

**Signed:** Tom Slater

*Chair of Governors*

**Policy adopted:** December 2017

**Policy reviewed:** Spring 2021

**Review date:** Autumn 2021

## **Rationale**

The aim is to set out clearly what strategies will be used when the behaviour of a pupil becomes unacceptable. This policy will give an overview of the rules and legislation governing the Exclusion process.

This document should be read in conjunction with the school's Behaviour Policy to give an overview of the standards of behaviour that are expected of pupils and the guidance given in school about those standards.

## **The Legislation which underpins this policy**

The principle legislation to which this guidance relates is:

- Exclusions from maintained School, Academies and Pupil Referral units in England (DfE Statutory Guidance September 2017)
- The Education Act 2002, as amended by the Education Act 2011
- The School Discipline (Pupil Exclusions and Reviews (England Regulations 2012)
- The Education and Inspections Act 2006
- The Education (Provision of Full-Time Education for Excluded Pupils ) (England) Regulations 2007

*The term parents in this policy relates to any adult with parental responsibility for the relevant child.*

## **Purpose**

It is the policy of Endeavour Schools Trust to try to deal with all behavioural issues in an active, positive way, employing a wide range of strategies to aid a pupil to improve behaviour. However, a serious breach of rules may mean that exclusion will occur without reference to any or all of the strategies outlined below:

- *Pupils are given every opportunity to improve his/her behaviour following procedures outlined in the Behaviour Policies*
- *Pupil and parents to be interviewed*
- *Identifying any special needs, educational, emotional or behavioural, and seek the support of other agencies such as Learning and Behaviour Support, Educational Psychology or Medical Services*
- *Negotiate Pastoral Support Plan or Personal Education Plan (for looked after children) and individual home-school strategies with the pupil and parents or guardians.*
- *Issuing a formal warning*
- *Withdrawal from class for a cooling off period of up to one day*
- *Involving social services or the police in very extreme cases*

Every effort will always be taken to help a child improve his/her behaviour before reaching the decision to exclude. Permanent exclusion will only be used as a last resort, when all other reasonable steps have been taken without success.

## Types of Exclusion

There are two types of exclusion:

**Fixed Term:** *this is for a specific period of time. A pupil may be excluded for one or more fixed periods (up to a maximum of 45 school days in an academic year)*

**Permanent Exclusion:** *involves the child being removed from the school roll.*

Pupils whose behaviour at lunchtime is disruptive may be excluded from the premises for the duration of the lunchtime period. An exclusion that takes place over a lunchtime will be counted as half a school day.

## Who Can Exclude?

Only the headteacher of a school can exclude a pupil and this must be on disciplinary grounds.

For any exclusion in excess of five days the Governing Body has delegated to the headteacher the duty to locate and provide appropriate alternative full time education in line with the pupils needs. For permanent exclusions, this duty falls on the Local Authority.

## A Guide to the Law:

- The legal requirements relating to exclusion, such as the headteacher's duty to notify parents, apply in all cases.
- The law does not allow for extending a fixed-period exclusion or 'converting' a fixed period exclusion into a permanent exclusion. In exceptional cases, usually where further evidence has come to light, a further fixed period exclusion may be issued to begin immediately after the first period ends; or a permanent exclusion may be issued to begin immediately after the end of the fixed period.
- The behaviour of a pupil outside school can be considered grounds for an exclusion, for example educational visits, residential visits and away school sports fixtures. Inappropriate behaviour in these circumstances will be dealt with as if it had taken place in school.
- Any decision of a school, including exclusion, must be made in line with the principles of administrative law, i.e. that it is: lawful, rational, reasonable, fair and proportionate.
- Under the Equality Act 2010, schools must not discriminate against, harass or victimise pupils because of: sex, race, disability, religion or belief, sexual orientation, pregnancy/maternity or gender reassignments. For disabled children, this includes a duty to make reasonable adjustments to policy and practices and the provision of auxiliary aids.
- The headteacher and governing board must comply with their statutory duties in relation to SEN when administering the exclusion process. This includes having regard to the SEND Code of Practice.
- 'Informal' or 'unofficial' exclusions, such as sending a pupil home to 'cool off' are unlawful, regardless of whether they occur with the agreement of parents or carers. Any exclusion of a pupil, even for short periods of time must be formally recorded.
- 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, the headteacher should consider whether exclusion is providing an effective sanction.

## **The Exclusion Process:**

- Only the headteacher of a school can exclude a pupil and this must be on disciplinary grounds
- Exclusions will be used sparingly and only in response to a serious breach or persistent breach of the school's behaviour policy and where allowing the pupil to remain in school would seriously harm the educational welfare of the pupil or others in the school.
- In the headteacher's absence the power to exclude may be delegated to the Executive Head or deputy headteacher.

### **Notifying Parents:**

- When making an exclusion the Head will immediately inform the child's parents or guardians that their child has been excluded, the type and length of the exclusion and the reasons for it.
- Appropriate work will be provided for the child to complete during the period of the exclusion and parents will be made aware of the expectation for the pupil to complete this.
- Written notification of the exclusion is to be provided directly to the parents to their last known address as held on the school's contact records using the template in Appendix A stating clearly: the reintroduction process and relevant sources of free and impartial information, including their right to make representations about the decision to the Governing Body in writing. Parents will also be informed that an electronic note will be placed on the pupil's file in SIMs.
  - Where a pupil is of compulsory school age the headteacher must also notify the pupil's parents of the days in which they must ensure that the pupil is not present in a public place at any time during school hours.
  - For exclusions of 5 consecutive days or more, whereby an alternative educational provision must be secured, it is the responsibility of the headteacher to inform the parents of any such arrangements being made.

Should additional evidence come to light as part of the investigation process, a child may be excluded for a further fixed period following their original exclusion or subsequently be permanently excluded, the headteacher must inform parents without delay and issue a new exclusion notice to parents.

### **Other Parties to be Notified:**

The headteacher must, without delay, notify the governing board and the local authority of:

- Any permanent exclusion (including where a fixed period exclusion is followed by a decision to permanently exclude the pupil)
- Any exclusion which would result in the pupil being excluded for a total of more than five school days (or more than ten lunchtimes) in a term
- Any exclusion which would result in the pupil missing a public examination or National Curriculum test.
- For a permanent exclusion, if the child resides outside the local authority area in which the school is located, the headteacher must also notify the pupil's 'home authority' of the exclusion and the reason(s) for it without delay.
- Fixed period exclusions will be reported to the local authority on the day that the exclusion takes place and all exclusions will be reported in the termly headteacher's report, which must include the reason for the exclusion and the duration of any fixed period exclusion.

## **Pupils Returning from an Exclusion**

All pupils returning from a Fixed Term Exclusion are required to attend a reintegration meeting, accompanied by a parent. This meeting will seek to establish practical ways in which further exclusion can be avoided and behaviour modified to acceptable standards in partnership between pupil, parent and school.

## Duties of the Governing Body in the Exclusion Process:

The Governing board 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 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 National Curriculum test**. Where an exclusion would result in a pupil missing a public examination or National Curriculum test there is a further requirement for a governing board, 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.
- If the exclusion is **more than 5 consecutive days but less than 15 days in a term**, then the governing board must consider the reinstatement of an excluded pupil **within 50 school days, from the notice of the exclusion**, if requested to do so by the parents.

## APPEALS:

All correspondence regarding an exclusion from the school will inform parents of their right to appeal to the Governing Body against the decision to exclude. This procedure is clearly set out in the statutory guidance, the person who should be contacted to initiate an appeal is the Clerk to the Governors.

Parents are entitled to make representations about the decision exclude for both fixed term and permanent exclusions to the Governing Body in writing as outlined in the template letter (Appendix A) within 15 days. Following this a **School Disciplinary Committee (SDC)** will be formed.

## The School Disciplinary Committee (SDC):

The SDC is made up of:	Who must be invited:
<ul style="list-style-type: none"><li>• The headteacher</li><li>• The governing body consisting of 3 or more governors who have not been involved at any stage</li></ul>	<ul style="list-style-type: none"><li>• The parent/carer (the parent carer may wish to invite a representative )</li><li>• The young person</li><li>• The Virtual School Headteacher in the case of a Looked After Child</li></ul>

**All parties invited should have received the documentation at least 5 days prior to the SDC to ensure parties have sufficient time to make representations.**

The SDC should consider their decision in the light of the principles applicable in an application for judicial review and the panel should apply the following tests:

- **IRRATIONALITY:** Was the decision so unreasonable that it was not one a sensible person could have made?
- **ILLEGALITY:** Did the headteacher act outside the scope of their legal powers in taking the decision to exclude?
- **PROCEDURAL IMPROPRIETY:** Was the process of exclusion so unfair or flawed that justice was clearly not done?

## **The School Disciplinary Meeting Outcome**

The governing board has two options for permanent exclusion, either to uphold the exclusion or direct the pupil's reinstatement.

Following this the school will advise parents that they can request a review of the decision by the governors committee to uphold a permanent exclusion.

## **Independent Review Panel**

An independent panel can uphold an exclusion but cannot overturn the decision of the governors' committee. The Panel can recommend that the governing body reconsiders its decision, taking account of the findings of the panel. If the panel has grounds for believing that the governors' decision was flawed, they can direct the governing body to reconsider their decision.

Whether or not the school recognises that a pupil has special educational needs all parents have the right to request the presence of an SEN expert at an independent review panel. The SEN experts role is to provide impartial advice to the panel about how SEN could be relevant to the exclusion.

If applied for within the legal time frame, the school will arrange for an independent review panel hearing to review the decision of the governing body not to reinstate a permanently excluded pupil. The legal time frame for an application is

- Within 15 school days of notice being given to the parents by the governing body of their decision to uphold a permanent exclusion; or
- 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. Any application made outside of the legal time frame will be rejected by the school.

The school will 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.

Parents may request an independent review panel even if they did not make a case to, or attend, the meeting at which the governing body considered the exclusion. The school will take reasonable steps to identify a date for the review that all parties are able to attend.

Parents may, at their own expense, appoint someone to make written and/or oral representations to the panel. The governing body will reconsider whether the pupil should be reinstated, doing so conscientiously, whether the panel has directed or merely recommended it to do so. Further representations need not be sought. The governing body is not prevented from taking into account other matters it considers relevant, ensuring that any such information does not make the decision unlawful.

## Appointing an Independent Review Panel:

The Governing Body may nominate a panel of at least 3 – 5 governors from across the trust, representing each of the three categories below:

1. 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.
2. Current or former school governors (including members of PRU management committees and directors of academy trusts) who have served as a governor for at least 12 consecutive months in the last 5 years, provided they have not been teachers or headteachers during that time.
3. Headteachers or individuals who have been a headteacher in the last 5 years

A person may not serve as a member of a review panel if they:

- Are a member/director of the local authority/academy trust or governing board of the excluding school
- Are the headteacher of the excluding school or anyone who has held this position in the last 5 years
- Are an employee of the local authority/academy trust, or the governing board 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 local authority/academy trust, school, governing board, parents or pupil, or the incident leading to the exclusion.
- Have not had the required training within the last two years

## Appointing a Clerk:

The local authority/academy trust may appoint a clerk to provide advice to the panel and parties to the review on procedure, law and statutory guidance on exclusions (see 8.3 of guidance September 2017)

The SDC should consider their decision in the light of the principles applicable in an application for judicial review and the panel should apply the following tests:

- **IRRATIONALITY:** Was the decision of the governing board not to reinstate the pupil so unreasonable that it was not one a sensible person could have made?
- **ILLEGALITY:** Did the headteacher and/or the governing board act outside the scope of their legal powers in taking the decision to exclude?
- **PROCEDURAL IMPROPRIETY:** Was the process of exclusion and the governing boards consideration so unfair or flawed that justice was clearly not done?

## EQUALITY ACT 2010

The school will follow the guidance on the Equality Act 2010 section 5.4. This guidance states that whilst a 'school must not discriminate against a pupil by excluding them from school,' it does not mean a school cannot exclude a pupil with a protected characteristic'. The guidance recognises that 'there may be occasions when it is appropriate to exclude a pupil with a protected characteristic,' it stresses it is important that a school does not exclude 'because of' the protected characteristic. A claim of discrimination under this Act should be lodged within six months of the day that the pupil was excluded.

**Model Letter**

Dear

I am writing to inform you of my decision to exclude XXX for a fixed period of XXX. This means that s/he will not be allowed in school for this period. The exclusion begins on XXX and ends at XXX. I realise that this exclusion may be upsetting for you and your family, but the decision to exclude XXX has not been taken lightly. XXX has been excluded for this fixed period due to XXX.

You have a duty to ensure that your child is not present in a public place in school hours during this exclusion between XXX and XXX, unless there is reasonable justification for this. I must advise you that you may receive a penalty notice from the local authority if your child is present in a public place during school hours on the specified dates. If so, it will be for you to show reasonable justification.

The Vaynor First School, you and your child have the right to make representations about this decision to the governing body. If you wish to make representations please contact Mrs Clare Banks in person, by phone or in writing The Vaynor First School, Tennyson Road, Redditch, B97 5BL, 01527 543187 -[office@thevaynor.worcs.sch.uk](mailto:office@thevaynor.worcs.sch.uk) as soon as possible. Whilst the governing body has no power to direct reinstatement, they must consider any representations made by you and your child and may place a copy of their findings on your child's school record.

You are advised that the following sources of advice are available to you:

- Pupil Exclusion and Mediation Officer Worcestershire:  
01905 678226
- You may also find it useful to contact the Children's Legal Centre. They aim to provide free legal advice and information to parents on education matters. They can be contacted on 0300 330 5485 or at <http://childlawadvice.org.uk/information-pages/school-exclusion>. The advice line is open from 8 am to 8 pm Monday to Friday, except Bank Holidays and 24th December to the 1st January.
- The current Statutory Exclusions Guidance:  
<https://www.gov.uk/government/publications/school-exclusion>
- SENDIASS  
01905 768153  
[sendiass@worcestershire.gov.uk](mailto:sendiass@worcestershire.gov.uk)
- Worcestershire Gypsy Roma Traveller Education Team  
01905 678182  
[Kpoole1@worcestershire.gov.uk](mailto:Kpoole1@worcestershire.gov.uk)

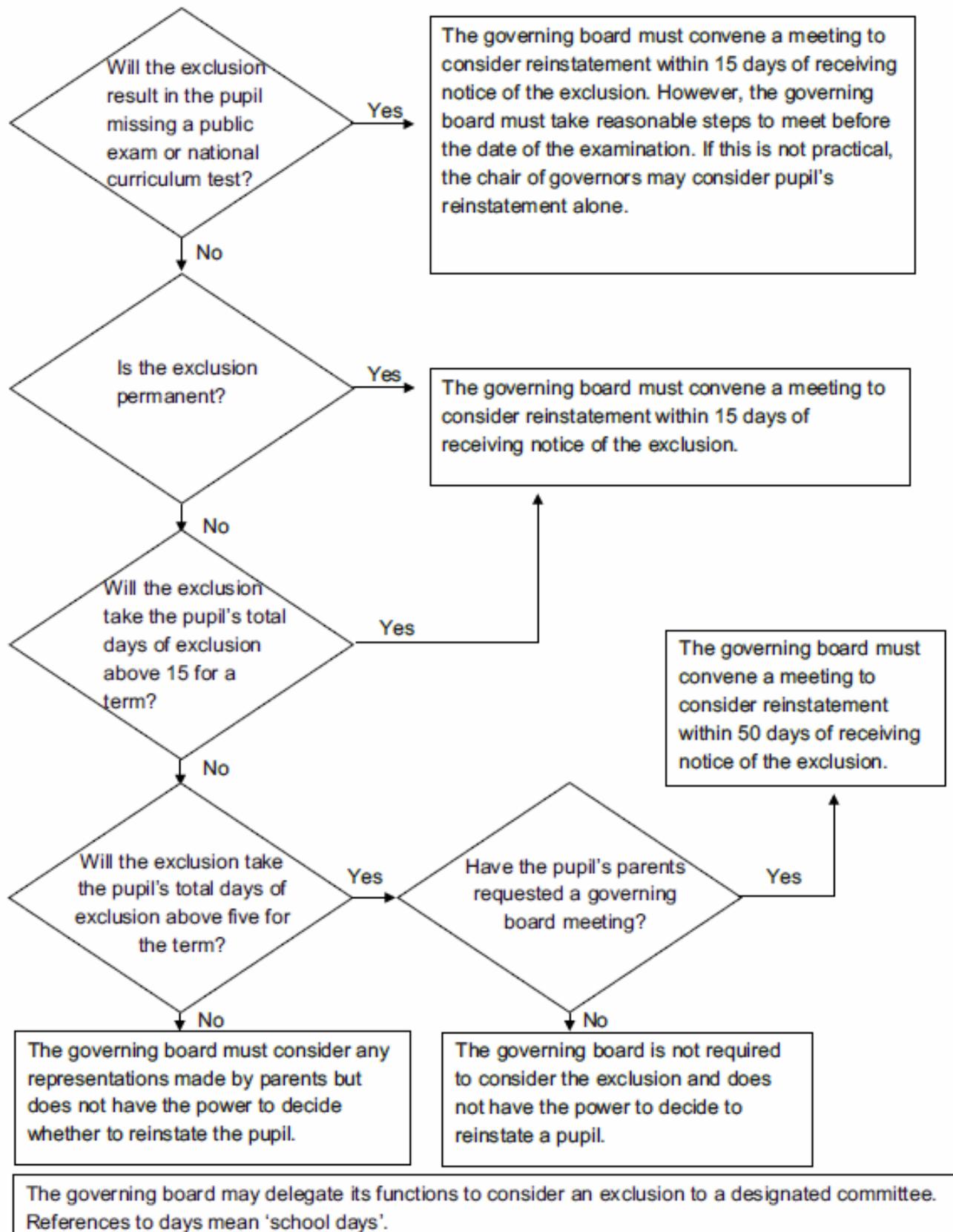
XXX's exclusion expires on XXX and we will expect XXX to be back in school on XXX as normal. Please come to the school office.

Yours sincerely

cc. Child's school file

cc. Pupil Exclusion and Mediation Officer, Babcock Prime

## A SUMMARY OF THE GOVERNING BOARD'S DUTIES TO REVIEW THE HEADTEACHER'S EXCLUSION DECISION



## A Guide For Parents/Carers

### Disclaimer

Disclaimer: This non-statutory document is not replacing the statutory guidance on exclusion and is intended only to support parents' understanding of the exclusion process.

The exclusion legislation applies to maintained schools; pupil referral units; and Academies / Free Schools – other than 16 – 19 Academies. It applies to all pupils at these schools, including those who are above or below compulsory school age, for example where a school also has a nursery or a sixth form. It does not apply to independent schools, stand-alone nurseries, stand-alone sixth form colleges and other post-16 provision, such as FE colleges; these have their own exclusion arrangements. If you are unsure in which category your child's school fits, you can find this information in Edubase: <http://www.education.gov.uk/edubase/home.xhtml>.

### Glossary:

The term '**must**' refers to what headteachers / governing bodies / academy trusts / local authorities and parents are required to do so by law. The term '**should**' refers to recommendations for good practice as mentioned in the exclusion guidance. In this document and in the exclusion guidance, '**parents**' refers to parent(s) / legal guardian(s) / foster carer(s) of pupils under 18, as well as to pupils over 18.

**Internal Exclusion** is when a pupil is barred from the classroom, but not from the school site. This is not an exclusion.

**Fixed-period Exclusion** (also referred to as 'suspension'): when a pupil is barred from the school premises for a fixed amount of time (including exclusions during lunchtime).

**Permanent Exclusion** (also referred to as 'expulsion'): when a pupil is permanently barred from the school premises.

**Alternative provision:** This refers to the education arrangements made for excluded pupils that do not involve mainstream or special schools.

### Reasons for Exclusion

#### ***For what reasons can a school exclude my child?***

There is no list of set behaviours for which a pupil can and cannot be excluded, and the decision to exclude lies with the headteacher. Headteachers can only exclude a pupil for a disciplinary reason (e.g. because their behaviour violates the school's behaviour policy). They cannot, for example, exclude a pupil for academic performance / ability, or simply because they have additional needs or a disability that the school feels it is unable to meet. A headteacher can exclude for behaviour outside of school, or for repeatedly disobeying academic instructions.

#### ***Can the school send my child to be educated elsewhere?***

Schools have the power to send a pupil to another education provider at a different location to improve his or her behaviour without the parents having to agree. A school can also transfer a pupil to another school – a process called a 'managed move' – if they have the agreement of everyone involved, including the parents and the admission authority for the new school.

Schools cannot force a parent to remove their child permanently from the school or to keep their child out of school for any period of time without formally excluding. The threat of exclusion must never be used to influence parents to remove their child from the school.

#### ***Can a school ask me to collect my child / send my child home early without following the formal exclusions process?***

'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off', are not allowed, even if they are with the agreement of parents. Any exclusion of a pupil, even for short periods of time, must follow the formal process, including being formally recorded (see below). Any fixed-period exclusion must have a stated end date.

## **Exclusion Process**

### ***What happens when my child is excluded?***

Please go to the section entitled 'What happens when your child is excluded' on the GOV.UK website: <https://www.gov.uk/school-discipline-exclusion>.

### ***Are there legal obligations that a school has to follow when excluding a pupil?***

When a principal excludes a pupil, they must without delay let parents know the type of exclusion and the reason(s) for it. They must also, without delay, provide parents with the following information in writing:

- the reason(s) for the exclusion;
- the length of the exclusion;
- the parents' right to put forward their case about the exclusion to the governing body, how they should go about doing this and how the pupil can be involved; and
- when relevant, what alternative provision will be provided from the 6<sup>th</sup> day of a fixed-period exclusion.

### ***Is there a limit to the number of times my child can be excluded?***

Yes. A pupil cannot be excluded for more than 45 days in one school year. This means they cannot have one fixed-period exclusion of 46 days or more; and also they cannot have lots of shorter fixed-period exclusions that add up to more than 45 days. This is true even if these exclusions have been given in different schools. Lunchtime exclusions – where pupils are excluded from school over the lunch period because this is when their behaviour is a problem – are counted as half a day. [what happens next then if the child exceeds the maximum?]

## **Scrutiny of the Exclusion**

### ***Can I question the decision to exclude my child?***

Parents have the right to make their case about the exclusion of their child to the governing body.

For fixed-period exclusions, unless the exclusion takes a pupil's total number of school days of exclusion past five in that term, the governing body must consider any case made by parents, but it cannot make the school reinstate the pupil and is not required to meet the parents.

For all permanent exclusions, the governing body must consider, within 15 school days of being told about the exclusion, whether the excluded pupil should be reinstated. This is the same for fixed-period exclusions where the pupil will miss more than 15 days in one term, or will miss a 'public exam' (e.g. a GCSE) or a national curriculum test (i.e. a key stage 2 test taken at the end of primary school). For a fixed-period exclusion that brings a pupil's total excluded days to more than five but under 15, the governing body must consider reinstatement within 50 school days. Information can be found on the GOV.UK website at the following link: <https://www.gov.uk/school-discipline-exclusion/exclusions>.

### ***What can I do if I feel my child is being discriminated against in the exclusion process, for example because he / she has a disability?***

Schools have a duty under the Equality Act 2010 not to discriminate against pupils on the basis of protected characteristics, such as disability or race, including in all stages of the exclusion process.

Parents can raise this issue during the exclusion review meeting with the governing body. If the governing body decides not to reinstate the pupil, parents can request an independent review panel to review the governing body's decision. When making their request, parents can ask for a Special Educational Needs (SEN) expert to attend the hearing to advise the panel on how SEN might be relevant to the exclusion. Parents can request this even if their child has not been officially recognised as having SEN. If a parent believes that their child has been discriminated against in the exclusion process because of a disability, then they may also make a claim to the First-tier Tribunal within six months of the exclusion: [www.tribunals.gov.uk/Tribunals/Firsttier/firsttier.html](http://www.tribunals.gov.uk/Tribunals/Firsttier/firsttier.html).

The Tribunal can consider claims about permanent and fixed-period exclusions. For permanent exclusions, this can be done instead of, or in addition to, an independent review panel.

***Where can I get independent advice on my options regarding the exclusion?***

- The Department's guidance to schools on exclusion, which is available on the GOV.UK website: <https://www.gov.uk/government/publications/school-exclusion>.
- 'School discipline and exclusions' and 'Complaint about a school or childminder': <https://www.gov.uk/school-discipline-exclusions/exclusions> and <https://www.gov.uk/complain-about-school>.

There are a number of organisations that provide free advice to parents on exclusion matters:

- Coram Children's Legal Centre can be contacted on 0345 345 4345 or through [http://www.childrenslegalcentre.com/index.php?page=education\\_legal\\_practice](http://www.childrenslegalcentre.com/index.php?page=education_legal_practice).
- ACE education runs a limited advice line service on 0300 0115 142 on Monday to Wednesday from 10 am to 1 pm during term time. Information can be found on the website: <http://www.ace-ed.org.uk/>.
- The National Autistic Society (Schools Exclusion Service (England)) can be contacted on 0808 800 4002 or through [schoolexclusions@nas.org.uk](mailto:schoolexclusions@nas.org.uk).

**Arrangements for my child after Exclusion**

***Will my child still receive an education?***

Schools should take reasonable steps to set work for pupils during the first five days of a fixed-period exclusion.

From the sixth day of an exclusion, suitable full-time education must be arranged for pupils of compulsory school age (primary and secondary school age), except for Year 11 pupils (final year of secondary school) whose final exams have passed. In the case of a fixed-period exclusion of more than five school days, it is the duty of the school to arrange this education. If a parent wishes to raise a concern about lack of education during a fixed-period exclusion (and their child is still of compulsory school age), they may follow the school's official complaint procedure.

In the case of a permanent exclusion, arranging suitable full-time education is the duty of the local Council where the pupil lives. If a parent wishes to raise a concern about lack of, or the quality of, education following a permanent exclusion (and their child is still of compulsory school age), parents should complain to the local Council where they live. If parents are unsure of which local Council they need to speak to, they should ask the school for advice.

***Does my child still have a right to attend their exams when excluded?***

This is a decision left to the school. Neither the school nor the local Council is legally required to arrange for an excluded pupil to take a 'public exam' or national curriculum test that occurs during the exclusion, although some may choose to arrange for this either on school premises or elsewhere. Where a parent has concerns about their child missing a 'public exam' or national curriculum test, they should raise these with the school.

***What are my duties as a parent?***

For the first five days of any exclusion, parents must ensure that their child of compulsory school age is not in a public place during school hours without very good reason. Parents must also ensure that their child attend any new full-time education provided from the sixth day of exclusion, (unless they have arranged suitable alternative education themselves).