

The Mendip School

Exclusion Policy

Review Due:	September 2020
Last Review	September 2018
Applicable to:	The Mendip School
Reviewed by:	Natalie Hanna

Introduction

This is the exclusion policy for The Mendip School (“the School”). In this policy reference to ‘exclusion’ includes both fixed term and permanent exclusions. Where the policy is referring to a specific type (i.e. fixed term or permanent) of exclusion, the wording will make this clear.

This policy provides an overview of the exclusion process that will be followed by the School. It should be read alongside current DfE Exclusion Guidance, which should be followed in all cases.

(a) DfE Guidance¹

The DfE guidance to be followed in relation to exclusion from school was published in June 2012 and relates to all exclusions, which occur from 1 September 2012. The Executive Principal, Governing Bodies, the Independent Review Panel and clerks, and SEN experts must by law have regard to the DfE guidance when deciding (as applicable):

- whether to exclude a pupil;
- whether to uphold an exclusion;
- whether to direct reinstatement;
- whether to recommend or direct that the governing body reconsiders the exclusion.

(b) School Policies

Schools must have policies, procedures and staff training in place that will promote good behaviour. Behaviour policies must be widely publicised so that pupils, parents and all school staff are aware of the standards of behaviour expected and the range of sanctions.

¹ “Exclusion from maintained schools, Academies and pupil referral units in England
A guide for those with legal responsibilities in relation to exclusion”

The School has the power to direct a pupil off-site for education to improve his or her behaviour. A pupil can also transfer to another school/academy as part of a 'managed move'. The latter requires the consent of the parent/carer.

(c) Parent

Any reference in this policy to parent(s) includes all those with parental responsibility.

Exclusion from school

When there is repeated or serious misbehaviour the school will use the policy and framework below. This policy complies with the requirements set out in the 1997 Education Act.

Reasons for Exclusion

Behaviour for which exclusion may be used includes:

- (a) actual or threatened physical violence
- (b) seriously disruptive behaviour which interferes with the learning opportunities of others or might lead to a breakdown in school discipline
- (c) continual low stage disruption which prevents other pupils learning
- (d) behaviour which might endanger others
- (e) continuing failure to complete lesser school punishments such as detentions
- (f) refusal to comply with dress code regulations
- (g) illegal activities including theft, drugs or possession of offensive weapons
- (h) racial abuse or harassment
- (i) harassment, intimidation or verbal or sexual abuse
- (j) vandalism

N.B. This is not an exhaustive list

1. Fixed term exclusion

This is an exclusion for a **fixed number of days**. The pupil must remain at home up to the first 5 days (during which time the School will take reasonable steps to set and mark work for the pupil).

For a fixed term exclusion of more than 5 days, full time education provision commences from the 6th day and must be organised by the School.

A pupil is entitled to return to the School once the period of exclusion has ended.

A pupil may not be excluded for more than 45 days in a school year.

A pupil may be excluded during **lunchtimes** for a **fixed number of days**. Each lunchtime exclusion is equivalent to half day fixed term exclusion. Arrangements will be made to provide a lunch if the pupil is entitled to free school meals.

2. Permanent Exclusion

This is where the Executive Principal's intention is that the pupil should not be allowed to return to the School. This decision should only be taken if:

- (a) the pupil has committed a serious breach or persistent breaches of the School's behaviour policy; and
- (b) allowing him/her to remain in the academy seriously harms the learning or welfare of the pupil or others in the School;

In most cases, this will be after a wide range of alternative strategies have been tried without success. However, there will be exceptional circumstances where, in the Head Teacher's judgement, it might be appropriate to permanently exclude a pupil for a single serious breach.

Exclusion is recognised as an appropriate sanction, however permanent exclusion should only be used as a last resort when a range of other strategies have been tried and exhausted. Most exclusion are the result of persistent breaches of the schools discipline policy. A permanent exclusion may also be imposed for a single serious breach of the School's behaviour policy.

The Decision to Exclude

1. General Advice

Only the Executive Principal, or, in their absence, the Head of School, Assistant Principals or teacher in charge can exclude a pupil. The Executive Principal may consult others, but not anyone who may later have a role in reviewing the decision.

Exclusion should not be imposed in the heat of the moment, unless there is an immediate threat to the safety of others in the School or the pupil concerned.

The exclusion process falls into **three stages**:

1. Decision by the Executive Principal to exclude;
2. Consideration of the Executive Principal's decision by the Governing Body, usually delegated to a Behaviour Committee²;

² Please see flow chart taken from the DfE Exclusion Guidance which sets out when the Governing Body must review an exclusion.

3. In the case of a permanent exclusion, and only if requested by parents, consideration of the Executive Principal's decision by an Independent Review Panel.

The decision to exclude is the Executive Principals to take. Where practical, the Executive Principal should ensure that a thorough investigation has been carried out and allow and encourage pupils to present their case before taking the decision to exclude. Facts are to be decided on the balance of probabilities.

Whilst exclusion may still be an appropriate sanction, the Executive Principal should take account of any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it comes to light that a pupil has suffered bereavement, has mental health issues or has been subject to bullying or provocation.

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 Executive Principal should also consider the use of a multi-agency assessment (including CAF) for pupils who demonstrate persistent disruptive behaviour. Such assessments may pick up unidentified special educational needs but the scope of the assessment could go further, for example, by seeking to identify mental health or family problems.

2. Fixed Term or Permanent

In many cases investigation may not be immediately possible if, for example, the incident is complex and a number of witness statements are required.

In this case, an Executive Principal may issue a fixed term exclusion for a short period:

- to allow investigation to take place;
- to give opportunity for a reasoned decision.

In this case the letter informing of the fixed term exclusion should clearly state that the reason for the fixed term exclusion is **“to allow investigation into an incident which may result in permanent exclusion”**. The letter should not state that the fixed term exclusion is, in itself, punishment for the incident under investigation. Once the investigation is complete, a further letter should be sent containing one of the following;

- notification for the pupil to return to school;
- an extension to the fixed term exclusion;
- notification of a permanent exclusion.

In exceptional cases, usually where further evidence, not available at the time of the investigation, has come to light a fixed term exclusion may be extended or converted to a

permanent exclusion. Similarly, the Executive Principal may choose to withdraw an exclusion in the light of new evidence.

3. Pupils from vulnerable groups

Pupils with Special Educational Needs (SEN)

Schools and governing bodies have a statutory duty to do their best to ensure that the necessary provision is made for any pupil who has SEN and to avoid excluding permanently any pupil with an Education Health and Care plan (EHCP). Where a pupil has an EHCP and is at risk of exclusion, schools should consider an early annual review or interim/emergency review.

Looked After Children

Looked After Children are at risk of low attainment in school and exclusion. Schools should be especially sensitive to exclusion issues where Looked After Children are concerned. The School will try every practicable and reasonable means to avoid exclusion.

Equality Duty

The law places a general duty on schools, in the exercise of their functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act 2010.

Furthermore schools must advance equality of opportunity and good relations between people of different groups (for example different races, those with a disability and those without, age, gender) and foster good relations between all people.

The law also places a number of specific duties on schools, including duties to assess the impact of policies and to monitor the operation of those policies on pupils, parents and staff in the context of the public sector equality duty.

Where a parent considers that the exclusion is discrimination under the Equality Act, then a claim may be lodged with the First tier Tribunal. There are specific time limits depending on the type of discrimination alleged.

4. Behaviour outside School

The School has the right to sanction poor behaviour taking place on trips, outings, sporting fixtures, or travel/movement in the vicinity of the School. Subject to the requirements of this policy, the Executive Principal may exclude pupils even if the circumstances giving rise to exclusion occur when the pupil is out of School.

Responsibilities of the Executive Principal/ Head of School

The Executive Principal should follow the procedures set out in the DFE guidance, which has been designed to ensure fairness and openness in the handling of exclusions. Following the guidance will reduce the chance of any successful legal challenge to the exclusion at a later stage.

1. Informing parents

Once a decision to exclude has been reached, the parent must be notified without delay, ideally by telephone, followed up with a letter preferably within one school day.

2. Informing Governors and the Local Authority

Without delay, preferably within one school day, the Executive Principal must inform the Governing Body and Local Authority of:

- all permanent exclusions (if the pupil resides in another authority, the home Local Authority should also be informed);
- exclusions that would take the term's total for that pupil to more than five days;
- exclusions that would result in the pupil missing a public examination or national curriculum test.

All other fixed term exclusions should be notified termly.

Pupils who have been permanently excluded should not be deleted from the school roll until the independent review panel process is completed, or the deadline for review is reached and no review has been applied for.

Where a fixed term exclusion results in a pupil missing an examination, although there is no right for the excluded pupil to take such an examination (or test) on School premises, the School may exercise its discretion to allow the pupil to enter the School premises for the sole purpose of taking the examination.

4. Governing body meetings

If a meeting of the Behaviour Committee is to be held, the Executive Principal should prepare all supporting papers for the exclusion and pass them to the Clerk for circulation to all parties at least five days in advance of the meeting. The paperwork should include:

- the Executive Principal's case for exclusion;
- a copy of the exclusion letter of notification to parent;
- attendance records;
- witness statements (signed where possible and dated);

- excluded pupil statement;
- the School discipline policy, and other relevant policies;
- details of any Pastoral Support Programme – or Individual Education Plan with clearly identified behaviour targets, where appropriate;
- Records of interventions;
- Details of any alternative or enhanced curriculum.

5. Reintegration interviews

Reintegration interviews are conducted as standard.

A fixed term exclusion must not be extended if such an interview cannot be arranged in time or the parents do not attend. Pupils have a right to return to school as soon as the period of fixed term exclusion ends.

Role of the Governing Body

The Governing Body of the School has delegated powers to a Behaviour Committee to review exclusions. Where the Behaviour Committee is to review an exclusion it will comprise of at least three people.

The Behaviour Committee can either uphold an exclusion, or direct reinstatement immediately or by a particular date. The Behaviour Committee cannot extend a fixed term exclusion nor substituted it with a permanent exclusion.

The Governors will appoint a Clerk to the Behaviour Committee to handle the administrative arrangements.

The flow chart from the DfE guidance sets out when the Behaviour Committee must meet to review an exclusion.

1. Prior to a Behaviour Committee Meeting

The Behaviour Committee should invite the parent and Executive Principal to the meeting, at a time and place convenient to all parties. The parent can be accompanied by a friend or legal representative at their request. A parent may also invite a Local Authority representative to attend the meeting as an observer but representations by this person can be made with the consent of the Behaviour Committee.

The excluded pupil is also entitled to attend the meeting, and should be encouraged to participate, taking into account their age and understanding.

Any written statements should be requested prior to the meeting. These should be circulated to all parties at least five days in advance of the meeting, along with a list of those who will be present at the meeting.

Governors should read all the paperwork and prepare relevant questions to assist them in making a decision.

2. Procedure for Behaviour Committee Meeting

An agenda for the Behaviour Committee meeting will be sent out in advance so that all parties are aware how the meeting will be run.

At the meeting, the Behaviour Committee should consider;

- any representations made by the parent and the pupil;
- whether the Executive Principal has complied with the exclusion procedure and has had regard to the DfE guidance on exclusions;
- on the balance of probabilities, has the pupil done what they are accused of;
- whether allowing him/her to remain in the School seriously harms the learning or welfare of the pupil or others in the School;
- whether the behaviour is a serious breach or persistent breaches of the School's behaviour policy; and
- that a wide range of possible strategies to improve a pupil's behaviour were tried and have failed (save that this will not apply if the pupil has been excluded for a single serious offence).

3. Behaviour Committee decision

The Behaviour Committee must inform the parent, Executive Principal and the Local Authority of their decision, in writing without delay, preferably within one school day of the meeting, stating their reasons. Where the pupil resides in a different Local Authority, they must also inform the pupil's 'home' Local Authority.

If the Behaviour Committee directs reinstatement, this should take place as soon as possible. No conditions can be attached to any direction to reinstate the pupil save that the Behaviour Committee can direct reinstatement on a particular date.

Where the Behaviour Committee upholds a permanent exclusion, there are specific requirements for what information should be included in the letter to parents.

Independent Review Panels

The Independent Review Panel (IRP) is independent of the School.

An IRP is only involved in reviewing permanent exclusions and only if requested by the parent/carer of the excluded pupil, and/or the pupil if over 18. A request for a review must be made within 15 school days of the decision of the Behaviour Committee. The relevant date will be set out in the decision letter of the Behaviour Committee. If the deadline expires and no request for a review has been made then the right for a review by the Independent Review Panel lapses.

An IRP must meet to consider an exclusion no later than the 15th school day after the day on which the review was requested. However, if necessary, the IRP may adjourn the hearing.

The constitution of an IRP is set out in the DfE guidance on exclusions.

The following are entitled to make written representations, appear and make oral representations, and to be represented (including legally):

- the parent (or, if aged over 18, the pupil);
- the Executive Principal;
- the governing body;

The excluded pupil is also entitled to attend the review, but if not attending then their views can be presented through a representative or by written statement.

As at the Behaviour Committee meeting, a representative of the Local Authority may attend at the request of the parent but may not make representations at the hearing unless the School agrees.

Request for an SEN Expert

If requested by the parents, the person convening the panel must appoint a SEN Expert to attend the IRP. Parents have a right to the above, regardless of whether their child has recognised or identified SEN.

The SEN Expert's role is to provide impartial advice to the IRP on how special educational needs may be relevant to the exclusion. Including whether the School policies in relation to SEN were legally reasonable and procedurally fair, whether the School acted in a legal, reasonable and procedurally fair way with regards to identification of SEN and any contribution that this could have made to the circumstances of the pupils exclusion.

The SEN Expert's role does not include making an assessment of the pupil's special educational needs.

Conduct and role of the IRP

It is for the IRP to decide how to conduct the proceedings, which should be reasonably formal so that all parties can present their case effectively.

The role of the IRP is to review the Behaviour Committee's decision not to reinstate a permanently excluded pupil. The IRP must take account of the circumstances of the excluded pupil and all others in the School. The IRP must apply the civil standard of proof (the balance of probabilities).

The decision

An IRP can decide to:

- uphold the exclusion decision;
- recommend that the governing body reconsiders their decision; or
- quash the decision and direct that the governing body considers the exclusion again.

The panel's decision can be decided by a majority vote. The panel can request that a copy of the decision letter is placed on the pupil's record and the School must comply with this request.

The panel may only quash a decision and direct reconsideration where it considers that the exclusion was flawed when considered in the light of the principles applicable on an application for judicial review; illegality, irrationality and procedural impropriety.

Reconvening a Behaviour Committee

If the IRP directs or recommends that the governing body reconsider the exclusion, the Behaviour Committee must meet to reconsider its decision within 10 school days of notification.

Where the Behaviour Committee has reconsidered an exclusion decision it must inform the parent, the Executive Principal and the Local Authority of its reconsidered decision and the reasons for it without delay.

5. After the IRP Meeting

The IRP must let all parties know its decision without delay.

If the IRP upholds the permanent exclusion, the Clerk should immediately report this to the Local Authority. If the pupil is of compulsory school age, it is for the Local Authority in whose area the pupil lives to make arrangements as quickly as possible for the pupil to continue in

suitable full-time education. If the pupil lives outside the area of the School's Local Authority, the Clerk should make sure that the home Local Authority is also informed immediately of the position.

Where the exclusion is upheld the Executive Principal should remove the pupil's name from the school roll the day after the conclusion of the independent review panel.

Its decision is binding on the parent, the Governing Body of the School and the Executive Principal. The IRP cannot revisit its decision once made.

The decision may be overturned by the Administrative Court by way of Judicial Review proceedings.

Additional Relevant Policies

Government Exclusions guidelines

Equalities Policy

SEN Policy

Behaviour Policy