

Westminster Academy

Exclusion Policy

1. Introduction

The current Department for Education (DFE) guidance to be followed in relation to exclusions “Exclusions from maintained schools, academies and pupil referral units in England” was published in June 2012 and relates to all exclusions which occur from 1 September 2012.

Westminster Academy (the Academy) has a Behaviour Policy in place that promotes good behaviour. This policy is widely publicised so that pupils, parents and school staff are aware of the standards of behaviour expected and the range of sanctions.

Exclusion (either for a fixed period or permanent) is recognised as an appropriate sanction but it will usually only be used as a last resort when a range of other strategies have been exhausted. Most exclusions are the result of persistent breaches of the Academy’s Behaviour policy. However, a permanent exclusion can happen for a one off offence if a pupil has committed a serious breach of the Academy’s Behaviour policy.

The Principal, governing body, Independent Review Panel (IAP) members and clerks must by law have regard to the DFE guidance when deciding:

- Whether to exclude a pupil;
- Whether to uphold an exclusion;
- Whether to recommend or direct that the governing body considers the exclusion again.

2. Definitions used in the Policy

Use of term ‘parent’ within this policy:

In addition to the child’s birth parents, references to parents in the policy include any person who has parental responsibility (which includes the local authority where it has a care order in respect of the child) and any person (for example, a foster carer) with whom the child lives.

3. Education off site

The Academy has the power to direct a pupil off site for education to improve their behaviour. A pupil can also transfer to another school as part of a managed move with the consent of their parents.

4. Two types of exclusion

Fixed term exclusion

This is an exclusion for a fixed number of days. The pupil must remain at home up to the first 5 days (during which time the Academy should take reasonable steps to set and mark work for the pupil). For a fixed term exclusion of more than 5 days, full time education provision commences from the 6th day and must be organised by the Academy. A pupil may not be excluded for more than 45 days in a school year.

A pupil may also be excluded during lunchtimes for a fixed number of days. Each lunchtime exclusion is equivalent to half a day's fixed term exclusion.

Permanent Exclusion

The Principal may decide to permanently exclude a pupil if:

- a) The pupil has committed a serious breach or persistent breaches of the Academy's behaviour policy; and
- b) Allowing them to remain in the Academy seriously harms the learning or welfare of the pupil or others in the school.
- c) Examples of misconduct that might be considered as a serious breach are:
 - Unauthorised use of or supply of alcohol or drugs;
 - Stealing from the Academy, employees of the Academy, or from pupils and other serious and deliberate offences of dishonesty;
 - Intentional damage to property;
 - A serious breach of safety requirements likely to endanger other people or the pupil, or to cause damage to Academy's property;
 - Abuse of the Academy's computer system and of the internet and non-compliance with any policy issued by the Academy addressing these matters;
 - Sexual misconduct, abuse or assault;
 - Serious actual or threatened violence, physical assault or fighting;
 - Carrying an offensive weapon;
 - Bullying and/or harassment including racial, sexual or homophobic harassment;
 - Wilful defiance of the properly exercised authority of the Academy and its staff;
 - Bringing the Academy into disrepute or acting in a manner deliberately to undermine the Academy's principles or ethos.

Unofficial exclusions

Formal exclusion is the only lawful method of removal if a pupil is sent home for disciplinary reasons. Informal or unofficial exclusions are unlawful regardless of whether they are done with the agreement of parents.

5. The Principal's power to exclude

General Advice

Only the Principal, (or, in their absence, the acting Principal) can exclude a pupil. The Principal may consult others but not anyone who may later have a role in reviewing the Principal's decision.

The Principal should ensure that a thorough investigation has been carried out and allow pupils to present their case before taking the decision to exclude. Establishing the facts is to be decided on the balance of probabilities.

The Principal should 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 bereavement or has been subject to bullying.

Early intervention to address causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any Special Educational Needs (SEN) or disability that a pupil may have. The Principal should

also consider the use of a multi-agency assessment for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified SEN.

Fixed Term or Permanent

A pupil may be excluded for one or more fixed periods or permanently. In some cases a full investigation may not be immediately possible if, for example, a number of witness statements are required. In this case the Principal may issue a fixed term exclusion for a short period to allow the investigation to take place and to give the opportunity for a reasoned decision.

In this case the letter informing parents of the fixed term exclusion should clearly state that the reason for the fixed term exclusion is **“to allow investigation into an incident which may result in permanent exclusion”**. Once the investigation is complete, a further letter should be sent containing one of the following;

- Notification for the pupil to return to school;
- An extension of the fixed term exclusion;
- Notification of a permanent exclusion.

In exceptional cases, usually where further evidence, not available at the time of the investigation, has come to light a fixed term exclusion may be extended or converted to a permanent exclusion. Alternatively, the Principal may choose to withdraw an exclusion in the light of new evidence.

Pupils from vulnerable groups

Pupils with SEN

The Academy has a statutory duty to do its best to avoid excluding permanently any pupil with a statement of SEN. Where a pupil has a statement of SEN and is at risk of exclusion, the Academy should consider an early annual review or emergency review.

Equality Duty

The Academy has to comply with the public sector equality duty (in the exercise of its functions, it must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010). The Academy must advance equality of opportunity and good relations between people of different groups (for example, different races). The Academy must also assess the impact of its policies and monitor the operation of those policies on pupils, parents and staff in the context of the public sector equality duty.

Disabled Pupils

The Academy has a legal duty under the Equality Act 2012 not to discriminate against disabled pupils by excluding them from school because of their disability.

Looked After Children

Looked After Children are at risk of low attainment in school and exclusion. The Academy should try every practicable means to avoid their exclusion.

Behaviour outside School

The Academy has the right to make decisions about behaviour taking place on trips, sporting fixtures, or travel in the vicinity of the Academy. The Principal may

exclude pupils even if the circumstances giving rise to exclusion occur when the pupil is out of school.

Police Involvement and Parallel Criminal Proceedings

The process of exclusion from school and criminal proceedings should run parallel. However, in certain circumstances it may be appropriate for a decision to permanently exclude to be postponed if a police investigation has not been concluded. In such circumstances, an extended fixed term exclusion should be used.

Responsibilities of the Principal

The Principal should follow the procedures set out in the DFE Exclusion Guidance.

a) Informing parents

Once a decision to exclude has been reached, the parent must be notified without delay, ideally by telephone, followed up with a letter preferably within one school day. There are specific requirements for what should be stated in the letter set out in the DFE guidance. It is important to ensure reasons for the exclusion are stated clearly in the letter (as further reasons cannot be introduced at a later date); the period of a fixed exclusion or if its permanent; and parents rights to make representations to the governing body.

b) Informing Governors and the Local Authority (LA)

The Principal must without delay inform the governing body and LA of:

- All permanent exclusions (if the pupil resides in another authority, the home LA should also be informed).
- Exclusions that would take the term's total for that pupil to more than five days.
- Exclusions that would result in the pupil missing a public examination or national curriculum test.

All other fixed term exclusions should be notified termly. Pupils who have been permanently excluded should not be removed from the school roll until the Independent Review Panel process is completed.

c) Education provision for excluded pupils

In all cases of exclusion, work should be sent by the Academy from day one and marked. Where a pupil is given a fixed term exclusion of six school days or longer, the Academy must arrange full time educational provision from and including the sixth day of exclusion.

During the initial period of up to five school days, the parents are responsible for the child and must ensure that they are not present in a public place during normal school hours without reasonable justification.

From the sixth day of a permanent exclusion, the home local authority is responsible for ensuring that suitable full time education is provided.

d) Governing body meetings

If a meeting of the governing body is to be held, the Principal should prepare all supporting papers for the exclusion and pass them to the Clerk for

circulation to all parties at least five days in advance of the meeting. The paperwork should include:

- The Principal's case for exclusion.
- A copy of the exclusion letter of notification to the parents.
- Attendance records.
- Witness statements (signed where possible and dated).
- Excluded pupil statement.
- Behaviour policy and other relevant policies.
- Details of any Pastoral Support Programme.
- Records of interventions.

e) Reintegration interviews

Reintegration interviews are not mandatory but are good practice.

6. Role of Governing Body

The governing body must consider any representations about an exclusion made by the parents of the excluded pupil. The governing body usually delegates its functions in respect of exclusions to a committee consisting of at least three governors (such a committee may be called the Behaviour Committee). The Behaviour Committee, which meets to consider any exclusion must be made up of members, none of whom have any connection with the pupil or incident that would affect their ability to act impartially.

The Behaviour Committee can either uphold an exclusion, or direct reinstatement immediately or by a particular date. The Behaviour Committee cannot extend a fixed term exclusion nor substituted it with a permanent exclusion.

The Behaviour Committee has a duty to meet within 15 school days of receiving notice of the exclusion if:

- The exclusion is permanent;
- It is a fixed term exclusion which would bring the pupil's total number of school days of exclusion to more than 15 in a term;
- It would result in a pupil missing a public examination or a national curriculum test.

Where a pupil is excluded from school for a fixed period of more than 5 but not more than 15 school days in a single term, and if requested to do so by the parents, the Behaviour Committee must meet and consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion.

In the case of one or more fixed term exclusions totalling 5 days or less in a school term, the Behaviour Committee must consider any written representations from the parents but cannot direct reinstatement in this case.

a) Role of the Clerk to the Behaviour Committee

The Behaviour Committee may appoint a Clerk who must not be a member of the governing body.

When the Principal notifies the Clerk that they have excluded a pupil for more than five days, the Clerk should:

- Set up a meeting of the Behaviour Committee within the timescales and formally invite the parents and Principal to the meeting at a time and

place convenient to all parties. The parent can be accompanied by a friend or legal representative at their request. A parent may also invite an LA representative to attend the meeting as an observer but representations can only be made by the LA with the consent of the governing body. The pupil is also entitled to attend the meeting, and should be encouraged to participate, taking into account their age and understanding;

- Obtain written information/ statements and circulate to all parties at least five days in advance of the meeting, along with a list of those who will be attending and a copy of the procedure for the meeting;
- Invite all parties in to the meeting at the same time;
- Prepare a written record of the meeting; and
- Record the Behaviour Committee's decision and reasons for it.

b) Procedure for the Behaviour Committee

The Chair should explain the purpose of the meeting, which will be to hear any representations and for the Behaviour Committee to consider whether or not to uphold the exclusion.

The Chair should go through the procedure for the meeting:

- The Principal will be invited to explain what has happened to lead to their decision to exclude the pupil and summarise their reasons for it;
- The parents/representatives will be given the opportunity to ask questions of the Principal;
- The Behaviour Committee will be given the opportunity to ask questions of the Principal;
- The parents/representatives will be invited to present their views concerning the exclusion;
- The Principal will be given the opportunity to ask questions;
- The Behaviour Committee will be given the opportunity to ask questions;
- Summary by the Principal and parents of the case for exclusion;
- The Committee will make their decision and record their reasons for their decision.

c) Decision

The Behaviour Committee must decide whether the exclusion was lawful, reasonable and procedurally fair.

At the meeting, the Behaviour Committee should consider;

- Any representations made by the parent and the pupil;
- Whether the Principal has complied with the exclusion procedure and has had regard to the DFE guidance;
- On the balance of probabilities, has the pupil done what they are accused of;
- Whether allowing the pupil to remain at the Academy seriously harms the learning or welfare of the pupil or others in the school;
- Whether the behaviour is a serious breach or amounts to persistent breaches of the Academy's Behaviour policy; and
- In most cases, whether a wide range of possible strategies to improve a pupil's behaviour were tried and have failed.

The Behaviour committee must inform the parent, Principal and the LA of their decision, in writing without delay, preferably within one school day of the meeting, stating their reasons.

If the Behaviour Committee directs reinstatement, this should take place as soon as possible. No conditions can be attached to any direction to reinstate the pupil except that the Behaviour Committee can direct reinstatement on a particular date.

Where the Behaviour Committee upholds a permanent exclusion, there are specific requirements for what information should be included in the letter to the parents set out in the DFE guidance.

A note of the Behaviour Committee's decision should be placed on the pupil's school record.

7. Independent Review Panels (IRP)

The Academy must have an IRP to review permanent exclusions if requested by the parents of the excluded pupil and/or the pupil if over 18.

Parents must apply to an IRP within 15 school days of notice being given by the Behaviour Committee of their decision to uphold a permanent exclusion.

An IRP must meet to consider an exclusion no later than 15 school days after the day on which the request for the review was received. If necessary, the panel may then decide to adjourn the hearing.

a) Composition of IRP

The IRP must consist of 3 or 5 members. One must be a lay member (who can be an ex-governor), one must be a head teacher or someone who was one within the last 5 years (two head teachers for panels of 5), and one must be a governor who has served for 12 consecutive months in the last 5 years (two for panels of 5).

b) Role of the Clerk to the IRP

The Clerk provides an independent source of advice on procedures for all parties.

In advance of the IRP, the Clerk must take reasonable steps to find out when the parent and others entitled to attend the hearing would be available in order to ensure that all parties are able to attend. They must also arrange a suitable venue for hearing the IRP.

The following are entitled to make written representations, appear and make oral representations, and to be represented (including legally):

- The parent (or, if aged over 18, the pupil);
- The Principal;
- The governing body.

The LA is entitled to attend if requested to do so by the parent (or pupil if over 18) but only as an observer and may only make representations with the consent of the Academy.

The Clerk should circulate all written evidence to all parties at least 5 school working days before the hearing.

If requested by the parents, the Academy must appoint a Special Educational Needs (SEN) Expert to attend the hearing. Parents have a right to this,

regardless of whether their child has recognised or identified SEN. The SEN Expert's role is to provide impartial advice to the IRP on how special educational needs may be relevant to the exclusion. This includes whether school policies in relation to SEN were legally reasonable and procedurally fair, whether the school acted in a legal, reasonable and procedurally fair way with regards to identification of SEN and any contribution that this could have made to the circumstances of the pupils exclusion.

c) Conduct and role of the IRP

It is for the IRP to decide how to conduct the proceedings. The role of the IRP is to review the Behaviour Committee's decision not to reinstate the permanently excluded pupil. The IRP must take account of the circumstances of the excluded pupil and all others in the school. The IRP must apply the civil standard of proof (the balance of probabilities).

Reaching a decision

Information on what the panel should consider when coming to their decision can be found in the DFE Guidance.

An IRP can decide to:

- Uphold the exclusion decision;
- Recommend that the governing body reconsiders their decision; or
- Quash the decision and direct that the governing body considers the exclusion again.

The IRP's decision can be decided by a majority vote. The IRP can request that a copy of the decision letter is placed on the pupil's record and the school must comply with this request.

The IRP may only quash a decision and direct reconsideration where it considers that the exclusion was flawed when considered in the light of the principles applicable on an application for judicial review: illegality, irrationality and procedural impropriety.

- **Illegality** - did the Principal and/or Governors act outside the scope of their legal powers in taking the decision to exclude?
- **Irrationality** - was the decision of the Governors not to reinstate the pupil so unreasonable that it was not one a reasonable person could have made?
- **Procedural Impropriety** - was the process of exclusion and the Governors' consideration so unfair or flawed that justice was clearly not done?

Procedural Impropriety means not simply a breach of minor points of procedure but something that has a significant impact on the quality of the decision making process. The DFE Guidance gives the following examples:

- Bias;
- Failing to notify parents of their right to make representations;
- Failing to give reasons for a decision; or
- Being a judge in your own case e.g. if the Head Teacher who took the decision to exclude were also to vote on whether to uphold the exclusion.

For other breaches of procedure, the IRP may recommend that the governing body reconsiders its decision.

Financial Penalties

Where an IRP directs a governing body to reconsider an exclusion it has the power to order that a readjustment of the Academy budget be made if the governing body does not offer to reinstate that pupil within 10 school days of receiving notification. The sum of this adjustment must be £4000, payable within 28 days, and will be in addition to other monies that follow permanently excluded pupils.

Reconvening a Behaviour Committee

If the IRP directs or recommends that the governing body reconsider the exclusion, the governing body must meet to reconsider within 10 school days of notification.

Where a governing body has reconsidered an exclusion decision it must inform the Principal and the LA of its reconsidered decision and the reasons for it without delay.

After the IRP

The IRP's decision is binding on the parent, the governing body and the Principal. The IRP cannot revisit its decision once made.

The IRP must let all parties know its decision without delay. The decision letter should give the IRP's reasons for its decision in sufficient detail for the parties to understand why the decision was made.

If the IRP upholds the permanent exclusion, the Clerk should immediately report to the LA. If the pupil is of compulsory school age, it is for the LA in whose area the pupil lives to make arrangements as quickly as possible for the pupil to continue in suitable full-time education. If the pupil lives outside the area of the LA, the Clerk should make sure that the home local authority is also informed immediately of the position.

8. Remedies after the IRP

Secretary of State

Parents can complain to the Secretary of State via the Education Funding Agency at the DFE.

Judicial review

Decisions of the IRP can be subject to judicial review.

Claims of Discrimination in relation to exclusion

Parents can also apply to the First-tier tribunal to hear cases of alleged disability discrimination, in addition to their right to apply to a County Court to hear other cases of discrimination under the Equality Act 2010. The First-tier Tribunal will be able to direct reinstatement.