



[Moorlands Schools Federation] Exclusions Policy:

Review Due:	May 2021
Last Review	May 2020
Applicable to:	All Trust Schools
Reviewed By:	SP
Approved By:	Board of Trustees May 2020

Comments:

This policy has been re-drafted in line with the latest government guidelines. References to the local authority have been removed (except where legally required) and a package of supporting documents accompanies the policy which includes template letters, information about meeting agendas and guidelines for clerks. The policy was reviewed by Trust Leaders and points queried were checked with solicitors and amended accordingly. Draft approved by external solicitors.

The Board of Trustees of the Bath and Mendip Partnership Trust have agreed this policy, which applies to all schools within The Bath and Mendip Partnership Trust (the “**Trust**”).

1. Aims

1.1 The Trust aims to ensure that:

- the exclusions process is applied fairly and consistently;
- the exclusions process is understood by governors, staff, parents and pupils;
- pupils in school are safe and happy; and
- pupils do not become NEET (not in education, employment or training).

2. Responsibilities of the Head Teacher

2.1 The decision making process

2.1.1 Only the head teacher of the excluding school (the “**Head Teacher**”) (or the acting Head Teacher if the Head Teacher is absent), has the power to exclude a pupil from school on disciplinary grounds. The decision to exclude a pupil will only be taken in response to a serious breach or persistent breaches of the school’s behavior policy, and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school.

2.1.2 In considering the exclusion of a pupil, either permanently or for a fixed period, the Head Teacher should ensure that a thorough investigation of the incident is carried out, and consideration is given to:

- all of the relevant facts and evidence relating to the allegation(s);
- all of the relevant behavior policies;
- whether the incident was provoked (e.g. by bullying or harassment);
- consultation with other people and agencies (except where they may be involved in any review of the proposed exclusion);
- the pupil’s presentation of their case, where practical; and
- due regard to the Equality Act 2010.

2.1.3 Permanent exclusion should only be used as a last resort and, before deciding whether to permanently exclude a pupil, the Head Teacher will usually (subject to 2.1.4 below) seek to implement those strategies outlined in the school’s behavior policy, including fixed term exclusion.

2.1.4 Except where a one-off incident of sufficient gravity has taken place, the Head Teacher will not consider permanent exclusion unless and until such alternative strategies have been used without success.

2.1.5 The Head Teacher may if considered appropriate to do so impose a fixed term exclusion prior to a permanent exclusion. This is to allow the Head Teacher to ensure that all matters are taken into consideration. A fixed term exclusion will never be converted to a permanent exclusion but if the Head Teacher considers it appropriate, a permanent exclusion may be imposed to follow the fixed term exclusion.

2.1.6 The Head Teacher may exclude a pupil for one or more fixed periods up to a maximum of 45 school days in a single academic year, or permanently. For any period of exclusion, the Head Teacher will formulate a plan to:

- enable the pupil to continue their education; and
- examine the process of reintegration.

2.1.7 The school will take all reasonable steps to set and mark work for pupils during the first five school days of a fixed term exclusion and have alternative provision arranged from the sixth day.

2.2 Informing parents

2.2.1 The Head Teacher will make sure that the parent(s) / carer(s) are notified immediately of the period of the exclusion and the reasons for it, either in person or by telephone, followed by a letter within one school day. An exclusion will normally begin on the next school day.

2.2.2 The letter will explain:

- the reason(s) for the exclusion;
- for a fixed term exclusion, the period of the fixed term;
- for a permanent exclusion, that it is permanent;
- the arrangements for enabling the pupil to continue their work;
- about parent(s) / carer(s) right to make representations about the exclusion to the governing body and how the pupil may be involved in this;
- about relevant sources of free and impartial information for parent(s) / carer(s);
- the parent(s) / carer(s) right to see and have a copy of their child's record; and
- that for the first five school days of an exclusion (or until the start of any alternative provision) parents / carer(s) are legally required to ensure that their child is not present in a public place during school hours without reasonable justification, and that parent(s) / carer(s) may be given a fixed penalty notice or prosecuted if they fail to do so.

2.2.3 Where alternative provision is being arranged (for fixed term exclusions of more than five days), then the following additional information must be included with the letter where it can be reasonably found out within the timescale:

- the start date for any provision of full-time education that has been arranged for the child during the exclusion;
- the start and finish times of any such provision, including the times for morning and afternoon sessions where relevant;
- the address at which the provision will take place; and
- any information required by the pupil to identify the person they should report to on the first day.

2.2.4 Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session, it may be provided in a subsequent notice, but it will be provided no later than 48 hours before the provision is due to start. The only exception to this is where alternative provision is to be provided before the sixth day of an exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.

- 2.2.5 If a pupil is excluded for a further fixed-period following their original exclusion, or is subsequently permanently excluded, the Head Teacher must inform the pupil's parent(s) / carer(s) without delay and issue a new exclusion notice to the pupil's parent(s) / carer(s).

2.3 Informing the Trust's CEO, the governing body and local authority

- 2.3.1 The Head Teacher will immediately notify the Trust's CEO, the governing body of the excluding school and the local authority of:

- any permanent exclusion (including where a fixed-period exclusion is followed by a decision to permanently exclude a pupil);
- any exclusion which would result in the pupil being excluded for a total of more than five school days (or more than 10 lunchtimes) in a term; and
- any exclusion which would result in the pupil missing a public examination or national curriculum test.

Schools and governing bodies should ensure the templates and notification forms attached to this policy are used to ensure correct parties are notified of exclusions.

- 2.3.2 For a permanent exclusion, if the pupil lives outside the local authority area in which the school is located, the Head Teacher will also immediately inform the pupil's 'home authority' of the exclusion and the reason(s) for it without delay.

3. Responsibilities of the governing body

3.1 Establishing the Exclusion Committee

- 3.1.1 Governors do not have the right to exclude a pupil. However, the governing body does have a duty to consider parent(s) / carer(s) representations about an exclusion.

- 3.1.2 The governing body may delegate this function to a designated sub-committee consisting of at least three governors (the "**Exclusion Committee**").

3.2 Considering reinstatement

- 3.2.1 The Exclusion Committee must consider the reinstatement of an excluded pupil within 15 school days of receiving notice of the exclusion if:

- the exclusion is permanent;
- 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
- it would result in a pupil missing a public examination.

- 3.2.2 In the case of a fixed-period exclusion which does not bring the pupil's total number of days of exclusion to more than 5 school days in a term, the Exclusion Committee must consider any representations made by the pupil's parent(s) / carer(s), but cannot direct reinstatement and is not required to arrange a meeting with the pupil's parent(s) / carer(s).

- 3.2.3 If requested to do so by the pupil's parent(s) / carer(s), the Exclusion Committee will consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion in cases where the pupil would be excluded for more than five but less than 15

school days in a term. In the absence of any such request, the Exclusion Committee is not required to meet and cannot direct the reinstatement of the pupil.

3.2.4 Where an exclusion would result in a pupil missing a public examination or national curriculum test, the Exclusion Committee must, so far as it is practicable, consider the exclusion before the date of the examination or test. If it is not practicable for a sufficient number of governors to consider the exclusion before the examination or test, the Chair of Governors alone may consider the exclusion and decide whether or not to reinstate the pupil. In such cases, parent(s) / carer(s) will still have the right to make representations and must be made aware of this right.

3.2.5 The following parties must be invited to a meeting of the Exclusion Committee and allowed to make representations:

- parent(s) / carer(s) (and, where requested, a representative or friend);
- the Head Teacher; and
- a representative of the local authority (if requested by the parent(s)/carer(s))¹

3.2.6 Where the Exclusion Committee is legally required to consider the reinstatement of an excluded pupil they should:

- not discuss the exclusion with any party outside the meeting;
- ask for any written evidence in advance of the meeting (including witness statements and other relevant information held by the school such as those relating to a pupil's special educational needs ("**SEN**");
- where possible, circulate any written evidence and information, including a list of those who will be present, to all parties at least five school days in advance of the meeting;
- allow the pupil's parent(s) / carer(s) and the pupil to be accompanied by a friend or representative (where a pupil under 18 is invited as a witness, the Exclusion Committee should first seek parental consent and invite the parents to accompany their child);
- comply with 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; and
- identify the steps they will take to enable and encourage the excluded pupil to attend the meeting and speak on their own behalf, taking into account the pupil's age and undertaking; or how the excluded pupil may feed in their views by other means if attending the exclusion meeting is not possible.

3.3 Fixed term exclusions

3.3.1 If the pupil has returned to school before the Exclusion Committee meets, the meeting will allow the pupil's parent(s) / carer(s) to give their views.

3.3.2 If the pupil is still excluded when the meeting takes place, the Exclusion Committee should decide whether to direct re-instatement. In reaching their decision the Exclusion Committee should:

¹ Parent(s)/Carer(s) may request the attendance of a representative of the local authority as an observer; that representative may only make representations with the governing board's consent.

- consider the pupil's parent(s) / carer(s) statements;
- have regard to the school's behavior policies and consider whether the Head Teacher has tried sufficient approaches to improve the pupil's behavior before resorting to exclusion, and whether any further strategies might be an alternative to exclusion.

3.4 Permanent exclusions

3.4.1 The Exclusion Committee should normally satisfy itself:

- for a one-off serious breach of behavior, that the offence took place; or
- for persistent bad behavior, all possible strategies to improve the pupil's behavior were tried without success.

3.4.2 In reaching their decision, the Exclusion Committee must, In light of their consideration either:

- decline to reinstate the pupil; or
- direct the reinstatement of the pupil immediately, or on a particular date.

3.4.3 The Exclusion Committee must ensure that clear minutes of the meeting are taken as a record of the evidence that was considered by the Exclusion Committee. These minutes should be made available to all parties on request.

3.4.4 In reaching their decision, the Exclusion Committee will ask all parties to withdraw before making their decision and will consider whether the exclusion was lawful, reasonable and procedurally fair and whether the Head Teacher followed their legal duties, including applying the civil standard of proof (i.e. on the balance of probabilities).

3.4.5 The Exclusion Committee should note the outcome of its consideration of the pupil's education record, along with copies of relevant papers for future reference. In cases where the Exclusion Committee considers parent(s) / carer(s) representations but does not have the power to direct a pupil's reinstatement, it should consider whether it would be appropriate to place a note of its findings on the pupil's educational record.

3.5 Notification

3.5.1 Where legally required to consider reinstating an excluded pupil, the Exclusion Committee must notify the pupil's parent(s) / carer(s), the Head Teacher and the local authority of its decision, and the reasons for it, in writing and without delay.

3.5.2 In the case of a permanent exclusion, where the Exclusion Committee decides not to reinstate the pupil, the Exclusion Committee's notification must also include the fact that it is permanent and notice of the pupil's parent(s) / carer(s) right to ask for the decision to be reviewed by an independent review panel together with the following information:

- 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 Exclusion Committee's decision is given to the pupil's parent(s) / carer(s);
- where and to whom an application for a review (and any written evidence) should be submitted;

- 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 SEN are considered to be relevant to the exclusion;
- that, regardless of whether the excluded pupil has SEN, parents have a right to require the Trust to appoint an SEN expert to advise the review panel;
- details of the role of the SEN expert; and
- that parents may, at their own expense, appoint someone to make written and/or oral representations to the panel.

3.5.3 The Exclusion Committee's notification must also notify the pupil's parent(s) / carer(s) of their right to make a claim under the Equality Act 2010 to the First Tier Tribunal (Special Educational Needs and Disability) within 6 months of the date on which the pupil was excluded in the case of disability discrimination, or to the County Court, in the case of other forms of discrimination, if the pupil's parent(s) / carer(s) believe that there has been unlawful discrimination in relation to the exclusion.

4. Independent review

4.1 If the pupil's parent(s) / carer(s) apply for an independent review within the legal time frame, the Trust will arrange for an independent review panel hearing to review the decision of the Exclusion Committee not to reinstate the permanently excluded pupil.

4.2 The legal time frame for an application is:

- within 15 school days of notice being given to the pupil's parent(s) / carer(s) by the Exclusion Committee of its decision not to reinstate the permanently excluded pupil; or
- where an application has not been made within this timeframe, within 15 school days of the final determination of a claim of discrimination under the Equality Act 2010 in relation to the exclusion.

4.3 Any application made outside of the legal time frame must be rejected.

4.4 The pupil's parent(s) / carer(s) may request an independent review panel even if they did not make representations to, or attend, the meeting at which the Exclusion Committee considered reinstating the pupil.

4.5 The Trust may appoint a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions. Where appointed, the clerk must:

- make reasonable efforts to inform the following people of that they are entitled to make written representations to the panel, to attend the hearing and make representations to the panel and be represented:
 - the pupil's parent(s) / carer(s);
 - the Head Teacher; and
 - the Exclusion Committee.
- make reasonable efforts to circulate to all parties copies of relevant papers at least 5 school days before the review, including:
 - the Exclusion Committee's decision;
 - the pupil's parent(s) / carer(s) application for a review; and

- any policies or documents that the Exclusion Committee was required to have regard to in making its decision.
 - give all parties details of those attending and their role, once the position is clear; and
 - attend the review and ensure that minutes are produced in accordance with instructions from the panel.
- 4.6 The Trust will constitute the panel with either three or five members representing each of the three categories below. A five member panel must be constituted with two members from each of the categories of school governors and head teachers:
- a lay member to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer;
 - current or former school governors (including members of pupil referral unit management committees and directors of academy trusts) who have served as a governor for at least 12 consecutive months in the last five years, provided they have not been teachers or head teachers during that time; and
 - head teachers or individuals who have been a head teacher within the last five years.
- 4.7 A person may not serve as a member of a review panel if they:
- are a member/director of the Trust or governing body of the excluding school;
 - are the Head Teacher; or have been within the last 5 years;
 - are an employee of the Trust, the governing body or the excluding School;
 - have, or at any time have had, any connection with the Trust, the excluding school, the governing body, the pupil or their parent(s) / carer(s) or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality; or
 - have not had the required training within the last two years (see appendix 1).
- 4.8 The role of the panel is to review the Exclusion Committee'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 must also apply the civil standard of proof (i.e. on the balance of probabilities). Following its review, the panel can decide to:
- uphold the governing body's decision;
 - recommend that the governing body reconsiders reinstatement; or
 - quash the governing body's decision and direct that they reconsider reinstatement.
- 4.9 The panel may only quash the governing body's decision if it considers that it was flawed when considered in the light of the principles applicable on an application for judicial review.
- 4.10 The panel's decision does not have to be unanimous and can be decided by a majority vote. In the case of a tied vote, the chair has the casting vote.
- 4.11 The panel's decision is binding on the pupil, their parent(s) /carer(s), the governing body, the Head Teacher and local authority.

- 4.12 New evidence may be presented to the panel, though the school may not introduce new reasons for the exclusion or for the decision not to reinstate the pupil and the panel must disregard any new reasons that are introduced.
- 4.13 Where present, the panel must seek and have regard to the SEN expert's view of how SEN might be relevant to the pupil's exclusion. Where a SEN expert has been requested but is not present, the panel should make parents aware of their right to request that the review is adjourned until such time as an SEN expert can attend.
- 4.14 The panel may adjourn on more than one occasion, if necessary. However consideration must be given to the effect of adjournment on the parties to the review, the excluded pupil and their parent(s) / carer(s) and any victim.
- 4.15 A review cannot continue if the panel no longer has representation from each of the three categories of members required. In this event the panel may be adjourned until the number can be restored.
- 4.16 Following the review, the panel must issue written notification to all parties without delay. This notification must include:
- the panel's decision and the reasons for it;
 - where relevant, details of any financial payment to be made if a governing body subsequently decides not to offer to reinstate a pupil; and
 - any information that the panel has directed the governing body to place on the pupil's educational record.
- 4.17 If a panel directs an Exclusion Committee to reconsider reinstatement it may order the Trust to make payment of £4,000 to the local authority in whose area the school is located, unless within ten school days of receiving notice of the panel's decision, the governing body decides to reinstate the pupil.
- 4.18 The clerk should ensure that minutes of the proceedings are taken, including details of attendance, voting and the decision. The minutes should be retained by the Trust for a period of at least five years as they may need to be seen by a court.
- 4.19 If the panel upholds the Exclusion Committee's decision, the clerk will immediately notify this to the local authority and the pupil's parent(s) /carer(s) and Exclusion Committee. If the pupil lives outside of the local authority in which the school is located, the clerk will make sure that the 'home authority' is also informed in writing without delay.

5. Reconsidering Reinstatement

- 5.1 Where the independent review panel directs or recommends that the Exclusion Committee reconsiders whether a pupil should be instated, the Exclusion Committee must reconvene within ten school days of being given notice of the panel's decision.
- 5.2 There is no requirement that the Exclusion Committee consist of different individuals in a reconsideration however the Trust will have regard to the reasons of the independent review panel and reserve the right to convene a fresh Exclusion Committee or an Exclusion Committee consisting of some new members.

- 5.3 The Exclusion Committee must conscientiously reconsider whether the pupil should be reinstated, whether the panel has directed or merely recommended it to do so.
- 5.4 In the case of either a recommended or directed reconsideration, the Exclusion Committee must notify the following people of their reconsidered decision and the reasons for it, in writing and without delay:
- the pupil's parent(s) / carer(s);
 - the Head Teacher; and
 - the local authority (and, where relevant, the 'home authority').
- 5.5 The reconsideration provides an opportunity for the Exclusion Committee to look afresh at the question of reinstating the pupil, in light of the findings of the independent review panel. There is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting.
- 5.6 The Exclusion Committee is not prevented from taking into account other matters that it considers relevant. It should, however take care to ensure that any additional information does not make the decision unlawful.
- 5.7 The Exclusion Committee should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the Exclusion Committee. These minutes should be made available to all parties on request.
- 5.8 The Exclusion Committee should base its reconsideration on the presumption that a pupil will return to the school if reinstated, regardless of any stated intentions by the pupil and/or their parent(s) / carer(s).
- 5.9 Any decision to offer reinstatement which is subsequently turned down by the pupil's parent(s) / carer(s) should be recorded on the pupil's educational record.
- 5.10 The Exclusion Committee's decision should demonstrate how they have addressed the concerns raised by the independent review panel; this should be communicated for all parties to understand.

6. Links with other policies

- 6.1 This exclusions policy is linked to the schools':
- behaviour policy; and
 - SEN policy and SEN information report.
- 6.2 Schools and governing bodies should ensure the attached forms and notices are used when communicating exclusion decisions.

Appendix 1: Independent review panel training

The Trust must ensure that all members of an independent review panel and clerks have received training within the two years prior to the date of the review. This training must have covered:

- 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;
- the need for the panel to observe procedural fairness and the rules of natural justice;
- the role of the chair and the clerk of a review panel;
- the duties of head teachers, governing bodies and the panel under the Equality Act 2010; and
- 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.

Further templates and notices included in the exclusions pack. Please ensure these are used when communicating exclusion decisions.