

# Exclusion Policy

Date of approval	13 <sup>th</sup> July 2017
Review date	July 2018

Headteacher: **Mrs J Gray, MSc, NPQH**

St Michael's Church of England High School • Rowley Learning Campus • Curral Road • Rowley Regis • West Midlands • B65 9AN

Telephone: **0121 561 6881** • Fax: 0121 561 6882 • email: [contact.staff@st-michaels.sandwell.sch.uk](mailto:contact.staff@st-michaels.sandwell.sch.uk)

## Contents

### Statement of intent

1. Legal framework
2. Grounds for exclusion
3. The Headteacher's power to exclude
4. Factors to consider when excluding a pupil
5. Duty to inform parents/carers
6. Duty to inform the governing body and LA
7. Arranging education for excluded pupils
8. Considering exclusions
9. Reaching a decision
10. Notification of considered exclusions
11. Removing pupils from the school register
12. Independent Review Panel
13. Appointing an SEN Expert
14. The role of an SEN expert
15. The duties of the Independent Review Panel members, the clerk and the SEN expert in the conduct of an independent review panel
16. Reconsidering exclusions following a review
17. Criminal investigations
18. Monitoring and review

### Appendix

- a) Reviewing the Headteacher's Exclusion Decision

## Statement of intent

At St Michael's CE High School we understand that good behaviour and discipline is essential for promoting a high-quality of education.

Amongst other disciplinary sanctions, the school recognises that exclusion of pupils may be necessary where there has been a serious breach, or consistent breaches, of the school's Behaviour Management Policy. Excluding a pupil may also be required in instances where allowing the pupil to remain in school would be damaging to the education of others; in all cases, excluding pupils should only be used as a means of last resort.

The school has created this policy to clearly define the legal responsibilities of the Headteacher, governing body and Local Authority (LA) when responding to pupil exclusions, in order to ensure that they are dealt with both fairly and lawfully, and in line with DfE statutory guidance.

This policy also aims to secure a pupil's right to an education despite having been excluded, by ensuring that appropriate arrangements are in place.

Signed by:

_____	Headteacher	Date: _____
_____	Chair of governors	Date: _____

## 1. Legal framework

- 1.1. This policy has due regard to the related statutory legislation, including but not limited to, the following:
- 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 (As amended 2014)
  - The European Convention on Human Rights (EHCR)
  - The Equality Act 2010
- 1.2. This policy also has due regard to statutory and non-statutory guidance, including, but not limited to, the following:
- DfE (2012) 'Exclusion from maintained schools, Academies and pupil referral units in England' (as amended 2015)
  - DfE (2016) 'Behaviour and discipline in schools'
  - DfE (2015) 'Special educational needs and disability code of practice: 0 to 25 years'
- 1.3. This policy will be implemented in conjunction with the following school policies and procedures:
- Behaviour Management Policy
  - Anti-Bullying Policy
  - Code of Conduct Agreement
  - Violence Towards Staff Policy

## 2. Grounds for exclusion

- 2.1. The school will only exclude a pupil where it is absolutely necessary, and where all other possible disciplinary sanctions, as detailed in the school's Behaviour Management Policy, have failed to be successful.
- 2.2. The following examples of behaviour may underline the school's decision to exclude a pupil:
- Any incident which poses a risk to other pupils or members of staff, e.g. bringing a weapon onto the premises;
  - Any incidents which breach the law;
  - Persistent and severe bullying;
  - Verbal and physical abuse;
  - Constant disruption;
  - A single, serious and major incident, e.g. serious assault on another individual leading to injury.

- 2.3. Pupils can be excluded on a fixed period basis, i.e. up to 45 school days within a year, or permanently. Similarly, fixed period exclusions can be extended into permanent exclusions where further evidence has been presented.
- 2.4. In all cases, the Headteacher will decide which exclusion period a pupil will be subject to, depending on what the circumstances warrant.
- 2.5. As a voluntary aided school, the school has the power to direct a pupil off-site to improve his/her behaviour.

### **3. The Headteacher's power to exclude**

- 3.1. Only the Headteacher has the power to exclude a pupil from the school, and is able to decide whether this is on a fixed period or permanent basis. All exclusions will only be issued on disciplinary grounds.
- 3.2. The Headteacher is able to exclude pupils from the premises where their behaviour is disruptive during lunchtime. All lunchtime exclusions will be counted as half of a school day.
- 3.3. The Headteacher is able to consider a pupil who engages in disruptive behaviour outside of school premises as grounds for exclusion, in accordance with the school's Behaviour Management Policy.
- 3.4. Any decision made to exclude a pupil will be lawful, proportionate and fair, with respect to legislation relating directly to exclusions and the school's wider legal duties, including the European Convention on Human Rights (ECHR).
- 3.5. All exclusions will be formally recorded.
- 3.6. When sending a pupil home following any exclusion, the Headteacher will ensure that they exercise their duty of care at all times and will always inform the parents/carers.
- 3.7. The Headteacher will apply the civil standard of proof when responding to the facts relating to an exclusion, i.e. that 'on the balance of probabilities' it is more likely than not that the facts are true.
- 3.8. The Headteacher may withdraw any exclusion that has not already been reviewed by the governing body.
- 3.9. At all times, the Headteacher will take into account their legal duties under The Equality Act 2010 and the Special educational needs and disability code of practice: 0 to 25 years, ensuring that they do not discriminate on any grounds, e.g. race, sex, disability, and will not increase the severity of a pupil's exclusion on these grounds.
- 3.10. The Headteacher will not issue any 'informal' or 'unofficial' exclusions, such as sending a pupil home to 'cool-off', regardless of whether or not the parents/carers have agreed to this.
- 3.11. The Headteacher will not use the threat of exclusion as a means of instructing parents/carers to remove their child from the premises.

## **4. Factors to consider when excluding a pupil**

4.1. When considering the exclusion of a pupil, the Headteacher will:

- Allow the pupil the opportunity to present their case.
- Take into account any contributing factors that are identified after a case of poor behaviour has occurred, e.g. if the pupil's wellbeing has been compromised, or they have been subjected to bullying.
- Take into consideration whether the pupil has received multiple exclusions or is approaching the legal limit of 45 excluded days per school year, and whether exclusion is serving as an effective sanction.
- Consider early intervention to address underlying causes of disruptive behaviour, including liaising with external agencies, to assess pupils who demonstrate consistently poor behaviour.

4.2. The Headteacher will consider what extra support may be available for vulnerable pupil groups whose exclusion rates are higher, in order to reduce their risk of exclusion, including the following:

- Looked after children (LAC)
- Pupils eligible for free school meals
- Pupils with SEND
- Certain ethnic groups

4.3. In light of the above, the Headteacher will consider avoiding permanent exclusion for pupil groups who are particularly vulnerable to the impacts it would create for them.

4.4. Where any member of staff has concerns about vulnerable pupil groups and their behaviour, they will report this to the Headteacher who will consider what extra support or alternative placement is required.

4.5. The Headteacher will work in conjunction with the parents/carers of any pupil with additional needs, in order to establish the most effective support mechanisms.

## **5. Duty to inform parents/carers**

5.1. Following the Headteacher's decision to exclude a pupil, they will inform the parents/carers immediately, of the period of the exclusion and the reasons behind this.

5.2. The Headteacher will inform the parents/carers in writing, of the following:

- The reasons for the exclusion;
- The length of the fixed period exclusion, or, for a permanent exclusion, the fact that it is permanent;
- Their right to raise any representations of the exclusion to the governing body, including how the pupil will be involved in this and how the representations will be made;
- Their right to attend a meeting where there is a legal requirement for the governing body to consider the exclusion, and the fact that they are able to bring an accompanying individual;

- The arrangements that have been made for the pupil to continue their education prior to the organisation of any alternative provision, or the pupil's return to school;
  - Relevant sources of free, impartial information.
- 5.3. Where the pupil is of compulsory school age, the Headteacher will inform the parents/carers by the end of the afternoon session that:
- For the first five days of the exclusion, parents/carers are legally required to ensure that their child is not present in a public place during school hours without justification, and that parents/carers may receive a penalty fine if they fail to do so.
- 5.4. Where the Headteacher has arranged alternative provision, they will also inform the parents/carers of the following:
- The start date for any provision of full-time education, including starting and finishing times
  - The address at which the provision will take place
  - Any information necessary for the pupil to identify the person they should report to on the starting date
- 5.5. Where the Headteacher is unable to provide information on alternative provision by the end of the afternoon session, they will provide the information in a subsequent written notice without further delay, and within 48 hours of the pupil beginning the provision.
- 5.6. If the alternative provision is due to begin before the sixth day of exclusion, the Headteacher is able to give less than 48 hours of notice, with parental consent.
- 5.7. If the Headteacher has decided to extend the pupil's exclusion from a fixed period to permanent, they will notify the parents/carers of the extended exclusion, the reasons for this and any other important information.

## **6. Duty to inform the governing body and LA**

- 6.1. The Headteacher will inform the governing body and LA, without delay, of the following:
- Any permanent exclusions (including where a fixed period exclusion has been extended to be permanent);
  - Any exclusions which would result in the pupil being excluded for more than five school days in a term (or more than 10 lunchtimes);
  - Any exclusions which would result in the pupil being absent from an examination or national curriculum test.
- 6.2. For any exclusions, other than those above, the Headteacher will notify the governing body and LA once per term.
- 6.3. All notifications to the governing body and LA will include the reasons for exclusion and the duration of any fixed period exclusion.
- 6.4. If the pupil who is excluded lives outside the LA in which the school is located, the Headteacher will notify the pupil's 'home authority'.

## **7. Arranging education for excluded pupils**

- 7.1. For any fixed period exclusions of more than five school days, the governing body will arrange suitable full-time education for the pupil, which will begin no later than the sixth day of exclusion.
- 7.2. The governing body will not arrange full-time education for any pupil who is currently in their final year of compulsory education, and who does not have any further public examinations to sit.
- 7.3. For permanent exclusions, the LA must arrange suitable full-time education for the pupil to begin no later than the sixth day of the exclusion. This will be the pupil's 'home authority' in cases where the school is maintained by (or located within) a different local authority.
- 7.4. The governing body is aware that it is beneficial to excluded pupils to begin their alternative education arrangements before the sixth day of exclusion. The governing body will always attempt to arrange alternative provision before the sixth day of exclusion.
- 7.5. Where it is not possible to arrange alternative provision during the first five days of exclusion, the school will ensure that they take reasonable steps to set and mark work for the excluded pupil.
- 7.6. If a pupil with SEND has been excluded, the governing body will ensure that any alternative provision is arranged in consultation with the parents/carers, who are able to request preferences.

## **8. Considering exclusions**

- 8.1. The governing body, or a delegated committee, will consider any representations made by parents/carers in regard to exclusion.
- 8.2. Parents/carers, the Headteacher and, where applicable, a member of the LA, will be invited to attend any consideration of exclusions and will be able to make representations.
- 8.3. Any meeting to consider an exclusion will be arranged at a date and time convenient for all parties, and in compliance with any statutory time limits.
- 8.4. The governing body will consider exclusions, and the reinstatement of the pupil, where:
  - The exclusion is permanent.;
  - The exclusion is fixed period, and would bring the pupil's total number of excluded school days to more than 15 in any given term;
  - The exclusion would result in the pupil missing a public examination.
- 8.5. The governing body will consider exclusions within 50 school days of receiving notification, if requested by the parents/carers, where a pupil would be excluded for more than five school days per term, but not more than 15.
- 8.6. In the case of a fixed period exclusion, where the pupil's total number of excluded school days does not amount to more than five, the governing body will consider any representations made by parents/carers, but will not be able to reinstate the pupil.

- 8.7. Where exclusion would result in a pupil missing a public examination, the governing body will consider the exclusion before the test to decide whether the pupil should be reinstated in time to take the examination.
- 8.8. In light of the above, the governing body will also consider whether it would be appropriate to allow the excluded pupil to enter the premises to take the examination.
- 8.9. When considering exclusions, the governing body will:
- Only discuss the exclusion with the parties present at the meeting;
  - Ask for any written evidence prior to the meeting;
  - Circulate any written evidence and information to all parties, at least five school days in advance of the meeting;
  - Allow pupils and parents/carers to be accompanied by a person of their choice at the meeting;
  - Consider what reasonable adjustments need to be made to support the attendance and contribution of parties at the meeting;
  - Identify the steps needed to enable and encourage the excluded pupil to attend the meeting and speak on his/her behalf, or how he/she may contribute personal views by other means if attendance is not possible;
  - Consider the interests and circumstances of the excluded pupil, including the grounds for exclusion.

## **9. Reaching a decision**

- 9.1. After considering exclusions, the governing body will either:
- Uphold an exclusion; or
  - Reinstatement the pupil immediately, or on a specified date.
- 9.2. If reinstatement is not possible, e.g. if the pupil has already returned to school following a fixed period exclusion, the governing body will consider whether the Headteacher's decision to exclude the pupil was fair, lawful and proportionate, based on the evidence presented.
- 9.3. The governing body will apply the civil standard of proof when responding to the facts relating to an exclusion, i.e. that 'on the balance of probabilities' it is more likely than not that the facts are true.
- 9.4. In order to reach a decision, the governing body will:
- Identify the steps they intend to take to ensure that all parties involved will have the opportunity to participate and present their views.
  - Ensure that minutes are taken of the meeting as a record of the evidence that was considered.
  - Ask all parties to withdraw from the meeting before concluding their decision.
  - Consider whether the exclusion of the pupil was lawful, proportionate and fair, taking into account the Headteacher's legal duties.
  - Record the outcome of the decision on the pupil's educational records, along with copies, which will be kept for at least six months.

- Make a note of their findings, where they have considered an exclusion but cannot reinstate the pupil.

## **10. Notification of considered exclusions**

- 10.1. The governing body will notify the parents/carers of the excluded pupil, the Headteacher and the LA of their decision following the consideration of an exclusion, in writing and without delay.
- 10.2. If the governing body decides to make the exclusion permanent, they will notify the parents/carers:
- That it is permanent, and their right for it to be reviewed by an independent review panel;
  - Of the date by which an application for review must be made;
  - Of the name and address to whom the review application should be submitted;
  - That any application should set out the grounds on which it is being made and that, where appropriate, this should include reference to how a pupil's SEND are considered relevant to the exclusion;
  - That, regardless of whether a pupil has been identified as having SEND, the parents/carers have a right to require the governing body to ensure a SEND specialist attends the review;
  - Of the role of the SEND expert that will attend the review, and that the parents/carers will not be charged for this;
  - That they are required to make it clear if they wish for an SEND expert to attend the review;
  - That they may appoint someone at their own expense to make representations to the panel.
- 10.3. The governing body will also notify parents/carers that if they believe an exclusion has been issued as a result of discrimination then they are required to make a claim under The Equality Act 2010, and that this should be within six months of when the discrimination allegedly took place.
- 10.4. After any conclusion, the governing body will notify the parents/carers, and all other parties involved, of the decision that was made and the reasoning for this, in sufficient detail.

## **11. Removing pupils from the school register**

- 11.1. The Headteacher will remove pupils from the school register if:
- 15 school days have passed since the parents/carers were notified of the governing body's decision to uphold a permanent exclusion and no application for an independent panel review has been received;
  - The parents/carers have stated in writing that they will not be applying for an independent panel review following a permanent exclusion.
- 11.2. If an application for an independent panel review has been made within 15 school days, the Headteacher will wait until the review has been determined, or abandoned, before removing the pupil from the school register.

- 11.3. If a pupil's name has been removed from the register and a discrimination claim is made, the pupil may be reinstated following a decision made by the First-tier Tribunal Court.
- 11.4. Whilst a pupil's name remains on the admissions register, the appropriate code will be used to mark the pupil's attendance:
- Code B: Education off-site
  - Code D: Dual registration
  - Code E: Absent and not attending alternative provision

## **12. Independent Review Panel**

- 12.1. The LA will review the governing body's decision not to reinstate a permanently excluded pupil, if the parents/carers submit their application for this within the required time frame.
- 12.2. Parents/carers are required to submit their applications within:
- 15 school days of the governing body's notification of their decision;
  - 15 school days of the final determination of a discriminatory claim made under The Equality Act 2010.
- 12.3. Any application made outside of this timeframe will not be reviewed.
- 12.4. Parents/carers are able to request an independent panel review even if they did not make a case to, or attend, the governing body's initial consideration of the exclusion.
- 12.5. The LA will adhere to all statutory guidelines when conducting an independent panel review, as outlined in the DfE's statutory guidance document 'Exclusion from maintained schools, Academies and pupil referral units in England' 2012.

## **13. Appointing a SEN expert**

- 13.1. If requested by parents/carers in their application for an independent review panel, the LA must appoint a SEN expert to attend the panel and cover the associated costs of this appointment.
- 13.2. The LA must make arrangements to indemnify the SEN expert against any legal costs and expenses reasonably incurred as a result of any decisions or actions connected to the review and which are taken in good faith.
- 13.3. Parents/carers have a right to request the attendance of a SEN expert at a review, regardless of whether the school recognises that their child has SEN.
- 13.4. The SEN expert's role is set out in [section 14](#) of this policy.
- 13.5. Individuals may not serve as a SEN expert if they have, or at any time have had, any connection with the LA, school, parents or pupil, or the incident leading to the exclusion, which might reasonably be taken to raise doubts about their ability to act impartially; however, an individual is not taken to have such a connection solely because he/she is an employee of the LA.
- 13.6. The SEN expert should be a professional with first-hand experience of the assessment and support of SEN, as well as an understanding of the legal requirements on schools in relation to SEND. Examples of suitable individuals might include educational psychologists; specialist

SEN teachers; special educational needs coordinators (SENCOs); and behaviour support teachers. Recently retired individuals are not precluded from fulfilling this role, though the LA would need to assure themselves that the individual has a good understanding of current practice and the legal requirements on schools in relation to SEN.

- 13.7. Whilst individuals are not automatically taken to be partial simply because they are an employee of, or contracted by, a LA, they should not have had any previous involvement in the assessment or support of SEN for the excluded pupil, or siblings of the excluded pupil. The LA should request that prospective SEN experts declare any conflict of interest at the earliest opportunity.
- 13.8. The final decision on the appointment of an SEN expert is for the LA to make, but it should take reasonable steps to ensure that parents/carers have confidence in the impartiality and capability of the SEN expert. Where possible, this may include offering parents/carers a choice of SEN expert. In order to meet its duties within the statutory time frame, the LA should consider maintaining a list of individuals capable of performing the role of SEN expert in advance of a request.
- 13.9. It is for the LA to determine the amount of any payment in relation to the appointment of the SEN expert, such as financial loss, travel and subsistence allowances.

## **14. The role of a SEN expert**

- 14.1. The SEN expert's role is analogous to an expert witness, providing impartial advice to the panel on how SEN might be relevant to the exclusion. The SEN expert should base their advice on the evidence provided to the panel. The SEN expert's role does not include making an assessment of the pupil's SEN.
- 14.2. The focus of the SEN expert's advice should be on whether the school's policies which relate to SEN, or the application of these policies in relation to the excluded pupil, were legal, reasonable and procedurally fair. If the SEN expert believes that this was not the case they should, where possible, advise the panel on the possible contribution that this could have made to the circumstances of the pupil's exclusion.
- 14.3. Where the school does not recognise that a pupil has SEN, the SEN expert should advise the panel on whether they believe the school acted in a legal, reasonable and procedurally fair way with respect to the identification of any SEN that the pupil may potentially have, and any contribution that this could have made to the circumstances of the pupil's exclusion.
- 14.4. The SEN expert should not criticise a school's policies or actions simply because they believe a different approach should have been followed or because another school might have taken a different approach.

## **15. The duties of the Independent Review Panel members, the clerk and the SEN expert in the conduct of an independent review panel**

- 15.1. The role of the panel is to review the governing body's decision not to reinstate a permanently excluded pupil. In reviewing the decision, the panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and people working at the school.
- 15.2. The panel 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) rather than the criminal standard of 'beyond reasonable doubt'.
- 15.3. Following the review, the panel can decide to:
  - Uphold the decision;
  - Recommend that the governing body reconsiders their decision; or
  - Quash the decision and direct that the governing body considers the decision again.
- 15.4. The panel's decision can be unanimous and is binding on the pupil, parents, the governing body, Headteacher and LA.

## **16. Reconsidering exclusions following a review**

- 16.1. Where the independent review panel instructs the governing body to review their exclusion decision, they will do so within 10 school days of being given notice of the review panel's decision.
- 16.2. The school is aware that if the governing body does not offer to reinstate the pupil, then a £4,000 adjustment will be made to the school's budget.
- 16.3. If, following a reconsideration of an exclusion, the governing body offers to reinstate the pupil but the parents/carers decline, no adjustment will be made to the school's budget.
- 16.4. Following a reconsideration, the governing body will notify the parents/carers, the Headteacher and, where necessary, the LA, of their reconsidered decision and the reasons for this.

## **17. Criminal investigations**

- 17.1. The Headteacher will not postpone taking a decision to exclude a pupil due to a police investigation being underway, or any criminal proceedings that are in place.
- 17.2. The Headteacher will give particular consideration when deciding to exclude a pupil where evidence is limited by a police investigation, to ensure that any decision made is fair and reasonable.
- 17.3. If the governing body is required to consider the Headteacher's decision in these circumstances, they will not postpone the meeting and will make a decision based on the evidence available.

## **18. Monitoring and review**

- 18.1. This policy will be reviewed on an annual basis by the Headteacher in conjunction with the governing body.
- 18.2. All members of staff are required to familiarise themselves with this policy as part of their induction programme.

## Reviewing the Headteacher's Exclusion Decision

