



# Exclusions Policy

## Equalities Statement

In our Trust we work to ensure that there is equality of opportunity for all members of our community who hold a range of protected characteristics as defined by the Equality Act 2010, as well as having regard to other factors which have the potential to cause inequality, such as, socio-economic factors. For further information, please see our Equalities Policy.

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# Contents

- 1. Introduction – Purpose of the Policy ..... 3
- 2. Legislation and statutory guidance ..... 3
- 3. The decision to exclude ..... 3
- 4. Definition ..... 4
- 5. Roles and responsibilities ..... 4
- 6. The Local Authority ..... 6
- 7. An independent review..... 7
- 8. School registers ..... 8
- 9. Returning from a fixed-term exclusion ..... 9
- 10. Monitoring arrangements..... 9
- 11. Links with other policies ..... 9
  
- APPENDIX: Independent review panel training ..... 10**
- ADDENDUM - Changes to the school exclusion process during the Coronavirus outbreak ..... 11**

## 1. Introduction – Purpose of the Policy

Swale Academies Trust aims to ensure that:

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

## 2. Legislation and statutory guidance

This policy is based on statutory guidance from the Department for Education: [Exclusion from maintained schools, academies and pupil referral units \(PRUs\) in England](#).

It is based on the following legislation, which outline schools' powers to exclude pupils:

- Section 52 of the Education Act 2002, as amended by the Education Act 2011.
- The School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012.
- Sections 64-68 of the School Standards and Framework Act 1998.

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 pupils.
- 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](#).

This policy complies with Swale Academies Trust funding agreement and articles of association.

## 3. The decision to exclude

Only the headteacher, or acting headteacher, can exclude a pupil from school. A permanent exclusion will be taken as a last resort.

(name) School is aware that off-rolling is unlawful. Ofsted defines off-rolling as:

“...the practice of removing a pupil from the school roll without a formal, permanent exclusion or by encouraging a parent to remove their child from the

school roll, when the removal is primarily in the interests of the school rather than in the best interests of the pupil.”

We are committed to following all statutory exclusions procedures to ensure that every child receives an education in a safe and caring environment.

A decision to exclude a pupil will be taken only:

- In response to serious or persistent breaches of the school’s behaviour policy, **and**
- If allowing the pupil to remain in school would seriously harm the education or welfare of others.

Before deciding whether to exclude a pupil, either permanently or for a fixed period, the headteacher will:

- Consider all the relevant facts and evidence, including whether the incident(s) leading to the exclusion were provoked.
- Allow the pupil to give their version of events.
- Consider if the pupil has special educational needs (SEN).

#### **4. Definition**

For the purposes of exclusions, school day is defined as any day on which there is a school session. Therefore, INSET or staff training days do not count as a school day.

#### **5. Roles and responsibilities**

##### **The Headteacher**

##### **Informing parents**

The Headteacher will immediately provide the following information, in writing, to the parents of an excluded pupil:

- The reason(s) for the exclusion.
- The length of a fixed-term exclusion or, for a permanent exclusion, the fact that it is permanent.
- Information about parents’ right to make representations about the exclusion to the governing board and how the pupil may be involved in this.

- Where there is a legal requirement for the governing board to meet to consider the reinstatement of a pupil, and that parents have a right to attend a meeting, be represented at a meeting (at their own expense) and to bring a friend.

The headteacher will also notify parents by the end of the afternoon session on the day their child is excluded that for the first 5 school days of an exclusion, or until the start date of any alternative provision where this is earlier, parents are legally required to ensure that their child is not present in a public place during school hours without a good reason. Parents may be given a fixed penalty notice or prosecuted if they fail to do this.

If alternative provision is being arranged, the following information will be included when notifying parents of an exclusion:

- The start date for any provision of full-time education that has been arranged.
- 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 to identify the person they should report to on the first day.

Where this information on alternative provision is not reasonably ascertainable by the end of the afternoon session, it may be provided in a subsequent notice, but it will be provided no later than 48 hours before the provision is due to start. The only exception to this is where alternative provision is to be provided before the sixth day of an exclusion, in which case the information can be provided with less than 48 hours' notice with parents' consent.

### **Informing the governing board and local authority**

The headteacher will immediately notify the governing board and the local authority (LA) of:

- A permanent exclusion, including when a fixed-period exclusion is made permanent.
- Exclusions which would result in the pupil being excluded for more than 5 school days (or more than 10 lunchtimes) in a term.
- Exclusions which would result in the pupil missing a public examination.

For a permanent exclusion, if the pupil lives outside the LA in which the school is located, the Headteacher will also immediately inform the pupil's 'home authority' of the exclusion and the reason(s) for it without delay.

For all other exclusions, the headteacher will notify the governing board and LA once a term.

### **The governing board**

Responsibilities regarding exclusions is delegated to Local Governing Bodies (LGB)/Governor Challenge Committees (GCC).

The LGB/GCC has a duty to consider the reinstatement of an excluded pupil (see section 6).

Within 14 days of receipt of a request, the Trust will provide the secretary of state with information about any exclusions across the Trust in the preceding 12 months.

For a fixed-period exclusion of more than 5 school days, the LGB/GCC will arrange suitable full-time education for the pupil. This provision will begin no later than the sixth day of the exclusion.

For secondary schools only:

Provision does not have to be arranged for pupils in the final year of compulsory education who do not have any further public examinations to sit.

## **6. The Local Authority**

For permanent exclusions, the LA is responsible for arranging suitable full-time education to begin no later than the sixth day of the exclusion.

### **Considering the reinstatement of a pupil**

The LGB/GCC will consider the reinstatement of an excluded pupil within 15 school days of receiving the 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.

If requested to do so by parents, the LGB/GCC will consider the reinstatement of an excluded pupil within 50 school days of receiving notice of the exclusion if the pupil would be excluded from school for more than 5 school days, but less than 15, in a single term.

Where an exclusion would result in a pupil missing a public examination, the LGB/GCC will consider the reinstatement of the pupil before the date of the examination. If this is not practicable, the LGB/GCC will consider the exclusion and decide whether or not to reinstate the pupil.

The LGB/GCC can either:

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

In reaching a decision, the LGB/GCC 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 LGB/GCC will notify, in writing, the Headteacher, parents and the LA of its decision, along with reasons for its decision, without delay.

Where an exclusion is permanent, the LGB's/GCC's 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 should 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 pupil has recognised SEN, parents have a right to require Swale Academies Trust to appoint an SEN expert to attend the 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 an 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 discrimination, they may make a claim under the Equality Act 2010 to the first-tier tribunal (special educational 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.

## **7. An independent review**

If parents apply for an independent review, the Trust will arrange for an independent panel to review the decision of the governing board not to reinstate a permanently excluded pupil.

Applications for an independent review must be made within 15 school days of notice being given to the parents by LGB/GCC of its decision to not reinstate a 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 school governors' category and 2 members will come from the headteacher category.

- A lay member to chair the panel who has not worked in any school in a paid capacity, disregarding any experience as a school governor or volunteer.
- School governors who have served as a governor for at least 12 consecutive months in the last 5 years, provided they have not been teachers or headteachers during this time.
- Headteachers or individuals who have been a headteacher within the last 5 years.

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

- Are a member/director of the Trust, or governing board 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 Trust or the governing board, of the excluding school (unless they are employed as a headteacher at another school).
- Have, or at any time have had, any connection with the Trust, school, governing board, 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 (see Appendix 1 for what training must cover).

A clerk will be appointed to the panel.

The independent panel will decide one of the following:

- Uphold the LGB's/GCC's decision.
- Recommend that the LGB/GCC reconsiders reinstatement.
- Quash the LGB's/GCC'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 a majority vote. In the case of a tied decision, the chair has the casting vote.

## **8. School registers**

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 an independent review has been made, the governing board 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 registration) will be used on the attendance register.

Where excluded pupils are not attending alternative provision, code E (absent) will be used.

## **9. Returning from a fixed-term exclusion**

Following a fixed-term exclusion, a re-integration meeting will be held involving the pupil, parents, a member of senior staff and other staff, where appropriate.

## **10. Monitoring arrangements**

The Headteacher monitors the number of exclusions every term and reports back to the LGB/GCC. They also liaise with the local authority to ensure suitable full-time education for excluded pupils.

This policy will be reviewed by the Board of Trustees every three years.

## **11. Links with other policies**

This exclusions policy is linked to our:

- Behaviour Policy.
- SEND Policy and information report.

## **APPENDIX: Independent review panel training**

Swale Academies Trust has a Service Level Agreement with Clerks Associates for the management and administration of independent school exclusion reviews. Clerks Associates will take responsibility for all aspects of the independent review. This includes assembling an independent panel.

Clerks Associates provides relevant training for panel members in compliance with the following:

- The requirements of the primary legislation, regulations and statutory guidance governing exclusions, which would include an understanding of how the principles applicable in an application for judicial review relate to the panel's decision making.
- The need for the panel to observe procedural fairness and the rules of natural justice.
- The role of the chair and the clerk of a review panel.
- The duties of headteachers, governing boards and the panel under the Equality Act 2010.
- The effect of section 6 of the Human Rights Act 1998 (acts of public authorities unlawful if not compatible with certain human rights) and the need to act in a manner compatible with human rights protected by that Act.

## **ADDENDUM - Changes to the school exclusion process during the Coronavirus outbreak**

This statutory guidance was published in October 2020 and should be read alongside the Trust Exclusions Policy. To read the full guidance, please see:

<https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>

### **Summary of key information for school leaders, governors, and parents**

- The normal arrangements and procedures that must follow a decision to exclude on disciplinary grounds are described in the 2017 statutory guidance on [exclusion from maintained schools, academies and pupil referral units in England](#). They are unchanged except as noted in this guidance.
- It is important that meetings relating to exclusions occurring between 25 September 2020 and 24 March 2021 take place within the normal timescales described in the statutory guidance.
- Governing boards and arranging authorities for independent review panels should take all reasonable steps to meet the normal deadlines for exclusions occurring after 24 September 2020.
- They should:
  - i) consider the [guidance on protective measures for the full opening of schools](#)
  - ii) facilitate remote access meetings where it is not reasonably practicable to meet in person.
- If the deadlines are missed because of coronavirus (COVID-19), the meeting must be held as soon as it becomes reasonably practicable to meet either in person or via remote access (respecting the conditions for such a meeting).
- For exclusions occurring between 1 June 2020 and 24 March 2021 (inclusive of those dates), meetings of governing boards or independent review panels should be held via remote access, providing that:
  - i) all participants agree;
  - ii) all participants have access to the required technology;
  - iii) all participants will be able to put their point of view across;
  - iv) the process will be fair and transparent.
- Full guidance on arranging and conducting remote meetings can be found in:

<https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>

- The deadline for applications for an independent review in relation to exclusions occurring between 1 June 2020 and 24 March 2021 will be 25 school days from the date on which notice in writing of the governing board's decision is given to parents, or directly to the pupil if they are 18 or above.
- Schools must wait for the extended period of 25 school days to pass without an application having been made before deleting the name of a permanently excluded pupil from their admissions register, in accordance with the Education (Pupil Registration) (England) Regulations 2006 as amended.
- Exclusions between 25 September 2020 and 24 March 2021 (inclusive) should follow the deadlines in the [exclusion from maintained schools, academies and pupil referral units in England](#) statutory guidance, other than the deadline for the application of an independent review.
- If it is not reasonably practicable to meet by the usual deadline either in person (because of coronavirus (COVID-19)) or by remote access (because of the conditions for a remote access meeting), the meeting must not be delayed any longer than is reasonably necessary because of coronavirus (COVID-19).
- For guidance on the extension of deadlines for meetings relating to exclusions between 1 June 2020 and 24 September 2020, please see: <https://www.gov.uk/government/publications/school-exclusion/changes-to-the-school-exclusion-process-during-the-coronavirus-outbreak>