



# School Exclusion

<b>Adopted On:</b>	May 2023
<b>Review Date:</b>	May 2024
<b>Review Frequency:</b>	Annually
<b>Approved By:</b>	Governing Board

## **1. Introduction and Policy Aims**

Moss lane School is committed to inclusion. We strive to challenge and support every pupil, nurturing individual talent. However, for some serious incidents of poor behaviour (such as verbal or physical abuse to another member of the school community, or a serious one off incident), the Headteacher may resort to excluding pupils, either for a fixed term or permanently. The purpose of this policy is to ensure that there are systematic and consistent procedures and expectations regarding the exclusion of any pupil from our school.

This policy should be read in conjunction with:

- our Teaching and Learning policy which outlines how we challenge our pupils to achieve
- our Behaviour policy that explains our use of Restorative Practice to help our pupils make the correct choices
- our Special Educational Needs and Inclusion policy which states our responsibilities and procedures in supporting any pupils who have been identified as having additional learning needs.

Our school 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

## **2. Legislation and statutory guidance**

This policy is based on statutory guidance from the Department for Education: Exclusion from maintained schools, academies and pupil referral units (PRUs) in England and the updated guidance added on 29 May 2020 Changes to the school exclusion process during coronavirus (COVID-19) outbreak

It is based on the following legislation, which outline schools' powers to exclude pupils:

- Section 52 of the Education Act 2002, as amended by the Education Act 2011
- The School Discipline (Pupil exclusions and Reviews) (England) Regulations 2012
- Sections 64-68 of the School Standards and Framework Act 1998

In addition, the policy is based on:

- Part 7, chapter 2 of the Education and Inspections Act 2006, which looks at parental responsibility for excluded pupils
- Section 579 of the Education Act 1996, which defines 'school day'
- 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

Please note that we will also consult and follow their Local Authorities' guidance on exclusions.

## **2.1 Changes to the school exclusion process during the coronavirus (COVID-19) outbreak**

The updated arrangements came into force on 1 June 2020 and apply to all exclusions occurring from then until 24 September 2020 (inclusive of those dates). The arrangements also apply to:

- permanent and fixed term exclusions occurring before 1 June which have not yet been considered by the governing board of the school
- permanent exclusions occurring before 1 June which have been considered by the governing board, if they have chosen not to reinstate the pupil and the time limit to apply for a review of this decision has not passed
- permanent exclusions occurring before 1 June where a parent has requested a review of a governing board's decision, but this has not yet happened.

Any exclusions covered by the arrangements will continue to be subject to them after 24 September 2020, until the procedures for scrutiny of the exclusion have been exhausted. An exclusion should be taken as having 'occurred' on the first day of the exclusion (not the date when the decision to exclude was made or communicated).

### **Remote access meetings**

When governors have to meet to consider an exclusion, they can do so via telephone or video conference software ('remote access') as long as certain conditions are met. The conditions are that it is not reasonably practicable for the meeting to take place in person, within the usual timescales, because of coronavirus (COVID-19), and that the governing board (or arranging authority, if the meeting is an IRP) is satisfied that:

- all the participants agree to the use of remote access
- all the participants have access to the technology which will allow them to hear and speak throughout the meeting, and to see and be seen, if a live video link is used
- all the participants will be able to put across their point of view or fulfil their function
- the meeting can be held fairly and transparently via remote access

It is the responsibility of the governors to make sure that these conditions are met before a meeting takes place. The governors should assess the facts of the case, the circumstances in which a meeting in person could be expected to take place, the needs of the intended participants (as far as this is possible), and the latest public health guidance when determining whether it would be reasonably practicable to meet in person.

### **Arranging a remote access meeting**

The governors should explain the technology they propose to use to participants and should make sure that the participants (particularly pupils and their families) know that they do not have to agree to a meeting to be held via remote access if they do not want to. If they do not consent to a remote access meeting, then they should be made aware the meeting is likely to be delayed.

Though all participants must have agreed to the use of remote access, where a parent has given their agreement for a meeting to be held via remote access, the other participants should make reasonable efforts to accommodate that preference unless there is a clear reason not to.

Governors must comply with relevant equalities legislation and recognise that some participants may find it difficult to participate in a remote access meeting (for example, if someone has a disability or if English is not their first language).

As long as the conditions for a remote access meeting are met, it is possible for some participants to be present in person and for others to join the meeting via remote access. All participants must have access to technology which will allow them to hear and be heard by others throughout (and to see and be seen throughout).

### **Timescales for meetings of governing boards**

For governing board meetings with a deadline before 1 June, the time limit will not be extended and governing boards should arrange for overdue meetings to take place via remote access, if the conditions for such meeting are met, or in person as soon as it is safe and practicable to do so.

If a time limit for a meeting has been extended, the governors should reassess at regular intervals whether it is reasonably practicable to meet in person and, if it is, should arrange to do so without delay.

### **Meetings to consider permanent exclusions and fixed period exclusions of more than 15 school days in a term**

If a pupil is permanently excluded or receives a fixed period exclusion which results in them having been excluded for 16 or more school days in term, then the governors should try to meet to discuss reinstatement within 15 school days. If this has not been reasonably practicable for the governing board to meet face to face or via remote access for a reason relating to the conditions for a remote access meeting, the limit will be extended to 25 school days, or as long as reasonably necessary for a reason related to coronavirus (COVID-19).

### **Meetings to consider fixed period exclusions between 6 and 15 school days in a term**

If a pupil receives a fixed period exclusion which results in them having been excluded for at least 6 days but not more than 15 school days in that term, and the parent chooses to make representations about the exclusion, then the governors should meet to discuss reinstatement within 50 school days. If it is not reasonably practicable to meet face to face or by way of remote access within 50 school days, the time limit will be extended to 60 days, or as long as reasonably necessary for a reason related to coronavirus (COVID-19).

### **Timescales for independent reviews of exclusions**

Where the governors uphold the decision of the Headteacher to permanently exclude a pupil, the deadline for parents to apply for a review of the governor's decision has increased to 25 school days from the date on which notice in writing of the decision is given to parents. Schools must wait for 25 school days to pass before deleting the name of a permanently excluded pupil from their admissions register.

If it has not been reasonably practicable for a review panel to meet in person or by way of remote access within the original time limit of 15 school days for reasons related to coronavirus (COVID-19), the timescale for this meeting will be extended to 25 school days, or as long as reasonably necessary for a reason related to coronavirus (COVID-19).

### **3. The decision to exclude**

Only the Headteacher can exclude a pupil from school. If the Headteacher is off school-site at the time of a serious incident where exclusion may be a proportionate sanction, as good practice, an attempt should be made by the senior member of staff with delegated responsibility to speak to the Headteacher and consult before a decision to exclude is made. The decision must be lawful, rational, reasonable, fair and proportionate. A decision to permanently exclude will be taken as a last resort. The decision must have regard to duties under the Equality Act 2010.

A decision to exclude a pupil will be taken only:

- In response to serious or persistent breaches of the school's behaviour policy, and
- If allowing the pupil to remain in school would seriously harm the education or welfare of others

Before deciding whether to exclude a pupil, either permanently or for a fixed period, the School Leader will:

- Consider all the relevant facts and evidence, including whether there were any mitigating contributory factors (e.g. bullying, mental health issues and take into account early intervention measures/use of multi-agency assessments.
- Allow the pupil to give their version of events
- Have due regard to the following (in accordance with the DfE guidance):
  - for groups with high exclusion rates (pupils with SEND, pupils eligible for Free School Meals, Looked After Children, pupils from different ethnic groups, students who have English as an Additional Language);
  - that additional support or alternative placement may be required for a student with an EHCP or a Looked After Child; and;
  - that the permanent exclusion of a pupil with a EHCP or a Looked After Child should, as far as reasonably possible, be avoided.

The decision to exclude will only be taken for a disciplinary reason and all exclusion decisions will be formally recorded.

The decision to exclude can be withdrawn by the Headteacher at any point prior to consideration by the governing board.

## **4. Definition**

For the purposes of exclusions, the school day is defined as any day on which there is a school session. Therefore, INSET or staff training days do not count as a school day.

## **5. Roles and responsibilities**

### **5.1 Actions taken following a serious incident**

- Written details of the incident are collected from those involved before any decision is made. Statements will be taken from pupils as well as any adults that were present.
- The parent/carer is telephoned by a senior member of staff to outline the incident
- In the case of pupils with an Education Health Care Plan (EHCP), all information will be logged and discussed with the Local Authority SEN team.
- As a result of the investigation, it may be determined that an internal exclusion may be appropriate. Parents will be informed by phone call and letter to confirm arrangements for this. Pupils will be given school work to complete as well as time to reflect upon the behaviour and the choices that were made.

### **5.2 The Headteacher Informing parents**

The Headteacher will immediately provide the following information to the parents of an excluded pupil:

- The reason(s) for the exclusion (by phone to ensure parents understand why the school has taken this decision and what happens next)
- A letter will follow providing:
  - Confirmation of the details of the incident, the reasons for the exclusion and, if appropriate, how the pupil will be reintegrated back into school;
  - The length of a fixed-period exclusion or, for a permanent exclusion, the fact that it is permanent;
  - Information about parents' rights to make representations about the exclusion to the governing board and how the pupil may be involved in this;
  - Where there is a legal requirement for the governing board to meet to consider the reinstatement of a pupil, and that parents have a right to attend a meeting, be represented at a meeting (at their own expense) and to bring a friend.

The Headteacher will also notify parents by the end of the afternoon session on the day their child is excluded that for the first 5 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 a good reason. Parents may be given a fixed penalty notice or prosecuted if they fail to do this.

For the first five days of a fixed term exclusion, the school will set work appropriate to the pupil's age and ability. Where a pupil is given a fixed exclusion of six days, the school has a duty to arrange suitable off-site full-time educational provision from and including the sixth day of exclusion. The school will set work as described above for the five days following a permanent exclusion.

The Headteacher may impose a fixed-period exclusion which may lead to a permanent exclusion, depending on the outcome of an on-going investigation and/or further consideration of the case. If this is a possibility it will be referred to in the letter to parents notifying them of the fixed-period exclusion. If a permanent exclusion is subsequently imposed, this is a separate exclusion event. Therefore, if a permanent exclusion follows a five day fixed-period exclusion, the responsibility of the school for the first five days of the permanent exclusion would be to set work as described above and not find suitable alternative provision. However, it is acknowledged that there are benefits in arranging alternative provision to begin as soon as possible after an exclusion and this will be implemented where possible. In the case of a looked after child, the school and the local authority should work together to arrange alternative provision from the first day following the exclusion.

If alternative provision is being arranged, the following information will be included when notifying parents of an exclusion:

- The start date for any provision of full-time education that has been arranged for the pupil 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/family to identify the person they should report to on the first day.

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.

### **Informing the governing board, local authority**

The Headteacher will immediately notify the governing board, the local authority (LA) of:

- A permanent exclusion, including when a fixed-period exclusion is followed by a decision to permanently exclude
- Exclusions which would result in the pupil being excluded for more than 5 school days (or more than 10 lunchtimes) in a term
- A fixed term exclusion which would bring the student's total number of school days of exclusion to more than 15 in one term
- Exclusions which would result in the pupil missing a public examination

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

For all other exclusions, the School Leader will notify the governing board, LA once a term.

### **5.3 The governing board**

Responsibilities regarding exclusions are delegated to a Governors Discipline Committee (GDC) (which should comprise a minimum of three governors). The GDC has a duty to consider the reinstatement of an excluded pupil (see section 6).

### **5.2 The Local Authority**

For permanent exclusions, the LA is responsible for arranging suitable full-time education to begin no later than the sixth day following the date the exclusion was issued.

## **6. Considering the reinstatement of a pupil**

A Governors' Discipline Committee (GDC) will consider the reinstatement of an excluded pupil within 15 school days of receiving the 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

If requested to do so by parents, the GDC will consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion if the pupil would be excluded from school for more than 5 school days, but less than 15, in a single term.

In advance of the meeting, the Headteacher will prepare an exclusion school evidence pack as documentary evidence for the decision to exclude. This will also be sent to the Inclusion Services at Surrey who may submit a written and/or verbal report to the committee offering advice and guidance based on the evidence provided.

The school evidence pack that is sent to all parties in advance of the GDC meeting might include some of the following:

- A profile sheet including basic information about the pupil
- An overview of the case including a detailed account and evidence of the reason(s) for the exclusion
- Confirmation that the current DfE exclusion guidance has been adhered to
- Where relevant, details of any behaviour modification strategies which have been used
- An indication of how the sanction applied is consistent with the School's Relationship/Behaviour Policy
- Alternative sanctions that were considered (if applicable)
- In the case of a pupil with SEND, or a looked-after or disabled student, that the relevant DfE guidance was considered before the decision to exclude was taken
- That in reaching the decision, equal opportunity legislation was complied with.



The GDC can either:

- Uphold the decision to exclude the pupil, or
- Direct reinstatement of the pupil immediately, or on a particular date

In reaching a decision, the GDC will consider whether the exclusion was lawful, reasonable and procedurally fair and whether the Headteacher followed their legal duties. They will decide whether or not a fact is true 'on the balance of probabilities', which differs from the criminal standard of 'beyond reasonable doubt', as well as any evidence that was presented in relation to the decision to exclude.

Minutes will be taken of the meeting by a fully trained clerk, and a record of evidence considered kept. The outcome will also be recorded on the pupil's educational record.

The GDC will notify, in writing, the Headteacher, parents and the LA of its decision, along with reasons for its decision, without delay.

Where an exclusion is permanent, the GDC decision will also include the following:

The fact it is permanent

- If the decision has been upheld, notice of parents' right to ask for the decision to be reviewed by an independent review panel, and:
  - The date by which an application for an independent review must be made
  - The name and address to whom an application for a review should be submitted
  - That any application should set out the grounds on which it is being made and that, where appropriate, reference to how the pupil's SEN are considered to be relevant to the exclusion
  - That, regardless of whether the excluded pupil has recognised SEND, parents have a right to require the school to appoint an SED expert to attend the review
  - Details of the role of the SEN expert and that there would be no cost to parents for this appointment
  - That parents must make clear if they wish for an SEN expert to be appointed in any application for a review
  - That parents may, at their own expense, appoint someone to make written and/or oral representations to the panel, and parents may also bring a friend to the review
- That if parents believe that the exclusion has occurred as a result of discrimination, they may make a claim under the Equality Act 2020 to the first-tier tribunal (special educational needs and disability), in the case of disability discrimination, or the county court, in the case of other forms of discrimination. A claim of discrimination made under these routes should be lodged within 6 months of the date on which the discrimination is alleged to have taken place.

## **7. An Independent Review Panel**

If parents apply for an independent review, the school will arrange for an independent panel to review the decision of the governing board not to reinstate a permanently excluded pupil. This will be accessed via the relevant Local Authority.

Applications for an independent review must be made within 15 school days of notice being given to the parents by the GDC of its decision to not reinstate a pupil.

A panel of 3 or 5 members will be constituted with representatives from each of the categories below:

- 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;
- School governors who have served as a governor for at least 12 consecutive months in the last 5 years, provided they have not been teachers or School Leaders during this time
- Headteachers or individuals who have been a Headteacher within the last 5 years

Where a 5-member panel is constituted, 2 members will come from the school governor category and 2 members will come from the School Leader category. A person may not serve as a member of a review panel if they:

- Are a member of the governors of the excluding school
- Are the Headteacher of the excluding school, or have held this position in the last 5 years
- Are an employee of the school of the excluding school (unless they are employed as a Headteacher at another school)
- Have, or at any time have had, any connection with the school, school, governing board, parents or pupils, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality
- Have not had the required legal IRP training within the last 2 years.

A trained Clerk will be appointed to the panel. The independent review panel will decide one of the following:

- Uphold the governor's decision
- Recommend that the governors reconsiders reinstatement
- Quash the governor's decision and direct that they reconsider reinstatement (only when the decision is judged to be flawed)

The panel's decision can be decided by a majority vote. In the case of a tied decision, the chair has the casting vote.

An independent review panel does not have the power to direct governors to reinstate an excluded pupil. However, where a panel decides that governor's decision is flawed when considered in light of the principles of judicial review, it can direct a governing board to reconsider its decision.

Whether or not a school recognises a pupil as having Special Educational Needs (SEND), all parents have the right to request the presence of a SEND expert at a review meeting. The SEND expert's role is to advise the review panel, orally, in writing or both, impartially, of the relevance of SEN in the context and circumstances of the review. For example, they may advise whether the school acted reasonably in relation to its legal duties when excluding the pupil.

The Independent Review Panel's decision is final and binding on all parties. There is no further right of appeal against the decision of an Independent Review Panel. A parent/guardian may seek a Judicial Review of an Independent Review Panel's decision an application to do this should be made within three months of the panel's decision.

If the parent/guardian believes that there has been maladministration in the conduct of the review hearing this should be raised with the Education and Skills Funding Agency.

## **8. School registers**

A pupil's name will be removed from the school admissions register if:

- 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
- The parents have stated in writing that they will not be applying for an independent review panel 12 Where an application for an independent review has been made, the governing board 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.

## **9. Returning from a fixed-period exclusion**

Following a fixed-period exclusion, a re-integration meeting will be held involving the pupil, parents, a member of senior staff and other staff, where appropriate. If the school wishes, the ASO or another member of the local inclusion team will be available to also attend the re-integration meeting. The following measures may be implemented when a pupil returns from a fixed-period exclusion: The points below are suggestions only and should be adapted to your school's specific circumstances.

- Agreeing a behaviour contract
- Reviewing and agreeing revised support interventions
- Putting a pupil 'on report'
- Internal isolation

## **10. Monitoring arrangements**

The Local authority monitors the number of exclusions every term to ensure suitable full-time education for excluded pupils. This policy is reviewed by the school governing body annually to ensure compliance with current statutory guidance.

## **11. Links with other policies**

This exclusion policy is linked to our:

- Behaviour policy
- SEND policy