

## Ormiston Academies Trust Exclusion policy

### Policy version control

Policy type	Mandatory OAT policy
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Approved by	Exec June 2020
Trust Board approval	July 2020
Release date	July 2020
Next release date	July 2023
Description of changes	<ul style="list-style-type: none"> <li>▪ References to 'student' changed to 'pupil/student'</li> <li>▪ References to 'SEN' changed to 'SEND'</li> <li>▪ Change to 1.3 to make it more flexible to allow age appropriate questioning</li> <li>▪ Added to 2.1.2 that all PEX cases regarding a child with EHCP must be discussed with the Director of Primary &amp; SEND.</li> <li>▪ Added to 2.2 that a child's statement should be requested after the event if it was not possible to take one at the time</li> <li>▪ Added to 2.2.4 that where an FTE is issued pending further investigation, this should be outlined in the FTE letter</li> <li>▪ Added section 3 on CCTV/Video Footage</li> <li>▪ Added 6.2 on panel composition for reconsideration meetings</li> <li>▪ Decision letters – added criteria that must be met in decision to exclude</li> <li>▪ Decision letters – added template letters for FTE panel outcomes (reinstatement and decline reinstatement)</li> </ul>

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# 1. Action to be invoked in serious disciplinary matters

- 1.1. In discharging their duties the Principal and Governors must have regard to DfE guidance “Exclusion from maintained schools, academies and pupil referral units in England” which was published in September 2017 and any subsequent DfE updates to this guidance. Staff will also take into account their statutory duties in relation to special educational needs (SEND) including having regard to the SEND Code of Practice.
- 1.2. A decision to exclude a pupil/student will only be taken:
  - In response to serious breaches of the academy’s Behaviour Policy; **and**
  - If allowing the pupil/student to remain in the academy would seriously harm the learning or welfare of the pupil/student, other pupils/students or staff in the academy.
- 1.3. In the event of a serious incident a member of staff must try to clarify the facts of the incident this must include talking to the pupil/student in question, in a manner appropriate to their age. A written record of this meeting must be made. If the nature of the incident is extremely serious then at least two staff members should be present to conduct the meeting. Pupils/students should be appropriately questioned and given an opportunity to explain their behaviour/actions. Where possible, pupils/students should be encouraged to provide a written statement of what happened and offered the opportunity to sign this as an authoritative record of events. At this stage the report will help to enable the academy to decide what further action should be undertaken. If the decision is taken to exclude a pupil, a member of SLT will meet with the child and speak to the family to discuss the exclusion.
- 1.4. Whilst an exclusion may still be an appropriate sanction, the Principal will also take into consideration any contributing factors that are identified after an incident of poor behaviour has occurred. For example, where it is revealed a pupil/student has suffered bereavement, has mental health issues or has been the subject of bullying. In cases involving SEND and Looked After Children (LAC) pupils/students, the Principal should also consider whether appropriate provision is in place to support their needs as well as the involvement of multi-agencies.
- 1.5. In most cases a range of alternative strategies will have been tried before excluding a child. Where a one-off incident of sufficient gravity has taken place, this may not apply.
- 1.6. Where it is deemed an exclusion is not appropriate or suitable, an academy may arrange a governor warning meeting for the pupil with a member of the Local Governing Body (LGB), in order to meet with a pupil and parents to remind them of the academy’s behaviour policies and academy expectations. If the pupil then has further exclusions, the governor that attended this meeting would not be eligible to sit on the exclusions panel.

## 2. Responsibilities of the Principal

### 2.1. Decision making process

- 2.1.1. The Principal alone (or the acting Principal<sup>1</sup>, if the Principal is absent) has the power to exclude pupils/students.

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<sup>1</sup> An acting Principal is someone appointed to carry out the functions of the Principal in the Principal’s absence or pending the appointment of a Principal. This will not necessarily be the deputy: it will depend who is appointed to the role of acting Principal.

2.1.2. In considering the exclusion of a pupil/student the Principal should ensure that the following range of activities is carried out:

- A thorough investigation of the incident(s) producing a written report of the investigation
- Consider all the relevant facts and firm evidence to support the allegations
- Take into account the relevant behaviour policies
- Check whether an incident appeared to be provoked (for example by bullying or racial or sexual harassment)
- Ensure that all pupils/students involved have the opportunity to give their version of events
- Consult other people or agencies except where they may be involved in any review of the exclusion
- Ensure time has been given to addressing and supporting the pupil's/student's individual problems within the capabilities of the academy
- Due regard to the Equality Act 2010
- Where the child has an EHCP, the Director of Primary & SEND has been contacted for consultation **before** a decision to permanently exclude has been made.

2.1.3. Before deciding to exclude a pupil/student permanently the Principal will first try a range of strategies as outlined in the academy Behaviour Policies, including fixed term exclusion. Only when other strategies have been tried without success will the Principal consider permanent exclusion. Except, or notwithstanding where a one-off incident of sufficient gravity has taken place.

2.1.4. The Principal may exclude a pupil/student for up to 45 academy days in any academic year. Any exclusion beyond 45 academy days will be permanent. However before that point is reached the Principal will have held discussions with the Local Authority (LA) with a view to arranging an appropriate placement in another academy or Pupil Referral Unit (PRU). From Day 6, pupils/students will be accessing the resources at the designated Centre.

2.1.5. Any LAC will receive education at the Centre from Day 1. A 'looked after child' is a child who is (a) in the care of an LA, or (b) being provided with accommodation by a LA in the exercise of their social services functions.

2.1.6. The Principal will aim for the shortest possible period of exclusion but however brief an exclusion a plan will be made to:

- enable the pupil/student to continue their education;
- use the time to address the pupil's/student's problems;
- examine the process of reintegration.

2.1.7. All incidents where a child is sent home due to behaviour, will be noted as an exclusion, even if pre-agreed with a parent, i.e. pupils being sent home during lunch times. If an exclusion is for part of the day (including lunch-time), it should be noted as a half day exclusion.

2.1.8. The Principal must take account of their legal duty of care when sending a pupil home following an exclusion.

2.1.9. The academy will take all reasonable steps to set and mark pupil/student work during the first five school days of an exclusion.

## 2.2. Informing Parent(s)/carer(s) about the Exclusion

2.2.1. The Principal will make sure that the Parent(s)/carer(s) are notified immediately of the period of the exclusion and the reasons for it either in person or by telephone which will be followed by a letter within one academy day. An exclusion will normally begin on the next academy day.

2.2.2. Letters about fixed period and permanent exclusions will explain:

- Why the Principal decided to exclude the pupil/student
- The period of a *fixed term* exclusion or for a *permanent exclusion*, the fact that it is permanent
- The arrangements for enabling the pupil/student to continue their education, including setting and marking the pupil's/student's work
- The Parent(s)/carer(s) right to make representations about the exclusion to the governing body and how the pupil/student may be involved in this
- Who the Parent(s)/carer(s) should contact if they wish to state their case (usually the Clerk to the Committee) and draw their attention to relevant sources of free and impartial information
- The latest date the Parent(s)/carer(s) can put a written statement to governors
- Where there has not already been a statement taken from the child, parents should be notified that the student still has the opportunity to submit a statement
- The Parent(s)/carer(s) right to see and have a copy of their child's record
- That for the first five days of an exclusion (or until the start date of any alternative provision) parents are legally required to ensure their child is not present in a public place during school hours without reasonable justification, and that parents may be given a fixed penalty notice or prosecuted if they fail to do so
- If alternative provision is being arranged then the following information must be included with this notice where it can reasonably be found out within the timescale
- the start date for any provision of full time education that has been arranged for the pupil/student during 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
- any information required by the pupil/student to identify the person they should report to on the first day
- The letter should also enclose a copy of the academy's Exclusion Policy.

2.2.3. If, following an exclusion, there is a need for a further exclusion, the Principal must issue a new exclusion (fixed term or permanent), with reasons outlined in the communications to parents. Where a new exclusion is issued, there will be a new right for the Parent(s)/carer(s) to state their case to the Exclusions Committee.

2.2.4. Where principal is excluding for a fixed period but plans to review the incident and/or child's file, which may result in a permanent exclusion, this should be communicated in the fixed term exclusion letter i.e. there will be a further investigation of the incident or a full review of the pupil/student's behaviour log and following this activity, a permanent exclusion may be issued if there is deemed to be a serious one-off or persistent breaches of the behaviour policy and allowing the pupil/student to return to the academy would harm the safety or welfare of the academy community.

2.2.5. For the purposes of alternative provision, where a child receives consecutive fixed-period exclusions, these are regarded as a cumulative period of exclusion. This means that if a child has more than five consecutive school days of exclusion, the academy must arrange education for the sixth academy day of exclusion, regardless of whether this is as a result of one fixed-period or more than one fixed-period exclusion.

## 2.3. Informing the Governing Body and Local Authority

2.3.1. The Principal will immediately inform the Chair of the Governing Body and the LA of all permanent exclusions. Where a pupil/student resides outside the LA in which the academy is located, the Principal must also notify the pupil's/student's "home authority" of the exclusion without delay.

2.3.2. In addition, the Principal will inform the governing body of exclusions which result, separately or in total, in the pupil/student missing more than five academy days in any one term, or which deny pupils/students the chance to take a public examination.

## 3. CCTV/Video Footage

3.1. If at all possible, the use of any video footage featuring third parties as the primary evidence to exclude should be avoided.

3.2. Where footage is the only/key evidence of an incident, you must contact OAT's Head of Governance or Data Protection Officer for further advice as there are safeguarding and GDPR/data protection implications that need to be addressed on a case by case basis.

3.3. Where it is possible to remove identification of all other third parties, (i.e. through blurring out all third parties and/or playing the video without sound), the footage can be shown without consulting OAT Head Office first.

3.4. Use of screenshots from the footage in which third parties are blurred out are likely to be contested at Exclusion Panels if it appears that the still images are selective and have misrepresented an incident by taking it out of context. Please consider any bias/unfairness that may occur when taking the decision to include stills from video footage.

## 4. Responsibilities of the Governing Body

### 4.1. Establishing an Exclusions Committee

4.1.1. The Governors do not have the right to exclude a pupil/student. Governors do have a duty to consider parents' representations about an exclusion. To enable this the Governing Body will establish an Exclusions Committee.

4.1.2. An Exclusions Committee should consist of three or five governors and should not include staff governors.

### 4.2. Clerking the Exclusions Committee

*N.B. clerking arrangement vary from academy to academy, all clerks should have an SLA which outlines their responsibilities, where the below is not included in the SLA, the academy is responsible for ensuring its completion.*

- 4.2.1. The Clerk is responsible for liaising with all parties to arrange the exclusion panel at a time suitable for all parties. This should include the parent of the pupil, the academy representative and the Exclusion Committee members. The parent can request the attendance of an LA representative, whom the clerk should invite if requested. Once the date has been agreed, the clerk should write to the parents to formally invite them to the meeting.
- 4.2.2. The Clerk is responsible for collating and circulating papers to all parties scheduled to attend the meeting.
- 4.2.3. The Clerk should ensure that all representatives enter the meeting at the same time and neither are alone with the panel without the other being present.
- 4.2.4. The Clerk is responsible for taking full and accurate minutes of the appeal hearing, which will be sent to the Chair of the Exclusions Committee for approval and finalised within 5 academy days of the panel meeting.
- 4.2.5. The Clerk is responsible for sending a letter to the parents and a copy to the LA notifying them of the outcome of the Exclusion Committee.

### 4.3. Fixed Term Exclusion cases

- 4.3.1. Please refer to the flowchart annexed to this policy which provides a summary of the Exclusions Committee's duty to review the Principal's exclusion decision.
- 4.3.2. If the pupil/student has returned to the academy before the Exclusions Committee meets, the meeting still enables the parent(s)/carer(s) to give their views. The Exclusions Committee can also consider whether more information should be added to the pupil's/student's record.
- 4.3.3. If the pupil/student is still excluded when the meeting takes place, the Exclusions Committee should decide whether to direct re-instatement. In reaching their decision the Committee should:
  - consider the parent(s)/carer(s) statements;
  - have regard to the guidance on the appropriate use of exclusion in DfE Circular 10/99 and in the academy's behaviour policies and consider whether the Principal has tried sufficient approaches to improve a pupil's/student's behaviour before resorting to exclusion, and whether any further strategies might be an alternative to exclusion.
  - The clerk will notify the parent(s)/carer(s) in writing of the panel's decision within one Academy day of the hearing.

### 4.4. Permanent Exclusion cases

- 4.4.1. Written evidence supporting the Principal's decision will be circulated to all parties at least five working days in advance of the meeting by the Clerk to governors. The pupil/parents will also be given the opportunity to submit a written statement and/or supporting papers for circulation.
- 4.4.2. The Exclusions Committees will allow parents and pupils/students to be accompanied by a friend or representative.
- 4.4.3. Reasonable adjustments will be made for people with special needs, a disability or for attendees for whom English is not their first language, to support their attendance and contribution to the meeting.

4.4.4. For permanent exclusions, the Exclusions Committee, consisting of three or five Governors not employed by the Academy or known to the pupil/student, should normally satisfy itself that:

- for a one-off serious breach of behaviour, on the balance of probabilities, the offence took place or;
- for persistent bad behaviour, all possible strategies to improve a pupil's/student's behaviour were tried without success.

4.4.5. The Exclusions Committee will consider the exclusion and either:

- decline to reinstate the pupil; or
- direct reinstatement of the pupil immediately or on a particular date.

4.4.5.1. Such consideration will take account of the pupil's/student's disciplinary record and the likely impact of their continued attendance.

4.4.6. The Exclusions Committee may not attach conditions to the re-instatement of a pupil/student.

4.4.7. The Exclusions Committee will ensure that clear minutes of the meeting are taken as a record of the evidence that was considered by the governing body. These will be made available to all parties on request.

4.4.8. In reaching their decision the Exclusions Committee will ask all parties to withdraw before making their decision and will consider whether the decision to exclude the pupil/student was lawful, reasonable and procedurally fair. They will also take into account the Principal's legal duties.

4.4.9. If the Exclusions Committee declines to reinstate the pupil, the clerk will write on behalf of the Exclusions Committee within one Academy day to the parent(s)/carer(s). The letter will:

- state that the decision to exclude is permanent
- give the reasons for the decision;
- explain the parent(s)/carer(s) right to appeal to an Independent Review Panel to which the parent(s)/carer(s) can make oral and written statements;
- give the name and address of the person the parent(s)/carer(s) should contact if they wish the decision to be reviewed, explaining that any notice for review should explain their grounds for requesting a review and stating the latest date for giving notice (15 academy days from the date of the Discipline Committee's decision). The parent(s)/carer(s) has the right to request a review even if they did not make a case to the Discipline Committee.
- State that regardless of whether the excluded pupil/student has recognised special educational needs, parents have a right to require the Ormiston Academy Trust to appoint a SEND expert to attend the review and that this appointment will be at no cost to parents
- Request that parents must make it clear if they wish for a SEND expert to be appointed in any application for review
- That parents may also bring a friend to the review
- Provide details of sources of free and impartial information.

4.4.10. If the Exclusion Committee declines to reinstate the pupil, the clerk will notify the parent(s)/carer(s) in writing of this decision within one Academy day of the hearing.

4.4.11. The Clerk will also notify the LA of the outcome of the panel meeting within one academy day.



## 4.5. After the meeting – Fixed Term and Permanent Exclusions

4.5.1. A note of the Exclusions Committee's views on the exclusion shall normally be placed on the pupil's/student's record with a copy of the Principal's exclusion letter.

## 5. Independent Review Panels

5.1. If applied for by parents within the legal time frame (15 Academy days), the academy will secure an independent external clerking service/clerk who will arrange for an Independent Review Panel to review the decision of a governing body not to reinstate a permanently excluded pupil/student.

5.2. Any application made outside the legal time frame will be rejected by the academy.

5.3. OAT Governance Team will be notified of any request for an Independent Review Panel.

5.4. Parents may request an Independent Review Panel even if they did not make a case to, or attend the meeting at which the governors made their decision.

5.5. The academy should ensure that the independent clerking service/clerk secured understands that they are responsible for:

- Establishing an Independent Review Panel which complies with DfE regulations
- Agreeing suitable date, time and independent venue for the hearing to take place, ideally a neutral location
- Appointing an independent Clerk to administer the process including the circulation of the meeting pack, taking accurate minutes of the hearing and sending out the decision letter (the Clerk to the excluding academy governing body will not be eligible to perform this role)
- The Clerk may also provide advice to the panel & parties to the review on procedure, legislation and statutory guidance on exclusions
- Where it has been requested, arrange for a SEND expert to attend the review hearing
- Where it has been requested, arrange for an interpreter to attend the review hearing.

5.6. The role of the panel is to review the governing body's decision not to reinstate a permanently excluded pupil/student. In reviewing the decision, the panel must consider the interests and circumstances of the excluded pupil/student, including the circumstances in which the pupil/student was excluded and have regard to the interests of other pupils/students and people working at the Academy. The panel must also apply the civil standard of proof "on the balance of probabilities" rather than the criminal standard of "beyond reasonable doubt".

5.7. Following its review, the panel can decide to:

- Uphold the exclusion decision
- Recommend that the governing body reconsiders their decision or,
- Quash the decision and direct the governing body to consider the exclusion again

5.8. The decision of the Independent Review Panel is binding on the: pupil/student, parents, governing body, LA and OAT.

5.9. New supporting evidence may be presented to the panel, but the academy may not introduce new reasons for the exclusion and panels will disregard any new reasons that are introduced.

5.10. Where present the panel must seek and have regard to the SEND expert's view of how SEND might be relevant to the pupil's/student's exclusion.

- 5.11. Members of the Exclusions Committee and the Principal will be invited to attend the hearing to present their case to the panel.
- 5.12. As with the governing body exclusion hearing, parents will be invited to attend and may bring a friend, if they are not present the case will be heard in their absence.
- 5.13. Where a panel quashes the governing body's decision and directs it to reconsider an exclusion it has the power to order that the Academy makes a payment of £4k to the LA if the governing body does not offer to reinstate the pupil/student within 10 Academy days of receiving notice of the panel's decision. (This sum would be in addition to any budget that would normally follow a pupil/student to a new school.)
- 5.14. A review cannot continue if the panel no longer has representation from the required categories of panel members. In this event the panel will be adjourned until the number can be restored.
- 5.15. Following the review, the panel must issue written notification to all parties without delay. This notification must include:
  - The panel's decision and the reason for it
  - Where relevant, details of any financial payment to be made if the governing body subsequently decides not to offer to reinstate a pupil/student
  - Any information that must be recorded on the pupil's/student's educational record to reflect the decision
- 5.16. If the panel upholds the decision, the Clerk to the Independent Review Panel will immediately notify the LA and if the pupil/student lives out of the LA of the academy, the pupil's/student's 'home local authority' as well.
- 5.17. If the panel quashes or recommends the reconsideration of the Exclusion Committee's decision, the Exclusions Committee must reconvene within ten school days of being given notice of the IRP's decision.

## 6. Reconsidering reinstatement

- 6.1. The Exclusions Committee must conscientiously reconsider the reinstatement of the pupil in light of the findings of the Independent Review Panel.
- 6.2. The Exclusions Committee should retain at least one person from the original panel and at least one new panel member.
- 6.3. In the case of either a recommended or directed reconsideration, the governing board must notify the following people of their reconsidered decision, and the reasons for it, in writing and without delay:
  - the parents;
  - the principal;
  - the local authority; and, where relevant, the 'home authority'
- 6.4. The reconsideration provides an opportunity for the Exclusions Committee to look afresh at the question of reinstating the pupil, in light of the findings of the independent review panel. There is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting. The Exclusions Committee is not prevented from taking into account other matters that it considers relevant.

- 6.5. The Exclusions Committee should ensure that clear minutes are taken of the meeting as a record of the evidence that was considered by the Exclusions Committee. These minutes will include a record of the discussion of the Exclusion Committee and the reasons for the decision. The minutes should be made available to all parties on request.
- 6.6. The Exclusions Committee should base its reconsideration on the presumption that a pupil will return to the school if reinstated, regardless of any stated intentions by the parents or pupil. Any decision of the Exclusions Committee to offer reinstatement which is subsequently turned down by the parents should be recorded on the pupil's educational record. The Exclusions Committee's decision should demonstrate how it has addressed the concerns raised by the independent review panel; this should be communicated for all parties to understand.

## A summary of the Exclusions Committee's duties

