



Exclusion Policy

Review Summary

Adopted:	March 2017
Review Cycle:	Bi-annual
Last Review:	November 2018
Next Review:	November 2020

1. Introduction

- 1.1. This Policy sets out the Framework for how Exclusions are managed within schools in the Ted Wragg Multi Academy 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.

3. Decision to Exclude a Pupil

- 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 will give pupils an opportunity to present their case, which should be recorded in writing, before taking the decision to exclude.
- 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 bereavement, has mental health issues or has been subject to bullying. 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 disability 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.
- 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.

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 governors 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 governors 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 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 governors to consider an exclusion

- 8.1. The governors 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 governors 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 school days, 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 governors, so far as is reasonably practicable, to consider the exclusion before the date of the examination or test. If this is not practicable, the chair of governors may consider the exclusion independently and decide whether or not to reinstate the pupil.
- 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, governors 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 governors 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 governors in preparing for the consideration of an exclusion decision

- 9.1. The Governor Panel will comprise a minimum of three governors from any Trust school; they should not be Parent Governors, Staff Governors or Associate Governors.
- 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 by the headteacher 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 governor panel 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 governor panel 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 the governor panel when considering the reinstatement of an excluded pupil

10.1. Where the governor panel 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. In addition the panel need to consider whether the decision to exclude the pupil was lawful, reasonable and procedurally fair, and whether the headteacher followed their legal duties.

10.2. The governor panel 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 the governor panel as an observer; that representative may only make representations with the governor panel'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 governor panel 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 governor panel 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 governor panel 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 governor panel to notify people after their consideration of an exclusion

11.1. Where legally required to consider an exclusion, the governor panel 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 governor panel must also inform the pupil's 'home authority'.

11.3. In the case of a permanent exclusion the governor panel'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 governor panel'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 SEND expert to attend the review;
 - e. details of the role of the SEND expert and that there would be no cost to parents for this appointment;

- f. that parents must make clear if they wish for a SEND 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 Local Authority (Devon County Council, Topsham Road, Exeter, Devon EX2 4QD). Parents will be given the contact details by the school.
- 12.2. If applied for by parents within the legal time frame, the local authority will arrange for an independent review panel hearing to review the decision of a governor panel not to reinstate a permanently excluded pupil.
- 12.3. The legal time frame for an application is:
 - a. within 15 school days of notice being given to the parents by the governor panel 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.
- 12.4. Any application made outside of the legal time frame must be rejected by the Local Authority.
- 12.5. The Local Authority 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
- 12.6. The Local Authority 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).
- 12.7. The Local Authority 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.

- 12.8. 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.
- 12.9. The independent review panel does not have the right to reinstate a permanently excluded pupil:
- a. Where the panel finds that the governor panel decision is flawed on judicial grounds it may direct that the decision is reconsidered – if this recommendation is made, the governor panel must reconvene within 10 school days of being notified.
 - b. Where the panel finds that the governor panel decision is flawed on judicial grounds and the governor panel 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

- 13.1. The Local Authority must constitute the independent review panel with either three or five members (as decided by the Academy Trust representing each of the three categories below. A five-member independent review panel must be constituted with two members from each of the categories of school governors and head teachers
- a. 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.
 - b. School governors 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 this time.
 - c. Head teachers or individuals who have been a head teacher within the last five years.
- 13.2. A person may not serve as a member of an independent review panel if they:
- a. are a member or director of the Academy Trust or governing body of the excluding school;
 - b. are the head teacher of the excluding school or anyone who has held this position in the last five years;
 - c. are an employee of the Academy Trust or the governing body, of the excluding school (unless they are employed as a head teacher at another school);
 - d. 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
 - e. have not had the required training within the last two years
 - f. where possible, panel members who are governors or head teachers should reflect the phase of education (primary / secondary) and type of school from which the pupil was excluded.

13.3. In order to meet their duties within the statutory time frame, the Local Authority will identify a number of eligible individuals in each of the different categories required to constitute an independent review panel in advance of an application for a review.

14. Ensuring that independent review panel members and clerks are trained

14.1. The Local Authority 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:

- a. 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);
- b. the need for the panel to observe procedural fairness and the rules of natural justice;
- c. the role of the chair of an independent review panel;
- d. the role of the clerk of an independent review panel;
- e. the duties of head teachers, governing bodies and the panel under the Equality Act 2010; and
- f. 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.

15. School registers

15.1 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.

15.2 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.

Adoption of the Policy

This Policy has been adopted by the Trustees of the Ted Wragg Multi Academy Trust.

Signed

A handwritten signature in black ink, appearing to be a stylized 'W' or similar character.

(Chair of Trust)

Date: 19 November 2018

Appendix A - A summary of the governor panel's duties to review the head teacher's exclusion decision

