



OAKFIELD ACADEMY

BELIEVE AND ACHIEVE

Exclusion Policy

This is a Additional policy
Recommended for review by Behaviour Link Governor every year
(alongside the Behaviour Policy).

Written/

Reviewed by: HoY/S&G Manager/SLT

Approved by: Behaviour Link Governor

Ratified on: July 2018

Next review due: July 2019

Introduction

Oakfield Academy is totally committed to developing the character and competence of every student and believes that all students should receive exceptional education. Through this policy Oakfield Academy aims to ensure that:

- The exclusions process is applied fairly and consistently
- The exclusions process is understood by Oakfield Academy staff, parents and pupils
- Pupils in the academy are safe and happy
- Pupils do not become NEET (not in education, employment or training)

The DfE exclusion guidance can be downloaded here: <https://www.gov.uk/government/publications/school-exclusion>

Statutory guidance means that academies should follow this guidance, unless there is good reason not to in a particular case. It is based on the following legislation, which outlines schools' power to exclude pupils:

- [Section 51A of the Education Act 2002](#)
- [The School Discipline \(Pupil exclusions and Reviews\) \(England\) Regulations 2012](#)

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 pupil
- 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](#)
- SEND Code of Practice January 2015

Referral to specific support service may be dependent on individual circumstances include e.g.

Educational Psychologist

An Advisory Teaching Service

Speech and Language Therapy Service

Family support services

Youth Support Services

Children and Young People's Services

Alternative Provision School or another Alternative Provider

Voluntary Sector Support Services

Definitions

Parent in this document include any person who has parental responsibility (which includes the Local Authority where it has a care order in respect of the child) and any person (for example foster carer) with whom the child lives. It is expected that all those with parental responsibility should be engaged with the exclusions process.

Key Principles

Only the Headteacher can exclude a pupil from school. If the school does not have a head then an acting principal can exclude a child. In the absence of the Headteacher SLT will consult with the Headteacher as part of the decision making process. A permanent exclusion will be taken as a last resort.

Any decision to exclude must be lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties), rational, reasonable, fair and proportionate. In every instance where a pupil is sent home for disciplinary reasons, the Headteacher must formally record and specify the length of the exclusion.

Unlawful exclusions

- 'Informal' or 'unofficial' exclusions, such as sending pupils home 'to cool off' are unlawful, regardless of whether they occur with the agreement of the parents or carers.
- If a pupil is sent home in response to a breach of discipline, even for a short period of time, this must be formally recorded as an exclusion

- The law does not allow for extending a fixed-period exclusion or ‘converting’ a fixed-period exclusion into a permanent exclusion except in exceptional cases (usually where further evidence has come to light. (DfE September 2017 guidance para 3)

It is unlawful to exclude or to increase the severity of exclusion for a non-disciplinary reason for example:

- Because the pupil has additional needs or disability that the school feels unable to meet
- Time needed to arrange a multi-agency, review or planning meeting
- Failure of a pupil/parent to meet specific conditions before the pupil is reinstated

Behaviour outside school

The behaviour of pupils outside school can be considered as grounds for exclusion. The Academy’s behaviour policy will set out what the school will do in response to all non-criminal poor behaviour and bullying which occurs anywhere off the school premises. This behaviour could include bringing the academy into disrepute. Parents should be directed to the academy’s Behaviour Policy available on the academy website.

Preventative Measures

Disruptive behaviour can be an indication of unmet needs. Where the academy has concerns about a pupil’s behaviour it should try to identify whether there are any causal factors and intervene early in order to reduce the need for exclusion. In this situation, the academy should give consideration to a multi-agency assessment that goes beyond the pupil’s educational needs.

Early intervention to address underlying causes of disruptive behaviour should include an assessment of whether appropriate provision is in place to support any SEN or disability that a pupil may have.

The Headteacher should consider what extra support might be needed to identify and address the needs of pupils from key vulnerable groups in order to reduce their risk of exclusion for example: pupils eligible for Free School Meals; Looked After Children and pupils from certain ethnic groups including Gypsy/Roma, Travellers of Irish Heritage and Black Caribbean communities.

SEND reviews

The Headteacher must take account of their statutory duties to the SEND Code of Practice when administering the exclusion process. They should, as far as possible, avoid excluding permanently any pupil with an Education Health and Health Care Plan (EHCP) (or a Statement of SEND). Where a school identifies a pupil with an EHCP/Statement of SEND who is at serious risk of disaffection or exclusion, an interim or early review should be called. It will then be possible to consider the pupil’s changing needs and provision as an alternative to the pupil being excluded.

Managed Moves

A Managed Move is defined as a formal agreement between two schools, a pupil and their parents. It allows a pupil at risk of permanent exclusion to transfer to another school. The move requires the agreement of the parent, the Headteacher of the pupil’s school, the Headteacher of the proposed school, and the LA (if the School being transferred to is a LA school). A Managed Move is never an early or first response when a pupil is failing at school because of behaviour. Rather, it should be considered as part of a measured response to supporting their emotional social and behavioural needs. It is likely to be a strategy considered in later stages of a support plan where there is little or no evidence of success.

Behaviour Policy

Academies must apply their behaviour policies in a consistent, rigorous and non-discriminatory way with due regard to the Equality Act 2010. This Act has provision that allows schools to take positive action to deal with particular disadvantages affecting one group, where this can be shown to be a proportionate way of dealing with such issues.

Exclusions should not be used for:

- failure to do homework
- poor academic performance
- lateness or truancy
- one off breaches of school uniform or rules on appearance
- behaviour of pupils' parents

Mitigating circumstances

Headteachers should take account of any contributing factors that are identified after an incident of poor behaviour has occurred (e.g. where it comes to light that a pupil has suffered bereavement, has mental health issues or has been subject to bullying).

Safeguarding children

Headteachers must take account of their legal duty of care when sending a pupil home following the exclusion. The Headteacher should also give particular consideration to the fair treatment of pupils from groups who are vulnerable to exclusion. Headteachers should ensure that:

- they are meeting their legal duty of care towards pupils. Parents must be formally notified of the exclusion and the pupils must not be placed at risk by, for example, being sent home without adequate supervision. Best practice is that parents must be spoken to directly before a student is sent home.
- child protection issues are taken into account e.g. bearing in mind that child's age and vulnerability.

Headteachers should consider whether any pupil may be at risk of Child Sexual Exploitation (CSE) and the implications of this on the decision to exclude. Exclusion from school or unexplained absences from school is a risk indicator on the CSE screening tool.

Working with the Headteacher, the Designated Safeguarding Lead is responsible for maintaining a confidential record of all pupils for whom there are Child Protection (CP) issues or who have a Child Protection Plan (CPP) and for managing the education contribution to the CPP.

A pupil, for whom there are CP issues, is more at risk of harm if their family is placed under unexpected stress. Any exclusion can create stress and each school should have systems that allow current information about a pupil's situation to be considered when the Headteacher is thinking about exclusion. The DSL can advise the Headteacher and contact children's social care before the Headteacher takes action to exclude. In discussion with the DSL, the social worker may decide to call a core group meeting for children with CP issues to plan how to ensure the pupil is kept safe from significant harm. The Headteacher will normally consult a pupil's social worker before making the decision to exclude. In some cases, it **may** be appropriate for the Headteacher to delay the dates for exclusion e.g. 2-3 days to allow the social worker to plan how to ensure the pupils is kept safe from significant harm during the exclusion. The Headteacher may issue an internal exclusion for the intervening days in school.

If a parent does not comply with the exclusion, by sending the excluded pupil to school, or by refusing to collect, or arrange collection of the pupil, the school must consider the pupil's safety in deciding what action to take. Any exclusion should not be enforced if doing so may put the safety of the pupil at risk. The social worker may help to resolve the issue with the parents of any pupil with a CP issue.

Alternative to exclusion – Internal exclusion

Schools can still use internal exclusions. Such exclusions are served on the school site and are not treated as an exclusion from school. Internal exclusion may be more appropriate in cases where a pupil is in Child

in Care (CiC) who is subject to Child Protection Plan, or for whom the Headteacher believes formal exclusion might pose a safeguarding risk.

CiC/LAC

Children in Care/Looked After Children are a group of pupils who are vulnerable to exclusion. The LA Virtual School Lead should be contacted on the day of exclusion. LA protocol should be followed when CiC/LAC children are excluded.

Gathering evidence

When establishing the facts in relation to an exclusion the Headteacher 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.

Evidence could consist of witness statements, photographs, screen shots from social network sites, physical evidence or behaviour incident records. In the case of exclusions for persistent disruptive behaviour, the Headteacher should also provide evidence that preventative measures have been used.

The Headteacher should give pupils the opportunity to present their views before taking the decision to exclude.

Witness statements

All witness statements should be attributed, signed and dated, unless the Academy has good reason to wish to protect the anonymity of the witness, in which case, the statement should be at least dated and labelled in a way that allows it to be distinguished from other statements.

The following advice is taken from Witness Statements Preparation Guide, European Human Rights Advocacy Centre, 2008.

If an adult is writing down the statement of a young person, or asking a pupil to write their own statement, they must avoid using leading questions. Useful questions might include:

- When did the incident take place?
- Where was the witness at the time and what was he or she doing?
- Who was the witness with and what did the witness see?
- What did each person say or do?

Statements should be factual and in the words of the witness: 'I did this.....', and 'I saw.....'. Statements could also include photos, maps, sketches or diagrams. When the decision is made to 'anonymise' witness statements by pupils, the school should contact the pupil's parents of the witness to explain that the 'anonymised' statement will be presented to the Academy Council exclusions panel. Regional Directors and Academy Councillors can read the original statements and decide whether to lift the 'veil of anonymity' to ensure fairness. In this case all parties at the meeting will see the names of the witnesses. Parents of the witness will need to agree to this in advance of the meeting otherwise the evidence may be discounted.

Police involvement and parallel criminal proceedings

The Headteacher need not postpone taking a decision about an exclusion solely because a police investigation is underway and/or any criminal proceedings may be brought. In such circumstances, Headteachers will need to take a decision on the evidence available to them at the time. It may be advisable, where the evidence is not clear-cut or is still coming to light, to first exclude the pupil for a fixed period.

The guidance now makes it clear that the law does not allow for extending a fixed period exclusion or converting it into a permanent one other than in exceptional circumstances such as further evidence coming 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. (DfE guidance page 8).

Fixed term exclusion

A pupil may be excluded for one or more fixed periods (up to a maximum of 45 days in a single academic year). A fixed period exclusion does not have to be for a continuous period. 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. Fixed period exclusions should be for the shortest time necessary. Exclusions will be treated as an authorised absence. Ofsted inspection evidence suggests 1-3 days are often long enough. A longer period of exclusion may have adverse educational consequences.

A lunch-time exclusion should be recorded as a half day.

Schools should take reasonable steps to set and mark work for pupils during the first five days of an exclusion. Work that is provided should be accessible and achievable by pupils outside of school.

Permanent exclusion

A decision to exclude a pupil permanently should only be taken:

- in response to serious or persistent breaches of the school's behaviour policy; **and**
- where allowing the pupils to remain in school would seriously harm the education or welfare of the pupil or others in the school.

Where practical, the Headteacher should give a pupil a final opportunity to present their case before taking the decision to exclude.

While current government guidance provides no examples of what a serious breach of the school's behaviour policy might be, Headteachers might reasonably consider permanent exclusion in the following, as cited in previous guidance (2008):

- serious actual or threatened violence against another pupil or member of staff
sexual abuse or assault
- supplying an illegal drug
- carrying an offensive weapon.

Procedures following an exclusion

Informing parents

The Headteacher must, without delay notify parents of the period of an exclusion and the reasons for it, their legal responsibilities during the first five days of their child's exclusion and follow up in writing with:

- the reasons for the exclusion;
- the period of a fixed period exclusion or, the fact that it is permanent;
- parents' right to make representations about the exclusion to the Chair of Governors and how the pupil may be involved in this;
- how any representations should be made to the Chair of Governors, depending on the length of the exclusion.
- where the Chair of Governors is legally required 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.

The school must inform parents of the days on which they must ensure that the pupil is not present in a public place at any time during school hours, for the first 5 days of any exclusion and that a Penalty Notice can be issued if they fail to ensure this.

From the sixth day of a fixed period exclusion, schools are required to arrange alternative full-time education for the excluded pupil.

‘Where a child received consecutive fixed-period exclusions, these are regarded as a cumulative period of exclusion for the purposes of this duty. This means that if a child has more than five consecutive school days of exclusion, then education must be arranged for the sixth school day of exclusion, regardless of whether this is as a result of one fixed-period or more than one fixed-period exclusion.’ (DfE guidance Section 5 Paragraph 45).

Local Authorities are required to arrange full-time education from the sixth day of a permanent exclusion.

If alternative provision is being arranged by the school, then the following information must be included in the letter to parents: the address, contact name to whom the pupil should report; start and finish date and times of any such full-time education, including the times for morning and afternoon sessions where relevant (where it can reasonably be found out within the timescale).

Parents must be informed where a further fixed period of exclusion or a permanent exclusion has been issued. The Headteacher may also withdraw an exclusion that has not been reviewed by the governing body. In such cases the Headteacher must write again to the parents explaining the reasons for the change and providing any additional information.

Informing the Chair of Governors and the Local Authority

The Headteacher must, immediately notify the Regional Director and the Local Authority of any permanent exclusion or any fixed period exclusion which would result in:

- being excluded for more than five days (or more than ten lunchtimes) in a term
- missing a public examination or national curriculum test.

Academies are no longer required to arrange a re-admittance meeting for a pupil and parents following an exclusion. However, schools should have a strategy for reintegrating pupils that return to school following a fixed period exclusion, and for managing their future behaviour. Each academy should have a clear strategy for reintegration. This will include a meeting with parents/carers and the student.

Considering reinstatement of pupils

The Chair of Governors has a duty to 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-term exclusion which would bring the pupil’s total number of school days of exclusion to more than 15 in a term
- It would result in a pupil missing a public examination

Where an exclusion would result in a pupil missing a public examination, the Academy Council and Chair of the Exclusions Panel will consider the reinstatement of the pupil before the date of the examination. If this is not practicable, the Academy Council and Chair of the Exclusions Panel will consider the exclusion and decide whether or not to reinstate the pupil.

The Academy Council and Chair of the Exclusions Panel can decide to:

- Decline to reinstate the pupil, or
- Direct the reinstatement of the pupil immediately, or on a particular date.

In reaching a decision, the Chair of Governors 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, and a record of evidence considered kept. The outcome will also be recorded on the pupil's educational record.

The Chair of Governors will notify, in writing, the Headteacher, parents and the LA (including the LA in which the pupil resides, if different to the LA in which the Academy is located) of its decision, along with reasons for its decision, without delay.

Where an exclusion is permanent, the Chair of Governors' decision will also include the following:

- 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 date by which an application for an independent review must be made
- The name and address to whom an application for a review (and any written evidence) would 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 has recognised SEN, parents have a right to require OCL to appoint a SEN expert to 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 a 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 unlawful discrimination, they may make a claim under the Equality Act 2010 to the First-Tier Tribunal (Special Education 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.

Preparing evidence in advance of Academy Council panel meetings

The Academy Council and Chair of Exclusions Panel require evidence from the school in advance of a disciplinary meeting including records of behaviour, the support provided by the school and relevant school.

The independent review (IPR)

If parents apply for an independent review, the Academy will arrange for an independent panel to review the decision of the Chair of Governors not to reinstate a permanently excluded pupil.

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

A panel of 3 or 5 members will be constituted with representatives from each of the categories below. Where a 5-member panel is constituted, 2 members will come from the Academy Council category and 2 will come from the Principal category.

- A lay member to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as an Academy Councillor or volunteer
- Academy Councillor who have served as an Academy Councillor for at least 12 consecutive months in the last 5 years, provided they have not been teachers or Principals during this time
- Principals/Headteachers or individuals who have been a Principal within the last 5 years

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

- Are a Director of the Academy trust or Academy Councillor 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 Academy trust or the Academy council, 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 Academy trust, Academy Council, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their impartiality
- Have not had the required training within the last 2 years

A clerk will be appointed to the panel.

The independent panel will decide one of the following:

- Uphold the Academy Council and Chair of the Exclusions Panel's decision
- Recommend that the Academy Council and Chair of the Exclusions Panel reconsider reinstatement
- Quash the Academy Council and Chair of the Exclusions Panel'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 the majority vote. In the case of a tied decision, the Chair has the casting vote.

Academy register

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.

Where an application for independent review has been made, the Academy Council 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 provision) will be used on the attendance register where excluded.

Monitoring arrangements

Academies monitor the number of exclusions every term and reports back to their Regional Director. They also liaise with the local authority to ensure suitable full-time education for excluded pupils.

The policy will be reviewed annually.

Links with other policies

This exclusions policy is linked to out

- Behaviour policy
- SEND policy