



Exclusions Guidance

Introduction

The principal legislation to which the DfE guidance on Exclusion from Maintained Schools, Academies and Pupil Referral Units of 2017 relates is:

- the Education Act 2002, as amended by the Education Act 2011
- the Education and Inspections Act 2006
- the Education Act 1996
- the Education (Provision of Full-Time Education for Excluded Pupils) (England) Regulations 2007, as amended by the Education (Provision of Full-Time Education for Excluded Pupils) (England)(Amendment) Regulations 2014.

2 Rationale and definitions

NeneGate School does not believe that exclusion should be used lightly or in a punitive sense. Exclusion should only be used as a protective consequence, where reflection, time and conversation are needed to ensure that a student is able to be reintegrated safely into the school community. Exclusions are not an automatic response to an anti-social behaviour or event, neither should they be a response to a culmination of these. All staff must discuss behaviours and events with the best interests of the students in mind.

DfE guidance states that good discipline in schools is essential to ensure that all students can benefit from the opportunities provided by education. The government supports head teachers in using exclusion as a sanction where it is warranted.

This guidance sets out the legal procedure and practice which informs the School's use of exclusion within its own Therapeutic Approach to Relationships and Behaviour policy. It is underpinned by the shared commitment of all members of the school community to achieve two important aims:

- Ensure the safety and well-being of all members of the School community by maintaining an appropriate educational environment in which all can learn and succeed;
- Reduce the need to use exclusion as a protective consequence.

An exclusion is defined as one of three types:

- Internal exclusion, known as Inclusion in our school, when a student is excluded from normal lessons, but remains within the School
- Fixed-term exclusion, when a student is excluded from the school for a specific period of time.
- Permanent exclusion, where steps are taken to permanently remove the student from the school.

3 Application

All exclusions decisions must be:

- Lawful
- Rational
- Reasonable
- Fair
- Proportionate

Legal duty of care is taken into consideration when sending a student home following an exclusion decision. Wherever possible the School will implement an exclusion decision with “immediate effect” only when it has been established the students can be cared for or collected by parents once they leave the premises

4 Responsibility for Exclusion

In law the Headteacher holds responsibility for making all exclusion decisions. If they are off site and not contactable, they may delegate some decisions on fixed term exclusions to a deputy, who will discuss the sanction with colleagues, prior to making a recommendation or decision. Wherever possible, a recommendation or decision should be agreed by at least two senior leaders and ideally by communication with the Principal / Headteacher.

5 Making a decision for Exclusion

Before deciding whether to exclude a student the person making the decision will ensure that:

- Every effort has been made to take statements from parties relevant to the incident that may prompt a decision to exclude and that appropriate investigations have been carried out.
- All evidence available to support the allegations is collated
- The student has been allowed to give her/his version of events.
- Any evidence which may indicate that the incident may have been provoked has been taken into account.
- Relevant policies have been referenced to ensure decisions made are free from prejudice and mitigating factors or protected characteristics are identified and considered.

The Head Teacher will exercise professional judgement during this process, bearing in mind the requirement to protect all students and staff from harm and the individual needs of the student.

CCTV footage may be used where available to clarify events; however, if it does not exist the decision maker must be mindful of the following:

- When establishing the facts in relation to an exclusion decision staff should 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.’
- This means that the decision maker should accept that something happened if it is more likely that it happened than that it did not happen.
- CCTV evidence should not unnecessarily influence the severity of the sanction; in addition, the absence of CCTV evidence should not reduce the severity of the sanction. The following need to be complied with when deciding whether to exclude a student:

The Public sector equality duty requires schools to have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and other conduct that is prohibited by the Equality Act
- Advance equality of opportunity between people who share a protected characteristic and people who do not
- Foster good relations between people who share a protected characteristic and people who do not share it.

Statutory duties in relation to SEND when administering the exclusion process including having regard to the SEND Code of Practice.

Exercise of discretion

In reaching a decision on fixed term or permanent exclusion, the decision maker will always look at each case on its own merits. Therefore, a tariff system, fixing a standard penalty for a particular action, is both unfair and inappropriate.

6 Unlawful exclusions

It is unlawful to exclude for a non-disciplinary reason. 'Informal' or 'unofficial' exclusions, such as sending a student home 'to cool off', are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a student even for short periods of time, must be formally recorded.

7 Reasons to Exclude

Exclusion, whether internal, fixed term or permanent, may be used for any of the following, all of which constitute examples of unacceptable conduct and are infringements of the School's Behaviour Policy:

- Actions which put the student or others in danger
- Verbal abuse to staff or students
- Physical abuse to/attack on staff or students
- Persistent bullying or discrimination of others
- Indecent behaviour
- Wilful damage to property
- Use of, possession of, banned substances
- Theft
- Serious actual or threatened violence against another student or a member of staff
- Sexual abuse or assault
- Supplying a banned substance
- Carrying an offensive weapon
- Arson
- Persistent unacceptable behaviour which has previously been reported and for which prior consequences and other interventions have not been successful in modifying the student's behaviour.

This is not an exhaustive list and there may be other situations where senior staff make the judgment that exclusion is an appropriate protective consequence.

8 Exclusion procedures

If a decision is taken to internally isolate a student, parents must be notified of the period of the inclusion and the reason(s) for it. Whenever the Headteacher excludes a student, either fixed term or permanent, they must, without delay, notify parents of the period of the exclusion and the reason(s) for it.

8.1 Internal exclusion or Inclusion

In some cases, behaviour which justifies a fixed-term exclusion will result in referral to internal isolation. By these means, there will be a protective consequence for students whose behaviour transgresses the behaviour standards of the school, but their academic work may suffer less than if they were excluded from the school.

On occasion the safety and welfare of the student may be in doubt should they be excluded from the site; as such Inclusion could be deemed an appropriate alternative.

The decision maker must be mindful of their legal duty of care for the student when making decisions. Internal Inclusion, used in place of a fixed term exclusion sanction should be recorded appropriately.

The decision to recommend a student for a fixed-term or permanent exclusion may still be taken in the following circumstances:

- In response to a serious breach of the School's Behaviour Policy, beyond that which would result in referral to Inclusion
- If allowing the student to remain in Inclusion would seriously harm the education or welfare of others in the school.
- The student fails to comply with the Inclusion protocols.

Please refer to the Therapeutic Behaviour and Relationships policy for further details about the use of Inclusion as a protective consequence.

8.2 Fixed-term exclusion

A fixed term exclusion is of short duration and may be necessary if a student commits an offence which is considered serious (refer to Section 7: Reasons to Exclude). The terms of this type of exclusion are:

- The School will inform parents, as soon as practically possible by phone call when the decision has been taken to 'Fixed-term exclude' a student. This will be followed, subsequently by a letter in which the terms of the exclusion are set out, together with the time and date of the re-admission meeting.
- A fixed-term exclusion does not have to be for a continuous period and can be applied to parts of the school day, e.g. lunchtime; or applied to specific days of a week.
- Fixed term exclusions can be used on more than one occasion and up to 45 days per academic year.
- Students will be forbidden from attending the School, or being on the School grounds for the term of their exclusion.
- Under current legislation, parents/carers are obliged to take responsibility for their child if s/he is excluded and ensure that they are not in a public place without good reason during school hours within the first 5 school days of any exclusion. Any parent who fails to comply with this duty without

reasonable justification commits an offence and may be given a fixed penalty notice or be prosecuted.

- Parents/carers must also ensure that their child attends the suitable full time education provided by the School or the local authority from the sixth day of exclusion.
- The School will send work home for students who are excluded, which will be marked when the student returns.
- In exceptional cases if, after further investigation, additional information comes to light that requires a student to be excluded for a further fixed-period following their original exclusion, or is subsequently permanently excluded, the Head Teacher must inform parents without delay and issue a new exclusion notice to parents. This new exclusion must begin immediately after the end of the original fixed term exclusion.

8.5 Permanent exclusion

The decision to exclude a student permanently is a serious one and will never be taken lightly. In doing so, we recognise that a permanent exclusion may have a serious impact upon a student's life chances. There are two main types of situation in which permanent exclusion may be considered.

- A final, formal step in a concerted process for dealing with disciplinary offences, including persistent and defiant misbehaviour, following the implementation and use of a wide range of other strategies. It is an acknowledgement that all available strategies have been exhausted and is used as a last resort.
- Where there are exceptional circumstances and it is not appropriate to implement other strategies and where it could be appropriate to permanently exclude a student for a first or 'one off' offence. These might include:
 - o Serious actual or threatened violence against another student or a member of staff.
 - o Sexual abuse or assault.
 - o Supplying an illegal drug.
 - o Carrying an offensive weapon*
 - o Arson.

The School will ensure police involvement for any of the above offences.

** Offensive weapons are defined in the Prevention of Crime Act 1953 as "any article made or adapted for causing injury to the person; or intended by the person having it with him for such use by him."*

These instances are not exhaustive but indicate the severity of such offences and the fact that such behaviour seriously affects the discipline and well-being of the School. When deciding whether a permanent exclusion is the most appropriate sanction the Head Teacher will consider:

- The gravity of the incident, or series of incidents, and whether it constitutes a serious breach of the School Behaviour Policy
- The effect that the student remaining in the School would have on the education and welfare of other students and staff.

In line with its statutory duty, these same two tests of appropriateness will form the basis of the deliberations of the Governing Body Exclusion Panel when it meets to consider the decision to permanently exclude or to hear an appeal against an exclusion decision. This Committee will

- Require the Headteacher to explain the reasons for the decision
- Look at appropriate evidence, such as the student's record, witness statements and the strategies used by the School to support the student prior to recommendation for permanent exclusion.

Alternative strategies to permanent exclusion are used wherever possible and the threat of a permanent exclusion will never be used as the means to coerce parents to move their child to another school.

9 Application of the Equality Act 2010

Under the Equality Act 2010 (the Equality Act), schools must not discriminate against, harass or victimise students because of:

- Sex
- Race
- Disability
- Religion or belief
- Sexual orientation
- Pregnancy/maternity
- Gender reassignment.

For disabled children, this includes a duty to make reasonable adjustments to policies and practices and the provision of auxiliary aids.

10 Special Educational Needs & Disability (SEND) students and permanent exclusion

Parents or students (if aged 18 or over) have the right to request the presence of a SEN expert at any review panel. The SEN expert's role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion; for example, whether the School acted reasonably in relation to its legal duties when excluding the student.

11 Appealing a permanent exclusion

Where parents (or excluded student, if aged 18 or over) dispute the decision of the Governing Body not to reinstate a permanently excluded student, they can ask for this decision to be reviewed by an independent review panel. Where there is an allegation of discrimination (under the Equality Act 2010) in relation to a fixed period or permanent exclusion, parents can also make a claim to the First-tier Tribunal (for disability discrimination) or a County Court (for other forms of discrimination). An independent review panel does not have the power to direct the Governing Body to reinstate an excluded student. However, where a panel decides that the Governing Body's decision is flawed when considered in the light of the principles applicable on an application for judicial review; it can direct the Governing Body to reconsider its decision.

12 Behaviour outside school

The behaviour of a student outside school can be considered grounds for an exclusion. Student behaviour on School "business" for example trips, travelling to and from School, including on Local Authority transport, or residential visits, is subject to the School's Behaviour Policy. Poor behaviour in these circumstances will be dealt with as if it had taken place in the School. Serious infringements of the School's Behaviour Policy that occur 'outside of' the School may lead to a fixed term or permanent exclusion. Student behaviour outside of school that impacts on the safety and well-being of other students in school will be considered within the School's Behaviour Policy.

13 Review of exclusions

The senior leadership team review:

- All permanent exclusions from the School and all fixed term exclusions that would lead to a student being excluded for over 15 days in a school term or missing a public examination.
- Fixed term exclusions which would lead to a student being excluded for over 5 days but not over 15 days in an Academy term where a parent/carer has expressed a wish to make representations.

The Governing Body will:

- Review exclusion data as part of the Headteacher's presentation to the Governing Body.
- Adhere to their duty regarding Exclusions as set out in the DfE Exclusions Guidance 2017

14 Re-admission meetings and re-integration

Following a fixed-term exclusion:

- Parents/carers are invited into the School to attend a re-admission meeting. Under current legislation, parents/carers are expected to attend a reintegration interview following any fixed period exclusion.
- This meeting will include:
 - Reflection on the incident which led to the exclusion
 - Discussion of actions to be taken by the school / students / parent to help him / her avoid this behaviour in the future
 - Further protective consequences which may need to be in place for a longer period of time (if required)
- This meeting should take place towards the end of the exclusion period. Depending on the severity of the incident and the past history and individual needs of the student, it may be desirable to have the meeting scheduled in the day(s) before the student returns to school to allow time for processing and to enable the school to ensure that any adjustments to curriculum provision / support can be put in place.