decision of the Panel alone and not the Clerk, who is there to provide support. Review hearings are held at the Town Hall, Halifax, because it is a convenient and accessible venue.

Parents have a right to request the attendance of a SEN expert at a Review, regardless of whether the school recognises that their child has SEN. The SEN expert's role will not include making an assessment of your child's special educational needs.

### **3. PREPARING FOR THE REVIEW**

You are entitled to attend the Review and make written and oral representations to the Panel, as are the school and the local authority, and you may be represented or simply bring a friend along for support. If you wish to bring more than one friend or representative, please inform the Clerk who will seek the Panel's agreement in advance.

The Panel will consider the following papers:-

- a. The governing body's decision letter;
- b. the parents' Application for a Review and any supporting documents submitted;
- c. any policies or documents that the governing body was required to have regard to in making their decision;
- d. any documents submitted by any party which have been circulated 5 school days prior to the review; and
- e. any oral representations made or additional evidence given at the Review.

The excluded pupil may attend the hearing. If the Clerk is notified of their attendance in advance of the hearing, steps can be taken to support their participation. If they are not attending, they may submit a written statement. If you do not attend the hearing, issues may arise which the Panel would have found it helpful to investigate but may be unable to do so because the Panel is limited to your written documents. If upon receiving your papers, you find that you know any of the Panel members, please ring the Clerk and let us know. If we do not know until the day of the hearing, it is possible that it may have to be adjourned.

### **4. GROUNDS FOR REVIEW**

When filling in the Application for a Review, you should indicate all the arguments that you will be relying on and include all written evidence you are relying on with your Application. You may find it helpful to refer to paragraph 9 of these notes headed 'The Decision' to see how the Grounds for Review could be structured. For example, one of your reasons may be that you do not believe that your child did what s/he is accused of doing or that you do not believe that they should be excluded permanently for what s/he is accused of doing. Your application, where appropriate, should include reference to how your child's special educational needs are considered to be relevant to the exclusion. **PLEASE NOTE THAT REVIEW PANELS CANNOT DIRECT REINSTATEMENT OF THE PUPIL.**

The Department for Education has issued a guide for those with legal responsibilities in relation to exclusion, "Exclusion for maintained schools, Academies and pupil referral units in England, which has effect from 1 September 2012. This contains statutory guidance to which schools and Independent Review Panels must have regard.

### **5. ADJOURNMENTS AND ABSENCE**

If you do not turn up to the hearing without having sent an explanation, the Panel will deal with the review in your absence. They can hear oral evidence from the Governing Body's Discipline Committee and representations from the Head Teacher and the local authority.

If you find out that you cannot attend on the date fixed for the Review, please contact the Clerk to the Independent Review Panel as soon as possible, explaining why you cannot attend, so the Chairperson can consider whether the hearing should be adjourned. If you do not give reasonable notice, without good reason, the Chairperson will be entitled to refuse your request for an adjournment.

If you wish to rely on additional written evidence you should send it to the Clerk to the Independent Review Panel as soon as possible. If the other parties are not given sufficient notice, they will be entitled to ask for an adjournment. Similarly, if evidence which is new to you is presented at the hearing and you wish for some time to consider it, you should ask for an adjournment as soon as possible.

## **6. THE REVIEW**

The Review will be conducted in a non-threatening and non-adversarial manner. The hearing is held in private but Members of the Council on Tribunals may attend as observers. The Panel can choose the procedure to be followed, but the opportunity for all parties to have a fair and impartial hearing and to say everything they want to say is paramount. The hearing is reasonably informal but there is a structure and the order of the Review hearing will usually be:-

- a. The school's case presented by a representative of the Governing Body with any witnesses (including an alleged victim) and the Head Teacher, who may make further representations to the Panel.
- b. You can then ask questions about the school's case and the Panel can ask questions.
- c. Your case with any witnesses (including the excluded pupil) as to why you think your child should be reinstated.
- d. The school representatives can ask you questions and Panel members can ask questions.
- e. Statement by the SEN expert (if one has been requested by the parent) and/or the local authority representative (as applicable).
- f. The Panel can ask questions of the SEN expert/LA representative.
- g. Both the school and parents will sum up their cases, with parents having the last word.

The Panel Members can ask questions of any party at any time during the hearing.

## **7. SEN EXPERT**

The SEN expert will be a professional who has expertise and experience of the assessment and support of SEN with an understanding of the legal requirements on schools in relation to SEN and disability.

The SEN expert will not have had any previous involvement in the assessment or support of SEN for your child or any siblings, which might raise doubts about their ability to act impartially.

The role of the SEN is that of an expert witness, providing impartial advice to the Panel on how special educational needs might be relevant to the exclusion. The focus of the SEN expert's advice should be on whether the school's policies relating to SEN, or their application in relation to your child's exclusion, were legal, reasonable and procedurally fair. The SEN expert should not criticise a school's policies or actions simply because s/he believes a different approach should have been followed or because another school might have taken a different approach.



## **8. EVIDENCE**

It is up to you to prove your case. It is your decision whether to bring your child along to explain his/her conduct. The school is likely to bring the teacher who investigated the incident and interviewed pupils. If you propose to bring a character witness, the Clerk will seek the agreement of the Panel.

If you intend to rely on supporting documentation, please make sure to enclose it with the Application for Review form. This is important because the parties and the Panel can read it in advance of the hearing and delays can be avoided and also it can be considered if, for any reason, you do not attend the hearing.

## **9. THE DECISION**

The Panel must review the governing body's decision not to reinstate a permanently excluded pupil. In reviewing the decision, the Panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded and have regard to the interests of other pupils and people working at the school. The Panel will decide on the balance of probabilities whether your child was responsible for the behaviour complained of and, if so, whether or not in the circumstances permanent exclusion was a proportionate response by the school to that behaviour.

The Panel can decide to:

Uphold the exclusion decision

Recommend that the governing body reconsiders its decision, or

Quash the decision and direct that the governing body consider the exclusion again.

Where the Panel directs or recommends that the governing body reconsiders its decision, the governing body must reconvene to do so within 10 school days of being given notice of the Panel's decision.

The Panel may only quash the decision where it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review. The Panel must only take into account the evidence that was available to the governing body at the time of making its decision or which would, or should, have been available to the governing body if it had been acting reasonably.

When considering the governing body's decision in light of judicial review principles, the Panel should apply the following tests:

Illegality – did the Head Teacher or governing body act outside the scope of their legal powers in taking the decision to exclude?

Irrationality – was the decision of the governing body not to reinstate the pupil so unreasonable that it was not one a sensible person could have made?

Procedural impropriety – was the process of exclusion and the governing body's consideration so unfair or flawed that justice was clearly not done?

You will be told of the Review Panel's decision and the reasons for it in writing without delay. The decision is binding on you and your child, the governing body and the Head Teacher and the Local Authority.

If you have a complaint about the outcome of your Review hearing, you may write with your concerns or queries to the Clerk to the Independent Review Panel, Democratic and Partnership Services, Westgate House, Westgate, Halifax HX1 1PS. However, you cannot complain simply because you were not successful and it is not possible for the Clerk to change the outcome of the Independent Review. If you are still not satisfied and feel that you were not given a fair hearing, or that procedures were not properly followed, you could complain about maladministration to the Local Government Ombudsman by writing to PO Box 4771, Coventry CV4 0EH. You can go to the High Court for a judicial review of the Panel's decision on the grounds of illegality, irrationality or procedural impropriety. In this event, you would need to seek your own legal advice.